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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

SUSMAN GODFREY LLP,

Plaintiff,

vs.

EXECUTIVE OFFICE OF THE  
PRESIDENT, et al.,

Defendants.

Civil Action No.  
1:25-cv-1107

Washington, DC  
April 15, 2025

2:04 p.m.

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TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE LOREN L. ALIKHAN  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:

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P R O C E E D I N G S

1  
2           **DEPUTY CLERK:** Your Honor, we're now on the record  
3 for Susman Godfrey LLP vs. Executive Office of the  
4 President, et al., civil action 25-cv-1107.

5           Counsel, please come forward and note your  
6 appearance for the record, beginning with the plaintiff.

7           **MR. VERRILLI:** Good morning, Your Honor. I'm Don  
8 Verrilli from Munger, Tolles & Olson for Susman Godfrey.  
9 Permit me first to introduce two of the leaders of the  
10 Susman Godfrey firm who are here, and they are sitting just  
11 behind me: Kalpana Srinivasan and Vineet Bhatia. Thank  
12 you. And if I can introduce my colleagues.

13           **THE COURT:** Sure, please do.

14           **MR. VERRILLI:** So I want to introduce Brad Brian,  
15 who is the chairman of Munger, Tolles & Olson, and our  
16 partner Ginger Anders, and our senior counsel Jeremy  
17 Kreisberg. Thank you.

18           **THE COURT:** Good afternoon, and welcome to you  
19 all.

20           You're a bit outmanned here.

21           **MR. LAWSON:** Good afternoon, Your Honor. Richard  
22 Lawson, Deputy Associate Attorney General for the Department  
23 of Justice.

24           **THE COURT:** All right, thank you very much. I  
25 appreciate everybody appearing on such short notice. Susman

1 Godfrey filed this suit yesterday and sought a temporary  
2 restraining order yesterday afternoon. We have opened the  
3 public line for this hearing, and I will just note for  
4 anybody listening that any broadcasting or recording is  
5 strictly forbidden and will result in contempt sanctions.

6 So because this is Susman's motion, I will hear  
7 first from counsel for the plaintiffs.

8 **MR. VERRILLI:** Thank you, and may it please the  
9 Court. We are here this afternoon seeking a TRO against --  
10 to block the key provisions of an executive order that is  
11 one of the most brazenly unconstitutional exercises of  
12 executive power in the history of this nation. And that is,  
13 unfortunately, just the latest in a string of brazenly  
14 unconstitutional attacks on law firms in retaliation for the  
15 work they have done representing their clients. We're  
16 specifically seeking a TRO against Sections 1, 3 and 5 of  
17 the order.

18 Now, the first thing we need to show is likelihood  
19 of success on the merits, and with the Court's permission, I  
20 will turn to that first.

21 **THE COURT:** Before we get into that, you had  
22 mentioned -- and I know this relates to your due process  
23 argument, that you had no -- or your client had no prior  
24 knowledge of this. I know that the administration has been  
25 negotiating with some other firms.

1           And so there was no outreach, this is the first  
2 you heard of this was when it dropped?

3           **MR. VERRILLI:** None whatsoever, total bolt from  
4 the blue. No notice, no outreach, no indication whatsoever.

5           **THE COURT:** All right, thank you.

6           **MR. VERRILLI:** With respect to likelihood of  
7 success on the merits, the Susman order is unconstitutional  
8 for all of the reasons that the three courts that have  
9 reviewed comparable orders -- the Jenner order, the  
10 WilmerHale order, the Perkins Coie order -- and found them  
11 likely unconstitutional, and for additional reasons as well.  
12 It violates the First Amendment by retaliating against  
13 Susman for its advocacy on behalf of clients, by  
14 perpetrating odious viewpoint discrimination against that  
15 advocacy, by trying to cut off our right to petition the  
16 courts, and by seeking to disrupt Susman's right to  
17 associate with clients in ways that are sadly similar to the  
18 ones that the states of the old segregationist south used to  
19 disrupt the relationships between civil rights lawyers and  
20 their clients.

21           And there's no need to infer retaliatory intent in  
22 this case, it is right there in unapologetic black and white  
23 on the face of the executive order. This order also denies  
24 due process by tarring Susman's reputation, disrupting its  
25 client relationships and impairing its lawyers' ability to

1 practice their profession without, as Your Honor's question  
2 made clear, any notice or any opportunity to be heard  
3 whatsoever. And it does so on the basis of impermissibly  
4 vague and totally unsubstantiated smears.

5 It denies Susman equal protection of the laws by  
6 singling the firm out without even a plausible rational  
7 basis for doing so. It denies Susman's clients their rights  
8 to be represented by the lawyers of their choice, and it  
9 runs roughshod over the separation of powers. It's every  
10 bit as bad as the Steel Seizure case. The President has  
11 ordered actions and imposed punishments without any  
12 statutory authority or any constitutional authority. In  
13 fact, it's worse than the Steel Seizure case because it's  
14 also a direct assault on the authority of Article III courts  
15 and the independence of the judiciary. And, if that weren't  
16 enough, it also bears all the hallmarks of an  
17 unconstitutional bill of attainder. We don't think, based  
18 on that, and based on that read together with the rulings in  
19 the other three cases, that there's any serious question  
20 that we have a likelihood of success on the merits.

21 But before I turn to irreparable harm, let me  
22 pause there if Your Honor has any questions with respect to  
23 the merits.

24 **THE COURT:** So just a housekeeping matter. I  
25 think there was a Sixth Amendment argument in some of the

1 other cases. There's not one here because you're purely a  
2 civil firm?

3 **MR. VERRILLI:** Well, based on the fact that the  
4 work of the firm is, with very few exceptions,  
5 overwhelmingly civil in nature, that's correct.

6 **THE COURT:** And if we could turn to the order. I  
7 was hoping we could go through it and you could help me get  
8 some clarity, or not, as it goes to your vagueness argument.  
9 So my understanding is that the allegation that Susman  
10 spearheads efforts to weaponize the American legal system  
11 and degrade the quality of American elections is in  
12 reference to your client's representation of Dominion  
13 Voting; is that how you read this?

14 **MR. VERRILLI:** We assume that that's one of the  
15 bases, along with the firm's reputation of the Secretary of  
16 State of Arizona in the 2020 election aftermath and the  
17 Governor of Wisconsin in the 2020 election aftermath. Those  
18 are the election-related representations of the firm that  
19 we're aware of. You know, maybe there's something else that  
20 the government has in mind with respect to this vague  
21 language, but those are the ones we think must be at issue.

22 **THE COURT:** And then I think you confessed some  
23 confusion as to what the next sentence was, but that: "The  
24 firm funds groups that engage in dangerous efforts to  
25 undermine the effectiveness of the United States military

1 through the injection of political and radical ideology."

2 Do you have a sense as to what that might be  
3 about?

4 **MR. VERRILLI:** We are completely mystified by  
5 that. Perhaps the government can clear it up today, but we  
6 are completely mystified. You know, it's particularly  
7 unfortunate, we think -- and as the Srinivasan declaration  
8 identifies, this firm has reservists, it has numerous  
9 veterans, it has a long and proud tradition of recognizing  
10 the importance of military service. And so we're completely  
11 mystified as to what that's about.

12 **THE COURT:** And then efforts to discriminate on  
13 the basis of race, you know, you pointed to a fellowship  
14 that your client has that I think they go on to speak of in  
15 the next paragraph. But are you aware of any other hooks on  
16 which the government is hanging that hat?

17 **MR. VERRILLI:** We are not; we are not.

18 **THE COURT:** And at this stage, since we're looking  
19 at a temporary restraining order, I think you would agree  
20 with me that I don't need to address every potential  
21 argument in terms of your likelihood of success on the  
22 merits.

23 Which do you think are your strongest, if you had  
24 to pick a favorite child or two?

25 **MR. VERRILLI:** Well, I never like having to pick a

1 favorite child, but I would say that the Court can look to  
2 the three decisions that have already been rendered on  
3 virtually identical executive orders, and those courts  
4 relied on the First Amendment retaliation argument. That  
5 seems to us to be rock solid. And with respect to that  
6 argument, of course, if there is retaliation for the  
7 exercise of protected speech -- and we know from Velazquez  
8 that advocacy in court is protected speech, that's just a  
9 flat out violation. You don't go through the compelling  
10 interests, narrowly tailored means analysis, it's just a  
11 flat out violation. You have the unanimous decision of the  
12 Supreme Court in Vullo from last term saying exactly that.  
13 That seems to us to be just an ironclad, obvious First  
14 Amendment violation.

15           The viewpoint discrimination, which the other  
16 courts have also relied on, seems to us to be equally strong  
17 in that it says it right on the face of the order that these  
18 punishments are being imposed because of the positions that  
19 the firm took. And, of course, it's standard First  
20 Amendment law that viewpoint discrimination is the most  
21 consequential, the most serious violation of the First  
22 Amendment. Viewpoint discrimination, you have it here, they  
23 admit it in the executive order. Those two seem just  
24 totally rock solid.

25           We think the other ones are also very, very



1 strong. And we do think the due process argument, you know,  
2 as Your Honor's question kind of reflected -- and, I mean,  
3 out of the blue, we got an order imposing these punishments  
4 and disabilities on us with no notice and no opportunity to  
5 be heard and in this incredibly vague way so that we don't  
6 even know in some instances what they're talking about.  
7 That also seems completely rock solid.

8 **THE COURT:** Have there been any efforts from you  
9 or your client to reach out to the administration to try and  
10 clarify what the catalyst was for this and to clarify some  
11 of the statements that are being made?

12 **MR. VERRILLI:** No, not to my knowledge. I'm quite  
13 certain there haven't been, Your Honor. And this, of  
14 course, has all happened very fast. You know, this order  
15 just issued a few days ago, again, out of the blue. So  
16 we've been focused on defending ourselves, defending -- our  
17 firm's been focused on defending Susman, and Susman's been  
18 focused on defending itself.

19 **THE COURT:** Do you want to move on to harm?

20 **MR. VERRILLI:** Yeah, I'd be happy to, Your Honor.  
21 Again, as with the merits, we don't think there's any  
22 serious question here that Susman is suffering and will  
23 continue to suffer irreparable harm. Our papers have  
24 detailed the harms. There's the harm -- irreparable harm as  
25 a matter of law based on the chilling of our free

1 expression, a First Amendment harm. There's irreparable  
2 harm to Susman's reputation by these unfounded smears  
3 hanging out there in an executive order by the President of  
4 the United States. That kind of reputational harm is well  
5 established irreparable harm. And there's economic harm as  
6 well, and that's detailed in the Srinivasan declaration at  
7 pages 30 to 35 in numerous respects. So if we just apply  
8 standard law, we easily establish irreparable harm.

9 But I think it's important to take a step back  
10 here and just think about what's actually going on. The  
11 point of this order is to harm Susman Godfrey. The harms  
12 aren't incidental, they are the point. The Executive is  
13 wielding an axe here, and we don't know exactly when that  
14 axe is going to fall, but they're ready to bring it down.  
15 And when they bring it down, Susman isn't going to be able  
16 to represent its clients. It's not going to be able to meet  
17 with government officials. It's not going to be able to --  
18 which they need to do to pursue their qui tam actions --  
19 which, by the way, net ironically hundreds of millions of  
20 dollars for the government. They're not going to be able to  
21 pursue their antitrust representations where they need to  
22 meet with government officials. They're not going to be  
23 able to pursue their environmental representations where  
24 they need to meet with government officials. They're not  
25 going to be -- they're not going to be able to pursue their

1 intellectual property cases where they've got to be in front  
2 of the PTAB. And as I said, they may not even be able to  
3 enter federal courthouses under this order.

4 **THE COURT:** I think under your reading of the  
5 order, they couldn't even go to jury duty.

6 **MR. VERRILLI:** Yeah, jury duty. Frankly, they  
7 couldn't even go to the Post Office to mail a letter. So we  
8 think that there really is no doubt that this is irreparable  
9 harm. And they may say, well, it's not ripe yet because you  
10 don't have guidance, but that's just a question of when this  
11 axe is going to fall.

12 And in that regard, Your Honor, I do think it's  
13 quite valuable to look at the memoranda that the Department  
14 of Justice circulated in the other cases. The Jenner one is  
15 particularly illuminating, I think, in this regard. It went  
16 to the heads of all executive departments and agencies. And  
17 the court required that this notification go out to instruct  
18 the agencies that the temporary restraining order was in  
19 place. But, you know, what it says is: "A local district  
20 judge has mandated that the Attorney General and OMB  
21 director personally send the below notification about Jenner  
22 & Block LLP, a law firm committed to the weaponization of  
23 justice, discrimination on the basis of race, radical gender  
24 ideology and other anti-American pursuits."

25 **THE COURT:** That was in their notice informing the

1 individuals of the court's TRO?

2 **MR. VERRILLI:** Yes, yes, to the agency heads of  
3 the court's TRO. Anti-American pursuits.

4 **THE COURT:** In, I believe, the Jenner and the  
5 Perkins Coie cases, there were indications that meetings  
6 with government officials had been canceled. I think -- as  
7 far as I can tell, you didn't allege anything like that in  
8 your papers.

9 Do you have reason to believe that that has  
10 happened since you filed or --

11 **MR. VERRILLI:** It hasn't happened yet, Your Honor.  
12 But as the declarations do explain, the representations that  
13 Susman undertakes requires meetings on a weekly basis with  
14 government officials on all kinds of cases, appearances in  
15 court on a weekly basis on all kinds of cases. And so it  
16 seems to me it's not an answer to the irreparable harm -- or  
17 even putting aside the constitutional harm and the  
18 reputational harm, which may be indisputably out there, and  
19 the harm that could come from the investigation into  
20 government contractors who are represented by -- who Susman  
21 represents. You know, this only goes to the Section Five  
22 disabilities being imposed.

23 But of course -- it's just common sense, of course  
24 clients thinking about hiring Susman Godfrey, thinking about  
25 staying with Susman Godfrey are going to be asking

1 themselves, well, what's going to happen when the axe falls  
2 here; are you going to be able to represent me. And I just  
3 think it's self-evident. You know, and it does -- it brings  
4 to mind a quotation from Judge Friendly that Chief Justice  
5 Roberts put into the Census case -- I think it's really  
6 quite apt here, which is that courts are not required to  
7 exhibit a naivety from which ordinary citizens are free.

8 Everyone knows what this is about; it is plain on  
9 the face of it: it is an attack on this law firm. It is a  
10 attack on this law firm based on its representations, and  
11 its design is to inflict harm in the here and now and harm  
12 in the future. There's just not any doubt about that.

13 **THE COURT:** In a few of the other cases, the  
14 complained of actions in the executive order had been  
15 undertaken by individuals who are no longer associated with  
16 the firm. I understand that your client still represents  
17 Dominion Voting.

18 But as to some prior representations, are we  
19 talking about -- and in looking at sort of a fish, actions  
20 that go to people who are actually at the firm or folks that  
21 have since departed?

22 **MR. VERRILLI:** Well, because the allegations are  
23 so vague that we don't know what they're about, it's a  
24 little bit hard to answer your -- I don't mean to flip about  
25 it. I mean, genuinely it's a little bit hard to answer Your

1 Honor's question. But with respect to Dominion Voting, I do  
2 think there's a significant point here. Maybe it's a  
3 coincidence, maybe it's a coincidence that this executive  
4 order dropped right on the eve of when Susman Godfrey was  
5 about to go to trial on behalf of Dominion Voting against  
6 Newsmax based on the defamatory allegations -- the  
7 defamatory statements from the 2020 election aftermath.  
8 Maybe it's a coincidence, but that's what happened.

9           And I do think Your Honor raised a point about  
10 other firms. I think it is useful to look at the experience  
11 of other firms. Of course, you did see what happened with  
12 other firms and their clients and their clients' reactions,  
13 it's all documented, the basis of judicial findings now. I  
14 think it's equally important to look at the conduct of the  
15 firms that settled with the Trump administration and to look  
16 at their explanations. You know, those explanations are a  
17 matter of public record; they're out there, the Paul Weiss  
18 chairman's message, the Skadden chairman's message. One can  
19 read those.

20           They didn't say, you know, we're really sorry, the  
21 President is right; we've been behaving badly and so we're  
22 doing this because it's the right thing. They said these  
23 executive orders are an existential threat to the continued  
24 existence of our firm, and we had no choice but to settle.  
25 I don't think there's any clearer proof of the irreparable

1 harm potential of these orders than those statements and the  
2 actions that those prominent, powerful firms took in  
3 response.

4 **THE COURT:** And I suppose it might be even worse  
5 for your client as one of the smaller firms in the --

6 **MR. VERRILLI:** Susman Godfrey is a mighty firm,  
7 and it's hugely successful and it's full of courageous  
8 lawyers who are standing up here. And if I may just say  
9 this now, they're standing up for themselves certainly, but  
10 they're doing more than that. They're standing up for the  
11 profession. They're standing up for the rule of law.  
12 They're standing up for the Constitution. They're standing  
13 up for this country. And they've had the courage to do  
14 that, but it's a risk. They understand it, everyone  
15 understands it. And the reason is because everyone  
16 understands what the point of this order is. The point of  
17 this order is to inflict grievous harm on these firms, on  
18 this firm and the others. That's its point. And I just  
19 think on any reasonable understanding of what irreparable  
20 injury consists of, this qualifies.

21 Now, if I may, just the last couple of factors,  
22 the balance of hardships and public interest, cases like  
23 this involving the government that effuse together of  
24 course. And I won't spend any considerable time on it  
25 unless Your Honor has questions about it, it just seems

1 obvious where the public interest lies here. It just seems  
2 obvious. There is no injury whatsoever to the government  
3 from the entry of a temporary restraining order. And in  
4 that regard, if the Court does choose to enter one, we'll of  
5 course abide by any expedited schedule necessary to achieve  
6 final resolution. So there's really no harm to the  
7 government here at all.

8 And it is just obvious where the public interest  
9 lies. It cannot be that the executive branch can exercise  
10 power that it does not have by statute, that it does not  
11 have under the Constitution to retaliate against a law firm  
12 like Susman Godfrey going into court, representing its  
13 clients zealously to the best of their ability. That is the  
14 core of what happened here. It is the definition of the  
15 public interest for Susman Godfrey to do the work that it  
16 does.

17 **THE COURT:** And it encroaches upon this court who  
18 relies on your lawyers to negotiate with the federal  
19 government in cases that you bring before us and bring  
20 before other judges --

21 **MR. VERRILLI:** Of course.

22 **THE COURT:** -- or resolve cases before they come  
23 to court.

24 **MR. VERRILLI:** And that's why I said earlier, Your  
25 Honor, this is not -- in a way it's worse than the Steel



1 Seizure case, because it's not just a presidential assertion  
2 of power that the President doesn't have under our  
3 Constitution, it's a direct assault on the Article III  
4 courts, on the independence of the judicial branch.

5           You know, and there's language in Velazquez that I  
6 think is quite relevant here where the court said that an  
7 independent judiciary relies on an independent bar. And the  
8 point in that case was, of course, that it is  
9 unconstitutional -- in that instance it was Congress through  
10 legislation, but it's unconstitutional, it's a grave First  
11 Amendment violation for the government to wield its power  
12 against lawyers who come to court so that they cannot make  
13 and they are deterred from making the full throated, zealous  
14 defense of their clients' interests that the norms of the  
15 profession and the rule of law require for the judiciary to  
16 be able to do its job under our Constitution.

17           **THE COURT:** All right, thank you very much.

18           **MR. VERRILLI:** Thank you.

19           **THE COURT:** I'll give you some time on rebuttal.

20 Mr. Lawson.

21           **MR. LAWSON:** Good afternoon.

22           **THE COURT:** Good afternoon.

23           **MR. LAWSON:** Your Honor, at sort of a 30,000-foot  
24 level, I would ask the Court to examine the issue of what  
25 these sections really focus on. And I'd like to focus on

1 Sections 3 and 5 at this high level.

2 **THE COURT:** Well, could you start with Section 1  
3 and tell me what you think are the allegations behind each  
4 of the statements.

5 **MR. LAWSON:** Your Honor, I heard the Court's  
6 questions of counsel. Regrettably, I don't have any further  
7 information beyond what is contained in here aside from the  
8 discrimination issue. And for that, all I have is a web  
9 page from the Susman website discussing some of the  
10 diversity initiatives, which we think would speak to the  
11 sort of gray zone under the Students for Fair Admissions  
12 case and diversity and quotas and so forth.

13 **THE COURT:** But you don't have any understanding  
14 of what the funding groups that undermine the effectiveness  
15 of the military is?

16 **MR. LAWSON:** Regrettably, Your Honor, I have no  
17 further information than what's contained in the order. I  
18 apologize, I just wasn't able to procure that before we got  
19 here.

20 **THE COURT:** All right, thank you.

21 **MR. LAWSON:** But if I could, there is a theme that  
22 will run through as this case progresses -- because  
23 obviously I'm handling the other ones as well.

24 **THE COURT:** Lucky you.

25 **MR. LAWSON:** One way to put it. Is the power --

1 how is the government acting here. And then for that, we  
2 have approached it from the idea of the government acting as  
3 sovereign. And is the government acting here in Section 3  
4 as a contractor and in Section 5 as a landlord and an office  
5 supervisor, not as the sovereign.

6 A key point, counsel for plaintiff referenced the  
7 Vullo case earlier -- the Court is nodding, I'm sure the  
8 Court is generally familiar, involving the issue of the  
9 improper use of the power of the sovereign to sanction and  
10 punish entities that did business with disfavored actors.  
11 There's no sanction or punishment here, not when it's coming  
12 to contracting, not when it's coming to office access, not  
13 when it's coming to hiring. This is not a fine. This is  
14 not jail time. Classic case of Bantam Books where there  
15 were books being sold at a bookstore, a concerned citizens  
16 committee with the power to refer cases for criminal  
17 prosecution sends a letter please remove these books. There  
18 was the threat of sanction and punishment. This is --  
19 Section 3 is, again, contracting. Section 5 is landlord  
20 employment, that type of thing.

21 **THE COURT:** So walk me through how it's not a  
22 sanction. Because, I mean, I don't know if Susman has  
23 itself government contracts, but if it does and it's  
24 competed for and won those, why would unrelated actions  
25 relating to cases that it brings, or whatever it might be

1 doing with groups that have something to do with the  
2 military, have any -- be any permissible basis on which to  
3 terminate such a contract?

4 **MR. LAWSON:** So if we look at Section 3, there is  
5 a reference in there to the racial discrimination angle.  
6 And so for that point, the analogy would be to the LBJ  
7 order, Executive Order 11246, regarding contractors and  
8 their requirements to diversify their workforce. Fifty  
9 something -- 60 something years ago, an extraordinary body  
10 of case law supporting that.

11 Also codified in the Code of Federal Regulations,  
12 I would draw the Court's attention to 41 C.F.R. -- and  
13 hopefully I've written this down correctly, 60-1.4(b)(8).  
14 Don't we love federal regulations. So I'll repeat, 41  
15 C.F.R. 60-1.4(b)(8). And this prevents contractors from  
16 working with entities that have themselves, the third-party  
17 entity, been debarred for failing to comply with the LBJ  
18 executive order. Now, I'm referencing this from the point  
19 of view of this sort of downstream inquiry on the larger --  
20 in compliance with the larger executive order has been on  
21 the books for decades. And so this idea of reaching out to  
22 contractors saying who are you doing business with, that's  
23 been a part of federal government contracting for decades.  
24 And so there's some body of law that would support that.

25 And again, so to -- I could see the Court's

1 concern, and obviously the initial question was, okay, how  
2 does this relate to the national security issue. And this  
3 is why I draw the Court's attention to Section 3 does  
4 specifically references the racial discrimination angle.  
5 Furthermore, under 40 -- we'll go to the statutes here, 40  
6 U.S.C. 121(a), the President, as far as the acquisition  
7 practice, is able to set -- to use the procurement power to  
8 advance policies and public policies. So there is a large  
9 body of case law supporting the idea of the use of the  
10 procurement power to advance social policy.

11           One of the leading cases, a very old case,  
12 Contractors Association of Eastern Pennsylvania vs.  
13 Secretary of Labor, 442 F.2d 159, and the spot cite running  
14 from 168 to 171 talks about the use of -- it traces in that  
15 section decades prior -- and this is from '71. I apologize,  
16 I didn't finish, the Third Circuit, 1971. Going back  
17 decades to the use of procurement power to advance social  
18 policy initially in the defense era under FDR. And it  
19 goes -- the court at that point said: "In the area of  
20 government procurement, executive authority to impose  
21 nondiscrimination contract provisions falls in Justice  
22 Jackson's first category" -- this is the steel case,  
23 Youngstown Sheet & Tube vs. Sawyer, 343 U.S. 579,  
24 discussing -- well, various levels of that. So falls in  
25 Justice Jackson's first category, action pursuant to the

1 express or implied authorization of Congress.

2           And I'll further note in Chrysler Corporation vs.  
3 Brown, 441 U.S. 281, spot cite 305 to 306, 1979, the court  
4 was examining the origins of this LBJ order, 11246. And the  
5 court said at that point: "The origins of congressional  
6 authority for Executive Order 11246 are somewhat obscure and  
7 have been roundly debated by commentators and courts." And  
8 then the court goes on to reference it draws equally from --  
9 or it can draw equally from the Administrative Services Act,  
10 Titles VI and VII of the Civil Rights Act and Equal  
11 Opportunity Act. So I'm referencing this from the point of  
12 view that to the degree the Court -- and I suspect the Court  
13 has noticed the various statutes that are and are not  
14 referenced in this order, that that in and of itself is not  
15 fatal.

16           Here we have a 1979 U.S. Supreme Court case  
17 examining the LBJ order and noting it doesn't really say  
18 what statutes are doing it. But because the use of social  
19 policy -- use of procurement power to advance social policy  
20 has been so established, that I would submit that that's  
21 permissible here. And furthermore, it doesn't fall within  
22 the world of sanctions and punishment, that it is discretion  
23 on the purchasing entity, the contractor.

24           **THE COURT:** So obviously this is the first time  
25 you've been able to present your arguments in this Court, so

1 I appreciate all of the citations. I've not had the chance  
2 to review them. But my sense of a lot of these are the  
3 government can incentivize particularly policy aims in  
4 engaging with who to contract with. This seems to be quite  
5 different because you're terminating existing contracts.

6 And so is there any support for that not being a  
7 sanction? I could understand that you might in the future  
8 not want to engage in contractual relationships with  
9 individuals or companies that don't support your  
10 administration's policies, but is there grounds for this  
11 kind of midstream termination?

12 **MR. LAWSON:** So very excellent question. I do not  
13 read the order as necessarily calling for an immediate  
14 termination that would violate any existing authority.  
15 Obviously there are -- what is it, the Mount Healthy and  
16 Umbehr line of cases. Umbehr itself -- and I apologize for  
17 Court and counsel, I don't have the cite handy, but it does  
18 reference that its analysis does not apply to -- or it  
19 specifically points that the case does not address future  
20 contracts.

21 But to the Court's question as to is this -- the  
22 cases that I rely on and just referenced, does it bless an  
23 immediate termination. To my knowledge, no immediate  
24 termination of the contract has happened. And obviously the  
25 provisions of the EO would require that it would be

1 consistent with that body of case law, that line of First  
2 Amendment retaliation of terminating an existing  
3 relationship, whether it's the school teacher fired by the  
4 board or the contractor who has it terminated ab initio, but  
5 it would have to be consistent with that.

6 But the larger point I'm trying to make is that,  
7 on its face, it's not necessarily a sanction, it's not  
8 necessarily punishment. So I would urge the Court to have  
9 great caution as it examines these arguments under that  
10 Vullo type of analysis. That is the largest point I'd like  
11 to leave the Court with as to Section 3.

12 As to Section 5, again, I would make the same  
13 general arguments about we're acting here as landlord, as  
14 employer. But there is an issue that I would just indulge  
15 the Court with, that while we would urge the Court to deny  
16 the temporary restraining order, to the degree the Court  
17 does grant it, there is a problem I've been dealing with in  
18 the other cases which is the ripeness issue. And there was  
19 great foresight on plaintiff's counsel to note that I would  
20 be referencing that.

21 And if the Court issues the order as I understand  
22 it to have been drafted, not only is the issue -- in my  
23 opinion would it not be ripe now, it can't be ripe because  
24 the order as issued would prohibit agencies from developing  
25 the guidance. I would urge the Court to consider some sort



1 of opportunity to allow these guidances to be promulgated so  
2 we can have something concrete here. There is -- we've  
3 already heard here, and the Court can imagine -- and we are  
4 not immune to the parade of horrors that can come as far  
5 as right to counsel, right to petition, but that's not  
6 called for in this order here; it doesn't say that. We need  
7 the guidance to know if any of that parade of horrors  
8 might be queuing up, much less beginning the parade.

9 And then just the last --

10 **THE COURT:** Can I ask, has there been any guidance  
11 being prepared?

12 **MR. LAWSON:** I don't know, I cannot speak to that.  
13 And to my knowledge, there's been no guidance on any of the  
14 other cases at all that were developed prior to the TROs  
15 being entered. The one last point, to kind of go out of  
16 order here -- we talked about 3, 5 and I'd like to jump back  
17 to 1, which is --

18 **THE COURT:** Well, actually, before you go there, I  
19 take your point that you're trying to separate the  
20 government as sovereign from the government as contractor or  
21 landlord, but what interest does the landlord have in  
22 barring individuals that the sovereign has problems with  
23 from coming into a courthouse or a federal building?

24 **MR. LAWSON:** Well, let me kind of go towards --  
25 give an example that I think might apply, if I can, from

1 recent events. I believe both the chair of the FTC and I  
2 believe the Deputy Attorney General have issued guidance to  
3 staff regarding engagement with the American Bar  
4 Association. I haven't studied them in great depth, I hope  
5 everybody will forgive if I get some of this analogy off  
6 point. But at a high level, I think direction that would be  
7 minimizing interactions with agencies -- like one of the  
8 concerns with the ABA is is it nonpartisan or is it  
9 partisan.

10 To the degree it's partisan, I think there's an  
11 interest by these actors to distance engagement with the --  
12 between agency staff. So I'm coming at it from that angle  
13 on the idea of within the power of an employer to state I  
14 don't want you interacting with a certain entity in your  
15 official capacity. And to the degree that is consistent  
16 otherwise with employment law -- obviously, people can pay  
17 their own way and go to these meetings, that is fine. But  
18 to go speak on a panel would be something. So I think that  
19 might be an area where some of the guidance would develop  
20 and flow from.

21 To speak to the issue of guidance that came out  
22 and said that marshals are to keep counsel from the firm  
23 from entering the court, I would hesitate to speculate that  
24 that would be anything like what was coming up. If the  
25 guidance did come up, I'm quite confident that motions would

1 be filed and orders would be rendered by this Court before  
2 we had an argument to hear whether you liked that position  
3 or not. So again, I just -- yes.

4 **THE COURT:** What is the interest in keeping them  
5 out of federal buildings, if not to retaliate against them?

6 **MR. LAWSON:** Well, I would -- again, just to kind  
7 of develop a bit of an analogy. To the degree there was an  
8 ability in a federal space to hold some sort of CLE on  
9 diversity or so forth, maybe something along those lines  
10 could apply. But again, I think the Court's -- if I can  
11 take the Court's question and highlight a position, this is  
12 why we need the guidance. Even if the Court issues like --  
13 you know, to the degree any guidance is issued, it is to be  
14 stayed pending review. I don't want to propose that  
15 necessarily, but I just want to highlight the great  
16 challenge we have in getting this into a concrete position  
17 for a full ruling from the Court on the matter.

18 And just to conclude very briefly, on Section 1,  
19 this is -- the government, as much as anyone, has its own  
20 right to speak. I would view that these contents -- the  
21 statements in Section 1 are classic government speech. The  
22 difference between the statements in Section 1 and a press  
23 conference are very, very minimal, maybe more well thought  
24 out and greater punctuation and so forth. But --

25 **THE COURT:** You say it's more well thought out,

1 but you don't actually know what the second sentence about  
2 funding military groups means.

3 **MR. LAWSON:** Well, correct. As far as the detail,  
4 the detail speaks for itself. What I -- all I was really  
5 meaning by well thought out is just, you know, coherent  
6 phrases and so forth. The -- but the larger point of  
7 Section 1 is -- that we've been wrestling with is how do we  
8 speak. And the government has a right to speak. And I  
9 think -- and I would urge great caution from the Court on  
10 the judiciary policing the executive branch's speech. That  
11 is just a very tricky area that is just extremely difficult  
12 to try to implement. And also, I don't think Section 1 has  
13 any real operative effect. Clearly Sections 3 and 5 are  
14 giving instruction. So I think an injunction on Section 1  
15 just courts more trouble than it might solve.

16 **THE COURT:** In other cases, my understanding is  
17 that -- I think at least in the Wilmer case, that it's --  
18 not that there's anything to enjoin in Section 1 because  
19 it's not taking any action, but the TRO was to prevent the  
20 government from discriminating against the firm on the basis  
21 of that language.

22 **MR. LAWSON:** Well, I think -- I believe Wilmer,  
23 before Judge Leon, there was no injunction as to Section 1.

24 **THE COURT:** Then it may be the Jenner case before  
25 Judge Bates.

1           **MR. LAWSON:** Jenner and Howell -- and plaintiff's  
2 counsel will speak better to this. I think their motion --  
3 their proposed order tracks very closely, at least at a high  
4 level, to what was entered before by Judges Bates and  
5 Howell. But that -- as I understand it, that is -- the  
6 purpose of the injunction of Section 1 is the use with the  
7 clients and whatnot. But it becomes so difficult to know  
8 what can or can't be said, what is -- what will be coming  
9 before this Court to be explained as far as what we said or  
10 not when it's all really, we would submit, protected by the  
11 First Amendment. The issues come in -- working on Section 3  
12 and working on Section 5, spot that. But Section 1, it's  
13 just extraordinarily difficult to practically implement an  
14 injunction as to that.

15           **THE COURT:** Do you know why the administration has  
16 been reaching out to certain firms ahead of these orders  
17 versus why you just drop this on Susman without opportunity?

18           **MR. LAWSON:** I cannot speak to that, I don't know,  
19 and anything I would say would be rank speculation.

20           **THE COURT:** Another concern that I have is, as  
21 your friend on the other side points out, a lot of the  
22 relationships between companies that may be federal  
23 contractors and the firm are -- is non public information,  
24 you know, potentially you're hiring the firm to investigate  
25 whether you should merge with somebody, what some

1 consequences would be if you bring an IP suit against  
2 somebody else. And so it seems quite stark to make  
3 contractors disclose that information to the federal  
4 government.

5 **MR. LAWSON:** Again, I would just -- I would draw  
6 back to the comments I made earlier about the idea of if  
7 this is an entity that it would otherwise not be compliant  
8 with the old LBJ order, that contractors need to make sure  
9 that they're not working with someone who would otherwise be  
10 debarred. So I do think that those -- that the line of  
11 inquiry is permissible. There are issues about whether or  
12 not the representation of an individual by an attorney is  
13 privileged.

14 My general understanding is that is privileged if  
15 the acknowledgement would be material, someone consulting a  
16 criminal defense lawyer 30 minutes after a presumed murder,  
17 something along those lines, whereas like, okay, what is  
18 this indicating. But I believe, absent that, I'm not sure  
19 there really is quite that same level of privilege. I  
20 certainly understand the Court's question and concern, but  
21 I -- you know, and with more time to brief, I could probably  
22 answer a little more fully the true parameters of doing that  
23 downstream inquiry. I'd just draw the Court's attention to  
24 my earlier comments about that.

25 **THE COURT:** And a lot of your argument today

1 focuses on maybe the government's actions as a landlord or  
2 as a contractor. Do those apply when we're talking about  
3 the First Amendment analysis or is that just a question of  
4 where the authority to enter such an order comes from?

5 **MR. LAWSON:** Well, I think that tracks to our  
6 conversation earlier regarding the Mount Healthy and Umbehr.  
7 That's where First Amendment issues about retaliation and  
8 viewpoint discrimination come in. I don't see anything in  
9 the order that is necessarily in conflict with that line of  
10 cases, and so certainly the First Amendment applies. But  
11 there is another line of cases on this -- well, anyway,  
12 sorry, that was a -- I was going the wrong direction on that  
13 one.

14 I guess the answer to your question of how does  
15 the First Amendment apply on that, I think that falls within  
16 the Mount Healthy-Umbehr line, and I don't see anything that  
17 these orders necessarily conflict with that.

18 **THE COURT:** And do you agree that if we're looking  
19 at viewpoint discrimination, strict scrutiny is the  
20 appropriate standard?

21 **MR. LAWSON:** I believe it is. I haven't --

22 **THE COURT:** And so under that, give me your best  
23 on your compelling interest, and then we can talk about  
24 whether it's narrowly tailored.

25 **MR. LAWSON:** Sure. Well, I think the critical

1 inquiry for viewpoint discrimination has to be that there's  
2 punishment or sanction. We start there. This is why I went  
3 to that at the beginning. To the degree the Court finds  
4 that this is a punishment, this is sanction, that this is in  
5 the Vullo category, the Bantam Books category, well, that's  
6 going to be a certain line of inquiry that I think I know  
7 where the Court may go on that.

8 This is why I've been driving the issue towards  
9 what is fundamentally going on here. If this is use of the  
10 procurement power to advance social policy, very well  
11 supported. And under the Northeastern Contractors -- I  
12 think I've got that right, I cited it earlier, extremely  
13 well supported under that first category from Youngstown  
14 Sheet. And even the court later, in the Brown vs. Kisor  
15 case, is talking about this use of social -- of procurement  
16 power to advance social policy is -- has many statutory  
17 sources on that.

18 **THE COURT:** And maybe you'll just repeat that  
19 argument, but what about it being narrowly tailored? So  
20 this applies to every one of, I think it's, 328 or 329  
21 people that work at the firm. So the IT guy might not be  
22 able to go get a job in government IT or the paralegal who's  
23 also a vet may not be able to go to the VA.

24 **MR. LAWSON:** So the narrowly tailored due  
25 process -- I'll put those together, if the Court will



1       indulge, from the perspective that those are inquiries far  
2       more appropriate for a legislative setting. This is an  
3       executive order within the ability to arrange contracting  
4       provisions and within the ability to act as a landlord.  
5       It's just a different -- it's just a different setting.  
6       Again, this -- the Court also predicted, this is a  
7       rephrasing of my earlier argument. If it's not punishment,  
8       if it's not sanction, if it is acting as landlord, then I  
9       would submit that the strict scrutiny, narrowly tailored  
10      analysis is just the wrong way to approach, that it's  
11      something else.

12               **THE COURT:** But I think, taking you at your word  
13      that we're talking about the government as landlord, the  
14      government as landlord doesn't have the right to engage in  
15      viewpoint discrimination unless it can satisfy strict  
16      scrutiny.

17               **MR. LAWSON:** Well, let's just assume that for a  
18      moment, yes. We don't know what --

19               **THE COURT:** Do we need to assume that? I mean, do  
20      you not agree with that?

21               **MR. LAWSON:** Well, here's -- sure, I agree with  
22      that, but the guidance, we don't know what the access is.  
23      We can't say it's viewpoint discrimination, we don't know  
24      what it says. And if the Court issues the order as  
25      requested, we won't know what it says.

1           **THE COURT:** All right, I think I'm losing you,  
2 because it strikes me that we can read the viewpoint  
3 discrimination from Section 1 of the executive order. You  
4 do not like the views that this firm has taken on behalf of  
5 its clients, and something to do with someone that's from  
6 the military, and as a result you're then taking actions.  
7 The degree of those actions, to be sure, we won't know until  
8 we see the guidance, but the genesis is the disagreement  
9 with the viewpoint.

10           **MR. LAWSON:** Well, on that point, Your Honor, if  
11 you're talking about the motivation -- now, this is where  
12 I -- recall where I lost -- went down the wrong path  
13 earlier, but I want to return to that. If the Court is  
14 talking about the motivation, there is a long body of case  
15 law that when it comes to analyzing statutes where the state  
16 is acting as sovereign -- McGowan vs. Maryland, criminal  
17 prosecutions for violating Sunday closure laws; in U.S. v.  
18 O'Brien, criminal prosecutions for the destruction of draft  
19 cards, the courts -- the Supreme Court in both cases said if  
20 there is a logical basis to support this decision, we will  
21 not inquire any further into the discriminatory nature of  
22 it, in any aspect of it.

23           So let us return on the landlord angle to the  
24 example I was giving about -- say, for example, the ABA.  
25 I'm not sure it would be out of place for the government, if

1 it could, if it had an access to a space and had the proper  
2 discretion, otherwise compliant with the law, to deny access  
3 to the ABA to use a federal facility and have -- place  
4 prohibitions on official representatives representing these  
5 agencies to speak at said conference. But again, this goes  
6 to we need the guidance. We need to know how -- if it's  
7 part of the parade of horrors or if it's within  
8 established areas of discretion.

9 **THE COURT:** You know, I confess I don't know that  
10 much about the ABA other than it's a nonprofit that likes  
11 the rule of law, but it strikes me that the ABA doesn't have  
12 the same -- there's not the same societal interest in having  
13 individuals being able to choose the lawyers that represent  
14 them and in encouraging lawyers to take positions that might  
15 be unpopular or indeed adverse to the current federal  
16 government.

17 **MR. LAWSON:** Well, on that point, as it relates,  
18 again, to Section 5, access to buildings, employment, et  
19 cetera, I will be the broken record and just say we need the  
20 guidance, it's not ripe. The Court's concern is not  
21 ill-founded, we just don't know if it holds. And if the  
22 Court issues the order as requested, we won't know. As it  
23 relates to Section 3 and contracting, I would just repeat  
24 the arguments I made earlier.

25 **THE COURT:** All right, thank you very much.

1           **MR. LAWSON:** Thank you, Your Honor.

2           **THE COURT:** Mr. Verrilli.

3           **MR. VERRILLI:** Thank you, Your Honor. I'm going  
4 to try to address some specific things that we heard from  
5 the United States. First, this point about the guidance.  
6 You know, I'd call that argument a red herring, but that  
7 would be unfair to red herrings. These executive orders are  
8 law firm-specific. They can issue general guidance  
9 tomorrow, tomorrow. That's all they would need to do to  
10 solve the whole problem, but they don't.

11           **THE COURT:** Well, and they can develop guidance  
12 even if there's an injunction in place.

13           **MR. VERRILLI:** Of course they can. I mean, you  
14 know -- I'll try to control myself here, but it is a  
15 completely insubstantial argument. Now with respect to the  
16 government as contractor and landlord, Your Honor's  
17 questions, I think, I have elucidated the problem with that  
18 argument, is that you can't violate the Constitution as a  
19 contractor. You can't violate the Constitution as a  
20 landlord. The Justice Department could not constitutionally  
21 adopt a rule that said anyone who is a registered Democrat  
22 may not enter the Department of Justice for a meeting. It  
23 could not constitutionally adopt a rule that said no black  
24 person may enter the Department of Justice. They can't act  
25 unconstitutionally.

1           And as Your Honor's question made clear, this kind  
2 of viewpoint discrimination and this kind of retaliation is  
3 unconstitutional. They can't do it as a contractor; they  
4 can't do it as a landlord; they can't do it as a sovereign;  
5 they can't do it, period. Now --

6           **THE COURT:** And what about your friend's point  
7 that the LBJ order and other authorities support the notion  
8 that the government can steer policy preferences through  
9 contracting?

10           **MR. VERRILLI:** So my friend, Mr. Lawson, made a  
11 reference to the allegation of racial discrimination. I  
12 assume what he's referring to is the Susman Prize. Of  
13 course, the Susman Prize is lawful. It's described in the  
14 Srinivasan declaration. Your Honor can look at it, it's  
15 lawful, there's nothing unlawful about it. And the other  
16 thing is it certainly hasn't been adjudicated as unlawful by  
17 anybody because we haven't had any process of any kind. And  
18 so the idea that you can invoke this notion that government  
19 can pursue social policy to justify this kind of vindictive,  
20 retaliatory order I think is just, again, completely  
21 insubstantial argument.

22           Now, if I could, with respect to Section 1, my  
23 friend says, well, that's just government speech. A couple  
24 of points about that. I would urge on the Court the Vullo  
25 case's discussion about that very issue. That was exactly

1 the argument that the state made in Vullo: well, yeah, you  
2 need to separate out the fact that we were criticizing the  
3 NRA from these other actions we took for unlawful conduct by  
4 the NRA. And what the court held is no, no, no, you have to  
5 consider them together. You have to look at it as a whole,  
6 as a pattern, and what the pattern shows you is that this  
7 was in retaliation for their exercise of First Amendment  
8 freedoms.

9 And I do think that goes back to the contractor  
10 point we were just discussing. You know, that logic in  
11 Vullo seems to me to apply fully, that even -- as I said,  
12 the prize is lawful, and it's certainly never been  
13 adjudicated unlawful. But even if it were, they can't do  
14 this. They can't do this because of that. They can't  
15 engage in this kind of retaliation. And that was the case  
16 in Vullo, you know, the NRA had violated the insurance  
17 regulations, there wasn't any doubt about that. So again,  
18 nothing to that argument.

19 **THE COURT:** And would that argument be the same if  
20 the entirety of the executive order was Section 1 and there  
21 weren't these Sections 3 and 5, which are tying action to  
22 that statement?

23 **MR. VERRILLI:** Yeah, that was the next point I  
24 wanted to make actually, Your Honor. The idea that Section  
25 1 is just some standalone exercise in government speech,

1 again, seems -- I'll restrain myself here, let's call it  
2 completely insubstantial. Section 1 says that Susman  
3 Godfrey is engaging in activities inconsistent with the  
4 interests of the United States, and that the firm should not  
5 have access to the nation's secrets nor be deemed  
6 responsible stewards of any federal funds.

7           And then if one drops down to Section 3,  
8 subsection two -- and this is the contracting section, it  
9 instructs federal agencies, in addition to dropping the  
10 specific contracts, to otherwise align their agency funding  
11 decisions with the interests of the citizens of the United  
12 States. Paragraph one in Section 1 specifically said that  
13 Susman Godfrey, in the view of the President, is acting in a  
14 manner inimical to the interests of the United States. So  
15 the idea that this is just speech is, it seems to me, again,  
16 completely insubstantial.

17           My friend's invocation of O'Brien, et cetera, what  
18 that law is is that when there's a facially neutral statute  
19 or a facially neutral government action, that only in rare  
20 circumstances will a court look behind a facially neutral  
21 action to see whether there's unconstitutional motive. Now,  
22 sometimes courts do, and there is First Amendment law saying  
23 that you do. But there's no need to do that here. Beyond  
24 constitutional motivation is right there in black and white  
25 in the executive order. It says it's being done in

1 retaliation for advocacy and speech, it says it.

2 And then if you had any doubts, if the Court had  
3 any doubts about that, there's some publicly available  
4 statements that we have referred to and quoted in our  
5 complaint. I'd direct the Court's attention to paragraph  
6 101 of the complaint where we quote the President telling a  
7 news outlet: "We have lots of law firms that we're going to  
8 be going after because they were very dishonest people.  
9 They're a crooked law firm. They're violent, vicious  
10 lawyers. They're fake lawyers." That's the same president  
11 who signed this executive order.

12 Then paragraph 105, this was not the President but  
13 someone else in the White House telling the Washington Post:  
14 "The President doesn't believe they," these firms, "should  
15 have the privileges afforded to companies of their stature  
16 to work and operate with the federal government since they  
17 have made it very clear they are vehemently against the  
18 President of the United States and their work proves that."  
19 That's a White House official. There isn't any doubt about  
20 what this is.

21 If the Court has no further questions, I'd just  
22 like to leave the Court with one additional thought, which I  
23 think is important. Think about what actually the  
24 Department of Justice is asking you to bless here in this  
25 case. In the world that they're trying to bring about, when



1 Mr. Lawson or anybody in the chain of command above him, all  
2 the way up to the Attorney General, four years from now,  
3 they're done with their government service, there's a new  
4 president, they're out there looking for a job, the new  
5 president would be, on their view, entirely within his  
6 rights or her rights to say, you know, the position that the  
7 Department of Justice took in court today defending this  
8 executive order was, to use the language that they used  
9 against Jenner & Block, anti-American. And the next  
10 president could issue an executive order that says any law  
11 firm that hires anybody who did that in court, who made that  
12 representation of their client in that way in court, will  
13 suffer exactly the same sanctions and disabilities that this  
14 order imposes on Susman Godfrey.

15 And as we said in our complaint, today it's Susman  
16 Godfrey, but if they're right, this could be anyone for any  
17 reason at any time. And make no mistake, they have made a  
18 lot of progress already. Some very prominent law firms have  
19 bent the knee -- to use the words of the White House press  
20 secretary, bent the knee by offering up hundreds of millions  
21 of dollars in tribute to stay on the President's good side.  
22 We're sliding very fast into an abyss here. There's only  
23 one way to stop that slide, and it's for the courts to act  
24 decisively, and to act decisively now.

25 I respectfully submit, Your Honor, that, above

1 all, is what the Article III judicial power is for. So we  
2 respectfully ask this Court to grant a TRO, as we've  
3 requested, and to move this case swiftly to a final  
4 determination repudiating this unconstitutional executive  
5 order.

6 **THE COURT:** All right, thank you very much.

7 **MR. VERRILLI:** Thank you.

8 **THE COURT:** It's 3:05 now. The Court will take a  
9 brief recess until 3:15 and then we'll return with a ruling.

10 (Off the record at 3:05 p.m.)

11 (Back on the record at 3:16 p.m.)

12 **THE COURT:** So thank you to the parties for their  
13 arguments today. I'm now going to issue an oral ruling,  
14 which I will follow up with a written order shortly. So  
15 Plaintiff Susman Godfrey LLP moves for a temporary  
16 restraining order to enjoin enforcement of Sections 1, 3 and  
17 5 of President Trump's Executive Order 14263 dated  
18 April 9th, 2025, entitled, quote, Addressing Risks from  
19 Susman Godfrey, end quote.

20 After hearing from the parties, I am inclined to  
21 grant the temporary restraining order, and I will set forth  
22 in brief my reasons why. First the legal standard. A  
23 temporary restraining order is an extraordinary remedy meant  
24 to prevent serious and imminent harm in dire circumstances.  
25 To obtain one, a court -- a party must, quote, show a

1 substantial likelihood of success on the merits; that it  
2 would suffer irreparable injury if the injunction were not  
3 granted; that an injunction would not substantially injure  
4 other interested parties; and that the public interest would  
5 be furthered by the injunction, end quote. That comes from  
6 Chaplaincy of Full Gospel Churches v. England, 454 F.3d 290,  
7 297; that's D.C. Circuit, 2006.

8           These four considerations are factors, not  
9 elements, and a district court must balance the strength of  
10 the requesting party's arguments in each of the four  
11 required areas. When the government is the opposing party,  
12 the third and fourth factors merge. That comes from a  
13 variety of cases, but for purposes of the court record, I'll  
14 cite Pursuing America's Greatness vs. Federal Election  
15 Commission, 831 F.3d 500, jump cite 511, D.C. Circuit, 2016.  
16 Here, Susman Godfrey has met its burden to satisfy each of  
17 the factors, and therefore it is entitled to a temporary  
18 restraining order enjoining the enforcement of Sections 1, 3  
19 and 5 of the executive order.

20           Starting with the first factor, the likelihood of  
21 success on the merits, the Court determines that Susman is  
22 likely to succeed on the merits of their claims. The Court  
23 need not address each, but will focus on the First and Fifth  
24 Amendment harms in brief. As to the First Amendment, the  
25 executive order is likely to violate the First Amendment for

1 several of the reasons outlined by Susman Godfrey in their  
2 motion. The order retaliates against the firm and its  
3 clients for their actual and perceived exercise of speech  
4 and associational rights. The Court and the parties  
5 discussed the NRA vs. Vullo case a lot today, and that  
6 stands for the notion that, quote, use of the power of the  
7 state to punish or suppress disfavored expression, end  
8 quote, is prohibited.

9 In order to demonstrate First Amendment  
10 retaliation, Susman must show that it, one, engaged in  
11 conduct protected by the First Amendment; two, that a causal  
12 link exists between the exercise of a constitutional right  
13 and the adverse action; and three, that the government took  
14 adverse action sufficient to deter a person of ordinary  
15 firmness from speaking again. That test comes from Aref vs.  
16 Lynch, 833 F.3d 242, jump cite 258, D.C. Circuit, 2016.

17 Susman is likely to show a likelihood of success  
18 on all three elements. First, the firm's advocacy on behalf  
19 of its clients, advice to its clients and petitioning of the  
20 courts on behalf of its clients constitute constitutionally  
21 protected expression that implicates central First Amendment  
22 concerns. That comes from Legal Services Corp. vs.  
23 Velazquez, 531 U.S. at 547 and 548. Second, the retaliatory  
24 nature of the executive order is plain from the language of  
25 the EO; namely, Section 1. Further, the Court agrees the

1 context is important here. The order against Susman is not  
2 the first of its kind, it follows orders against Paul Weiss,  
3 WilmerHale, Perkins Coie and others. Notably, every firm to  
4 have challenged the executive order has received a temporary  
5 restraining order against its enforcement.

6 Third, the executive order constitutes a  
7 sufficiently adverse action against the firm, quote, to give  
8 rise to an actionable First Amendment claim, end quote.  
9 That's *Houston Community vs. Wilson*, 595 U.S. 468, jump cite  
10 477, 2022. The order threatens the firm's clients with  
11 disfavored contracting treatment and restricts attorneys  
12 from engaging with federal employees, which is a routine  
13 activity that is necessary for a wide range of the firm's  
14 representations. The order additionally threatens to deny  
15 Susman's personnel access to government buildings, including  
16 federal courthouses. Any one of these actions alone meets  
17 the standard for adverse action.

18 The executive order also discriminates against the  
19 firm on the basis of viewpoint. The order refers to the  
20 firm's participation in the, quote, legal system in the  
21 context of elections. And it is highly likely that Susman  
22 will be able to demonstrate that these references are veiled  
23 illusions to the firm's reputation of Dominion Voting, state  
24 government entities and other clients in connection with the  
25 2020 election.

1                   Again, quoting Vullo: "At the heart of the First  
2 Amendment's free speech clause is the recognition that  
3 viewpoint discrimination is uniquely harmful to a free and  
4 democratic society." Viewpoint discrimination is subject to  
5 strict scrutiny, which means that the government's action  
6 must be sustained or will be sustained only if the  
7 government proves that the order is narrowly tailored to  
8 serve compelling governmental interests. As the firm  
9 argues, viewpoint discrimination, in the context of legal  
10 representation, is especially pernicious. In the context of  
11 strict scrutiny, such viewpoint discrimination is all but  
12 dispositive of the strict scrutiny test.

13                   The Court agrees with Susman that nothing in the  
14 order shows a compelling interest. The order's unexplained  
15 reference to national security and the supposed funding of  
16 groups that, quote, engage in dangerous efforts to undermine  
17 the effectiveness of the United States military through the  
18 injection of political and radical ideology, end quote, is  
19 quite vague; so much so that no party here today actually  
20 knows what it is referencing. Additionally, the firm --  
21 sorry, the executive order's reliance on a purported award  
22 that -- as to students of color and to representation of  
23 individuals involved with voting litigation bears no  
24 connection to the national security concerns that the  
25 executive order is trying to promote.

1           In a similar vein, the order lacks the narrow  
2 tailoring that would be required because it threatens the  
3 termination of all government contracts held by any clients  
4 of the firm but does not justify this far-reaching  
5 punishment. Further, it allows for barring all Susman  
6 attorneys and staff from federal buildings, which could mean  
7 courthouses, Post Offices, the VA hospital and beyond.

8           The Court will also find that Susman is likely to  
9 prevail on its Fifth Amendment claim that the order violates  
10 its right to due process. The Due Process Clause is  
11 violated when the plaintiff faces a deprivation of a  
12 protected liberty or property interest and has not received  
13 the process that is due. Here, the firm was deprived of  
14 protected liberty and property interests that include the  
15 right of its attorneys to pursue their chosen profession,  
16 the firm's good name, reputation, honor and integrity, and  
17 the constitutionally protected interest in its contracts  
18 with its own clients. The firm has shown that the order was  
19 issued with no process whatever, and it also raises viable  
20 concerns that the order is impermissibly vague, and that  
21 vagueness is its own independent due process flaw.

22           A federal law is unconstitutionally vague and thus  
23 violates due process if it, quote, fails to provide a person  
24 of ordinary intelligence fair notice of what is prohibited  
25 or is so standardless that it authorizes or encourages

1 seriously discriminatory enforcement, end quote. That is  
2 from United States v. Williams, 553 U.S. 285, jump cite 304,  
3 2008.

4 The government further finds that the firm has  
5 made a showing that it is likely to succeed on other aspects  
6 of its Fifth Amendment claims, including its right to equal  
7 protection and its client's due process right to counsel.  
8 However, given the compelling nature of the First Amendment  
9 harms and the due process claim, the Court need not go into  
10 those at length.

11 Next I want to turn to irreparable injury. It's  
12 well established that irreparable injury is a high standard  
13 and the injury must be both certain and great, actual and  
14 not theoretical, and of such imminence that there is a clear  
15 and present need for equitable relief. Additionally, the  
16 injury must be beyond remediation, meaning that the  
17 possibility of adequate compensatory or other corrective  
18 relief at a later date could show against irreparable harm.  
19 The Court concludes that Susman has carried its burden here.

20 Susman has described several harms to its firm.  
21 First, it has argued that the order has impaired its First  
22 and Fifth Amendment constitutional rights. With regard to  
23 the First Amendment, the loss of First Amendment freedoms,  
24 even for minimal periods of time, alone constitutes  
25 irreparable injury. The Court agrees that if it does not



1 grant a TRO, Susman will suffer certain and imminent injury  
2 because the order chills the firm's speech and advocacy.

3 Next, with regard to the Fifth Amendment, a  
4 violation of Fifth Amendment due process rights, which  
5 includes unlawful interference with the right to counsel,  
6 can give rise to irreparable harm. That is also true of  
7 other Fifth Amendment harms the Court finds that the firm is  
8 likely to establish, including equal protection. Second,  
9 the firm explains that it will suffer severe and irreparable  
10 reputational harm as a result of the executive order because  
11 statements in the order could damage the firm's corporate  
12 good will and reputation. Relying on the Srinivasan  
13 declaration, Susman points to the order's description of the  
14 firm's work as, quote, dangerous and, quote, detrimental to  
15 critical American interests, end quote, and its accusation  
16 that the firm is, quote, spearheading efforts to weaponize  
17 the American legal system and degrade the quality of  
18 American elections, end quote. The Court agrees that this  
19 characterization indeed threatens reputational harm and  
20 justifies emergency relief.

21 Third, the firm argues that it is already  
22 suffering irreparable economic injuries explaining that,  
23 quote, without relief from the Court, the executive order  
24 will subject Susman to unrecoverable losses, end quote. By  
25 not being able to meet with federal officials when one-third

1 of its business includes federal cases and where it has  
2 cases not just in federal court, but also before various  
3 federal agencies, including U.S. Attorney's Offices, the  
4 Patent Review Board, the Coast Guard, and I believe other  
5 agencies, will stymie a critical aspect of its business.

6 That is especially so when the firm engages in the  
7 types of litigation that are particularly adjacent to the  
8 government, including qui tam litigation and patent  
9 litigation, as the firm has supported through its  
10 declarations. And while Susman admits that it has not yet  
11 had any meetings canceled and has not yet been barred from  
12 any federal building, it has pointed out there's every  
13 reason to believe that the refusals are imminent. And the  
14 firm has already been fielding requests from clients about  
15 how to handle such a situation.

16 Additionally, the order is discouraging current  
17 clients from continuing their relationships with the firm  
18 and prospective clients from beginning new relationships.  
19 In particular, because the executive order directs agencies  
20 to terminate contracts with contractors who have hired the  
21 firm to perform services. So the Court finds that for  
22 purposes of a TRO, the firm has sufficiently demonstrated  
23 that the possible loss resulting from the order threatens  
24 the very existence of its business and warrants emergency  
25 relief.

1           Turning to the balance of the equities and the  
2 public interest, as noted, when the government is the  
3 opposing party in the case, the third factor -- which is  
4 harm to other parties, and the fourth factor -- which is the  
5 public interest, merge. Here, the balance of equities  
6 overwhelmingly favors granting a TRO in this case. The  
7 government has sought to use its immense power to dictate  
8 the positions that law firms may and may not take. The  
9 executive order seeks to control who law firms are allowed  
10 to represent. And this immensely oppressive power threatens  
11 the very foundation of legal representation in our country.

12           The adversarial process lies at the heart of our  
13 judicial system and maintains that all individuals,  
14 regardless of beliefs, are entitled to representation. As  
15 the court wrote in *Velazquez*: "An independent judiciary  
16 requires an independent bar." Here, the executive order  
17 specifically targets lawyers because of the clients that  
18 they represented. The executive order is based on a  
19 personal vendetta against a particular firm. And frankly, I  
20 think the framers of our Constitution would see this as a  
21 shocking abuse of power.

22           We've already seen the effects of similar  
23 executive orders against other law firms. Law firms across  
24 the country are entering into agreements with the government  
25 out of fear that they will be targeted next, and that

1 coercion is plain and simple. And while I wish other firms  
2 were not capitulating as readily, I admire firms like Susman  
3 for standing up and challenging it when does threaten the  
4 very existence of their business.

5 But even for the many firms that have entered into  
6 agreements with the administration, there is nothing  
7 stopping the government from returning to target them in the  
8 future. But at base, the government cannot hold lawyers  
9 hostage to force them to agree with it. Allowing the  
10 lawyers to coerce private -- sorry, allowing the government  
11 to coerce private businesses, law firms and lawyers solely  
12 on the basis of their views is antithetical to our  
13 constitutional republic and hampers this Court and every  
14 court's ability to adjudicate its cases. Because this  
15 executive order attacks a core principle of client  
16 representation and threatens to punish both Susman and the  
17 legal industry as a whole, the Court finds that the public  
18 interest weighs in favor of granting a TRO.

19 On the flip side, granting a TRO would not inflict  
20 harm to the government. The government has no legal  
21 interest in breaking the law. And furthermore, as I've  
22 already said, the government is purely trying to control  
23 what private lawyers may do, which I do not think will  
24 withstand constitutional scrutiny.

25 So for all of those reasons, today I will impose a

1 temporary restraining order. I will put this in writing,  
2 but it is ordered that plaintiff's motion for a temporary  
3 restraining order is granted.

4 It is further ordered that defendants are enjoined  
5 from implementing or giving effect to Sections 1, 3 and 5 of  
6 the executive order of April 9th, 2025 entitled Addressing  
7 Risks from Susman Godfrey, including by relying on any of  
8 the statements in Section 1.

9 It is further ordered that defendants are directed  
10 to rescind any and all guidance or direction that has  
11 already issued that relates to implementing or enforcing  
12 Sections 1, 3 and 5 of the executive order.

13 It is further ordered the defendants are directed  
14 to immediately issue guidance to their officers, staff,  
15 employees and contractors to disregard Sections 1, 3 and 5  
16 of the executive order and carry on as if those sections of  
17 the executive order were never issued.

18 It is further ordered that the defendants are  
19 directed to immediately issue guidance to other agencies  
20 subject to the executive order to suspend and rescind any  
21 implementation or enforcement of Sections 1, 3 and 5.

22 It is further ordered the defendants are directed  
23 to immediately, A, communicate to every recipient of a  
24 request for a disclosure of any relationship with Susman  
25 Godfrey or any person associated with the firm made pursuant

1 to Section 33(a) of the executive order, that such request  
2 is rescinded until further order of the Court; and B, cease  
3 making such requests for disclosure pursuant to Section  
4 33(a) of the executive order until further order of the  
5 Court.

6 It is further ordered the defendants are directed  
7 to take in good faith any other steps that are necessary to  
8 prevent the implementation or enforcement of Sections 1, 3  
9 and 5 of the executive order.

10 And finally, it is ordered that defendants shall  
11 file a joint -- file a status report by 5:00 p.m. tomorrow,  
12 April 16th indicating the steps they've taken to comply with  
13 the Court's TRO.

14 I do want to turn to scheduling, but before I do,  
15 I do want to note that I am declining to impose a bond under  
16 Federal Rule of Civil Procedure 65(c). Under Rule 65(c),  
17 the Court has broad discretion to determine the appropriate  
18 amount of an injunction bond, including the discretion to  
19 award no bond at all. And here, requiring a bond would  
20 potentially preclude Susman Godfrey's right to judicial  
21 review.

22 So I will get a written order out later today. I  
23 would like to hear from the parties on whether there is a  
24 need to proceed to preliminary injunction briefing or  
25 whether we can move just to summary judgment. And I'll hear

1 first from the plaintiffs.

2 **MR. VERRILLI:** Thank you, Your Honor. I believe  
3 that the course here ought to parallel the course in the  
4 other cases; in other words, move directly to summary  
5 judgment. With respect to the schedule, we do want  
6 resolution expeditiously, as I said before. With the  
7 Court's indulgence, it may be that we can work out a  
8 schedule jointly with the United States for prompt  
9 submission of dispositive motions and then a hearing at Your  
10 Honor's discretion.

11 It might make sense if we could schedule a brief  
12 telephonic status conference in the next day or two so that  
13 we can just nail that down and make sure that we've got  
14 agreement upon that. And we haven't discussed specific  
15 dates yet, but I suspect we'll be able to work out a plan  
16 that's amenable to both sides. And if it's amenable to the  
17 Court, then we can move forward that way.

18 **THE COURT:** All right, thank you. Anything to  
19 add?

20 **MR. LAWSON:** No, Your Honor, we're happy to move  
21 quickly.

22 **THE COURT:** All right. I'll ask the parties to  
23 file a joint status report by 5:00 p.m. tomorrow setting  
24 forth the briefing schedule for summary judgment briefing  
25 mindful of the fact that the TRO will be in effect for 14

1 days, so until April 29th. If the parties agree to extend  
2 it by another two weeks, that gives you a bit more time to  
3 have your summary judgment briefing. I would just ask that  
4 you leave me at least a day or two to go through the  
5 briefing before we have our hearing and before I need to  
6 render any ruling before any TRO might expire.

7 All right. Is there anything else you wish to  
8 address today, Mr. Verrilli?

9 **MR. VERRILLI:** Nothing. Thank you, Your Honor.

10 **THE COURT:** Anything else from you, Mr. Lawson?

11 **MR. LAWSON:** No, Your Honor.

12 **THE COURT:** All right, thank you very much. I  
13 appreciate everyone's availability today. I'm grateful for  
14 the arguments, and I will look out for the order on  
15 compliance and the joint briefing schedule. This matter is  
16 adjourned.

17 (Proceedings adjourned at 3:36 p.m.)

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C E R T I F I C A T E

I, **Jeff M. Hook, Official Court Reporter,**  
certify that the foregoing is a true and correct transcript  
of the record of proceedings in the above-entitled matter.

April 16, 2025

DATE



Jeff M. Hook

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<b>MR. LAWSON:</b> <b>[28]</b> 2/21 17/21 17/23 18/5 18/16 18/21 18/25 20/4 23/12 25/12 25/24 27/6 28/3 28/22 29/1 29/18 30/5 31/5 31/21 31/25 32/24 33/17 33/21 34/10 35/17 36/1 55/20 56/11	' '71 [1] 21/15	<b>304 [1]</b> 48/2 <b>305 [1]</b> 22/3 <b>306 [1]</b> 22/3 <b>328 [1]</b> 32/20 <b>329 [1]</b> 32/20 <b>33 [2]</b> 54/1 54/4 <b>333 [1]</b> 1/24 <b>343 [1]</b> 21/23 <b>35 [1]</b> 10/7 <b>350 [1]</b> 1/17 <b>3:05 [1]</b> 42/8 <b>3:05 p.m [1]</b> 42/10 <b>3:15 and [1]</b> 42/9 <b>3:16 p.m [1]</b> 42/11 <b>3:36 p.m [1]</b> 56/17	<b>9</b> <b>90071 [1]</b> 1/17 <b>950 [1]</b> 1/20 <b>9th [2]</b> 42/18 53/6	<b>action [12]</b> 1/3 2/4 21/25 28/19 38/21 39/19 39/21 44/13 44/14 45/7 45/17 46/5 <b>actionable [1]</b> 45/8 <b>actions [11]</b> 5/11 10/18 13/14 13/19 15/2 19/24 31/1 34/6 34/7 38/3 45/16 <b>activities [1]</b> 39/3 <b>activity [1]</b> 45/13 <b>actors [2]</b> 19/10 26/11 <b>actual [2]</b> 44/3 48/13 <b>actually [7]</b> 10/10 13/20 25/18 28/1 38/24 40/23 46/19 <b>add [1]</b> 55/19 <b>addition [1]</b> 39/9 <b>additional [2]</b> 4/11 40/22 <b>additionally [4]</b> 45/14 46/20 48/15 50/16 <b>address [5]</b> 7/20 23/19 36/4 43/23 56/8 <b>Addressing [2]</b> 42/18 53/6 <b>adequate [1]</b> 48/17 <b>adjacent [1]</b> 50/7 <b>adjourned [2]</b> 56/16 56/17 <b>adjudicate [1]</b> 52/14 <b>adjudicated [2]</b> 37/16 38/13
<b>MR. VERRILLI:</b> <b>[27]</b> 2/7 2/14 3/8 4/3 4/6 6/3 6/14 7/4 7/17 7/25 9/12 9/20 11/6 12/2 12/11 13/22 15/6 16/21 16/24 17/18 36/3 36/13 37/10 38/23 42/7 55/2 56/9	<b>1</b> <b>1.4 [2]</b> 20/13 20/15 <b>101 [1]</b> 40/6 <b>105 [1]</b> 40/12 <b>1107 [2]</b> 1/4 2/4 <b>11246 [3]</b> 20/7 22/4 22/6 <b>1155 [1]</b> 1/14 <b>121 [1]</b> 21/6 <b>14 [1]</b> 55/25 <b>14263 [1]</b> 42/17 <b>15 [1]</b> 1/5 <b>159 [1]</b> 21/13 <b>168 [1]</b> 21/14 <b>16th [1]</b> 54/12 <b>171 [1]</b> 21/14 <b>1971 [1]</b> 21/16 <b>1979 [2]</b> 22/3 22/16 <b>1:25-cv-1107 [1]</b> 1/4	<b>4</b> <b>40 [2]</b> 21/5 21/5 <b>41 [2]</b> 20/12 20/14 <b>441 [1]</b> 22/3 <b>442 [1]</b> 21/13 <b>454 [1]</b> 43/6 <b>468 [1]</b> 45/9 <b>477 [1]</b> 45/10	<b>A</b> <b>ab [1]</b> 24/4 <b>ABA [5]</b> 26/8 34/24 35/3 35/10 35/11 <b>abide [1]</b> 16/5 <b>ability [6]</b> 4/25 16/13 27/8 33/3 33/4 52/14 <b>able [18]</b> 10/15 10/16 10/17 10/20 10/23 10/25 11/2 13/2 17/16 18/18 21/7 22/25 32/22 32/23 35/13 45/22 49/25 55/15 <b>above [3]</b> 41/1 41/25 57/5 <b>above-entitled [1]</b> 57/5 <b>absent [1]</b> 30/18 <b>abuse [1]</b> 51/21 <b>abyss [1]</b> 41/22 <b>access [7]</b> 19/12 33/22 35/1 35/2 35/18 39/5 45/15 <b>accusation [1]</b> 49/15 <b>achieve [1]</b> 16/5 <b>acknowledgement [1]</b> 30/15 <b>acquisition [1]</b> 21/6 <b>across [1]</b> 51/23 <b>act [7]</b> 22/9 22/10 22/11 33/4 36/24	
<b>THE COURT:</b> <b>[56]</b> 2/13 2/18 2/24 3/21 4/5 5/24 6/6 6/22 7/12 7/18 9/8 9/19 11/4 11/25 12/4 13/13 15/4 16/17 16/22 17/17 17/19 17/22 18/2 18/13 18/20 18/24 19/21 22/24 25/10 25/18 27/4 27/25 28/16 28/24 29/15 29/20 30/25 31/18 31/22 32/18 33/12 33/19 34/1 35/9 35/25 36/2 36/11 37/6 38/19 42/6 42/8 42/12 55/18	<b>2</b> <b>20001 [1]</b> 1/25 <b>20004 [1]</b> 1/15 <b>2006 [1]</b> 43/7 <b>2008 [1]</b> 48/3 <b>2016 [2]</b> 43/15 44/16 <b>2020 [4]</b> 6/16 6/17 14/7 45/25 <b>2022 [1]</b> 45/10 <b>2025 [3]</b> 1/5 42/18 53/6 <b>20530 [1]</b> 1/20 <b>242 [1]</b> 44/16 <b>25-cv-1107 [1]</b> 2/4 <b>258 [1]</b> 44/16 <b>281 [1]</b> 22/3 <b>285 [1]</b> 48/2 <b>290 [1]</b> 43/6 <b>297 [1]</b> 43/7 <b>29th [1]</b> 56/1 <b>2:04 [1]</b> 1/7	<b>5</b> <b>500 [1]</b> 43/15 <b>50th [1]</b> 1/17 <b>511 [1]</b> 43/15 <b>531 [1]</b> 44/23 <b>547 [1]</b> 44/23 <b>548 [1]</b> 44/23 <b>553 [1]</b> 48/2 <b>579 [1]</b> 21/23 <b>595 [1]</b> 45/9 <b>5:00 p.m [2]</b> 54/11 55/23		
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