

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

PATSY WIDAKUSWARA, JESSICA JERREAT,
KATHRYN NEEPER, JOHN DOES 1-4,
REPORTERS SANS FRONTIÈRES,
REPORTERS WITHOUT BORDERS, INC.,
AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES
(AFSCME), AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES (AFGE),
AMERICAN FOREIGN SERVICE
ASSOCIATION (AFSA), and THE NEWSGUILD-
CWA,

Plaintiffs,

-against-

KARI LAKE, in her official capacity as Senior
Advisor to the Acting CEO of the U.S. Agency for
Global Media; VICTOR MORALES, in his official
capacity as Acting CEO of the U.S. Agency for
Global Media; and U.S. AGENCY FOR GLOBAL
MEDIA,

Defendants.

Case No. 1:25-cv-01015-RCL

**PLAINTIFFS' COMBINED
REPLY MEMORANDUM OF
LAW IN SUPPORT OF THEIR
MOTION FOR PARTIAL
SUMMARY JUDGMENT [168]
AND MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
CROSS-MOTION FOR PARTIAL
SUMMARY JUDGMENT AND
MOTION TO DISMISS [202]**

Oral Argument Requested

TABLE OF CONTENTS

INTRODUCTION 1

ARGUMENT 2

 I. This Court has jurisdiction over Plaintiffs’ Appointments Clause and FVRA claims. 2

 II. Defendant Lake’s appointment as Senior Advisor was invalid. 3

 III. Defendant Lake’s appointment as Deputy CEO was invalid. 6

 IV. Defendant Lake’s service as Acting CEO violates the FVRA and the Appointments Clause. 7

 A. Defendant Lake was not the first assistant when the CEO office became vacant. 7

 B. Defendant Lake was never an “assistant” to the CEO. 10

 C. Delegation cannot be used as an end-run around the FVRA. 10

 D. Because Defendant Lake’s appointment as Acting CEO violates the FVRA, it also violates the Appointments Clause. 12

 E. Defendant Lake is still serving as Acting CEO past the FVRA’s time limits. 14

 V. The Court should vacate Defendant Lake’s unauthorized actions. 15

CONCLUSION 16

TABLE OF AUTHORITIES

CASES	Page(s)
<i>Andrade v. Lauer</i> , 729 F.2d 1475 (D.C. Cir. 1984).....	2
<i>Andrade v. Regnery</i> , 824 F.2d 1253 (D.C. Cir. 1987).....	5
<i>Asylumworks v. Mayorkas</i> , 590 F. Supp. 3d 11 (D.D.C. 2022)	15
<i>Aviel v. Gor</i> , No. 25-5105, 2025 WL 1600446 (D.C. Cir. June 5, 2025).....	13
<i>Axon Enter., Inc. v. FTC</i> , 598 U.S. 175 (2023).....	2
<i>Bandimere v. SEC</i> , 844 F.3d 1168 (10th Cir. 2016)	4
<i>Bullock v. U.S. Bureau of Land Mgmt.</i> , 489 F. Supp. 3d 1112 (D. Mont. 2020)	11
<i>Does 1-26 v. Musk</i> , 771 F. Supp. 3d 637 (D. Md. 2025)	5
<i>Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.</i> , 561 U.S. 477 (2010).....	2
<i>Freytag v. Comm’r</i> , 501 U.S. 868 (1991).....	12
<i>In re Grand Jury Subpoenas to Off. of New York State Att’y Gen.</i> , No. 25 MISC. 19 (LGS), 2026 WL 60793 (N.D.N.Y. Jan. 8, 2026).....	7, 11
<i>Harmon v. Thornburgh</i> , 878 F.2d 484 (D.C. Cir. 1989).....	16
<i>Kennedy v. Braidwood Mgmt., Inc.</i> , 606 U.S. 748 (2025).....	7
<i>L.M.-M. v. Cuccinelli</i> , 442 F. Supp. 3d 1 (D.D.C. 2020)	9, 10, 16

Loper Bright Enters., Inc. v. Raimondo,
603 U.S. 369 (2024)..... 8

Lucia v. SEC,
585 U.S. 237 (2018)..... 3, 4

Make the Rd. New York v. Noem,
No. 25-5320, 2025 WL 3563313 (D.C. Cir. Nov. 22, 2025)..... 16

New Mexico v. Musk,
784 F. Supp. 3d 174 (D.D.C. 2025) 5

NLRB v. SW Gen., Inc.,
580 U.S. 288 (2017)..... 7

Rural Dev. Innovations Ltd. v. Marocco,
No. CV 25-1631 (RJL), 2025 WL 4083332 (D.D.C. Nov. 19, 2025)..... 3

Rural Dev. Innovations Ltd. v. Marocco,
No. CV 25-1631, 2025 WL 1807818 (D.D.C. July 1, 2025) 2, 13

SW Gen., Inc. v. NLRB,
796 F.3d 67 (D.C. Cir. 2015)..... 7

Trump v. CASA, Inc.,
606 U.S. 831 (2025)..... 16

TRW Inc. v. Andrews,
534 U.S. 19 (2001)..... 8

United States v. Garcia,
No. 2:25-CR-00227-DGC-BNW,
2025 WL 2784640 (D. Nev. Sept. 30, 2025)8, 8, 10, 11

United States v. Giraud,
160 F.4th 390 (3d Cir. 2025).....7, 8, 9, 11, 11

Widakuswara v. Lake,
779 F. Supp. 3d 10 (D.D.C. 2025) 3

Youngstown Sheet & Tube Co. v. Sawyer,
343 U.S. 579 (1952)..... 13

U.S. CONSTITUTIONAL PROVISIONS

U.S. Const., art. II., § 2, cl. 2 13

U.S. Const., art. II., § 2, cl. 3 13

STATUTES

5 U.S.C.

§ 706(2)(A) 16

§ 3345(a) 13

§ 3345(a)(1) 1, 5, 7, 8, 9, 10

§ 3345(a)(2) 5, 6, 10

§ 3345(a)(3) 5, 9

§ 3346(a)(1) 14

§ 3346(a)(2) 14

§ 3346(b)(1) 14

§ 3347(a)(1) 122

§ 3347(a)(1)(A) 12

§ 3347(a)(2) 1212

§ 3348(d)(1) 15

§ 3349a 14

22 U.S.C.

§ 6203(b)(1) 13

§ 6204(a)(1) 4

§ 6204(a)(3) 4

§ 6204(a)(11) 3, 5

28 U.S.C.

§ 1331..... 2

OTHER AUTHORITIES

Designation of Officials of the United States Agency for Global Media to Act as
Chief Executive Officer, 90 Fed. Reg. 2,599 (published Jan. 13, 2025) 5, 6

E.O. 14,148, Initial Rescissions of Harmful Executive Order and Actions,
90 Fed. Reg. 8,237 (published Jan. 28, 2025)..... 6

PN 26-6—Leo Brent Bozell III—United States Agency for Global Media,
<https://www.congress.gov/nomination/119th-congress/26/6> 14

INTRODUCTION

Defendants do not meaningfully dispute the key facts: Defendant Lake exercised virtually all of the USAGM CEO's power while she was a Senior Advisor and Deputy CEO, to the point where she fired over 600 employees after her supposed boss, the Acting CEO, "refused to do his job and do that." Because Lake operated without direction and supervision by any other officer, the Constitution required that she, as a principal officer, go through Senate confirmation, but she did not. Even if she were considered an inferior officer, the Constitution required that she be appointed in particular ways, which she was not.

Lake's elevation from Deputy CEO to Acting CEO also violated the Federal Vacancies Reform Act ("FVRA") and the Appointments Clause. As a growing chorus of courts have held, to become an "acting officer" by operation of having been "the first assistant to the office" pursuant to 5 U.S.C. § 3345(a)(1), the first assistant must have been in place at the time the office became vacant, and Lake was not. Also, because she was never subordinate to the Acting CEO whose "deputy" she purportedly served as (for a matter of days) before she ascended to Acting CEO herself, she was never the first "assistant" to anyone within the meaning of § 3345(a)(1). Nor can the government bypass the FVRA by delegating all or virtually all of an agency head's power to another individual. Absent exceptions not applicable here, the FVRA is the exclusive mechanism by which an individual can temporarily perform the functions and duties of a vacant office that requires Senate confirmation. Finally, contrary to the government's suggestion that Lake stopped serving as Acting CEO in November 2025, Lake continued serving as the Acting CEO in January and February 2026, well past the FVRA's time limits.

Because Lake never had authority to serve as Senior Advisor, Deputy CEO, or Acting CEO of USAGM, her unauthorized actions in those roles must be vacated.

ARGUMENT

I. This Court has jurisdiction over Plaintiffs' Appointments Clause and FVRA claims.

Contrary to Defendants' argument, Opp. at 7, this Court has jurisdiction over Plaintiffs' claims under 28 U.S.C. § 1331 (federal question). The Civil Service Reform Act does not preclude the district court's jurisdiction here. The Supreme Court has twice held that structural constitutional claims like Plaintiffs' claims here fall outside the implied jurisdiction-stripping doctrine that Defendants have repeatedly invoked. *See Axon Enter., Inc. v. FTC*, 598 U.S. 175, 180 (2023) ("The ordinary statutory review scheme does not preclude a district court from entertaining these extraordinary claims."); *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 489 (2010) (rejecting government's argument that plaintiffs' separation of powers and Appointments Clause claims must be channeled through SEC judicial review procedures).

The D.C. Circuit has likewise carved out Appointments Clause claims from administrative channels. *See Andrade v. Lauer*, 729 F.2d 1475 (D.C. Cir. 1984). In *Andrade*, the court held that employees challenging a RIF could bring their Appointments Clause challenge to the exercise of authority by the officials who ordered the RIF directly in district court. *Id.* at 1490-96, 1501. Presaging *Axon*, the court reasoned that the administrative channel, including the Federal Labor Relations Authority, had "neither the qualifications nor the expertise to" adjudicate "important principles concerning the relative influence of the Legislative and Executive Branches over carrying out this country's laws"; that the Appointments Clause claim was collateral to any issue that would properly be before the FLRA; and that the claim would not be obviated by agency process. *Id.* at 1491-93. This case is materially indistinguishable. *See also Rural Dev. Innovations Ltd. v. Marocco*, No. CV 25-1631 (RJL), 2025 WL 1807818, at *4 (D.D.C. July 1, 2025) ("*RDP*") (rejecting government's argument that grantee's and employees' Appointments Clause and FVRA

claims must be channeled), *opinion vacated on other grounds*, 2025 WL 4083332 (D.D.C. Nov. 19, 2025). As Defendants do, Plaintiffs incorporate by reference their arguments from previous briefing. ECF No. 131 at 11-16; ECF No. 166-1 at 36-41; ECF No. 190 at 4-7.

Defendants also assert, without elaboration or explanation, that several Plaintiffs lack standing. Opp. at 7-8. This Court has already held to the contrary, finding Plaintiffs have both organizational and associational standing. *Widakuswara v. Lake*, 779 F. Supp. 3d 10, 26-28 (D.D.C. 2025). As Defendants do, Plaintiffs incorporate their previous briefing. ECF No. 131 at 6-11.

II. Defendant Lake’s appointment as Senior Advisor was invalid.

Defendants claim that Lake was properly appointed as Senior Advisor on February 27, 2025, by Roman Napoli, “who was carrying out delegable duties and functions of the CEO on that date,” and not the President. Opp. at 9. But even if she was appointed by Napoli, that appointment was invalid.

First, to the extent she was a principal officer, Lake needed to be appointed by the President and confirmed by the Senate, which she was not. If she was an inferior officer, Congress permitted the CEO of USAGM to appoint her. 22 U.S.C. § 6204(a)(11). But Napoli was not the CEO or Acting CEO of USAGM; indeed, Defendants are careful to state each time they refer to Napoli that he was “carrying out delegable duties and functions of the office of the CEO” but never allege that Napoli was the CEO or Acting CEO himself. *See* Opp. at 9, 14.¹ As a constitutional matter, an agency head cannot delegate the duty of appointing inferior officers to others. *See Lucia v. SEC*, 585 U.S. 237, 244-45, 251 (2018) (ALJ’s appointment by SEC staff rather than the Commission

¹ Defendants also never identify who delegated what duties or functions to Napoli or when. *See infra* n.4 (describing President Trump’s rescission of USAGM’s order of succession on January 20, 2025).

itself was improper because ALJs are inferior officers).² If Napoli was not himself the CEO or even the Acting CEO, then he could not appoint Lake as an inferior officer.

Notably, Defendants do not and cannot dispute that Lake exercised significant authority and thus was an officer, not a mere employee, and therefore needed to be appointed as described above. The “significant authority” “inquiry . . . focuse[s] on the extent of power an individual wields in carrying out [her] assigned functions.” *Id.* at 245. Defendants agree that Congress vested the CEO with “many powers” and that the CEO “holds broad supervisory authority.” *Opp.* at 2-3. Defendants quibble about whether Lake was delegated 95% versus “[r]oughly” 95% of the CEO’s powers, but they do not dispute that Defendant Lake was delegated virtually all of the CEO’s powers while she was a Senior Advisor, or that the only power that she could identify as *not* being delegated to her was writing reports. *Lake Dep. Tr.* 55:12-13, 56:7-57:5 (ECF No. 158); *Defs.’ Response to Pls.’ SUMF ¶ 6* (ECF No. 202-3). And there is no question that Lake exercised the CEO’s powers. Lake made determinations about broadcasting, such as directing Voice of America (“VOA”) to cease all programming and deciding to the VOA charter on a loop on TV stations that otherwise would have gone dark in March 2025, and directing the VOA Persian service to resume television coverage in Farsi in June 2025. *See Lake Dep. Tr.* 109:7-110:1; *Pls.’ Add’l SUMF ¶ 2*; *Lake Dep. Tr.* 113:22-114:8; *ECF No. 202-3 ¶ 10* (no dispute as to showing charter and resuming Farsi coverage); 22 U.S.C. § 6204(a)(1), (3) (giving CEO authority to “supervise all broadcasting activities” and “determine . . . the addition or deletion of language services”). Lake cut funding to grantees. *See, e.g., Radio Free Asia v. United States*, 1:25-cv-00907-RCL, Fleming Decl. Ex. A

² *See also Bandimere v. SEC*, 844 F.3d 1168, 1181 (10th Cir. 2016) (“The current ALJ hiring process whereby the OPM screens applicants, proposes three finalists to the SEC, and then leaves it to somebody at the agency to pick one, is a diffuse process that does not lend itself to the accountability that the Appointments Clause was written to secure.”)

(ECF No. 12-2) (notice of grant termination to Radio Free Asia signed by Kari Lake, Senior Advisor); Pls.’ Add’l SUMF ¶ 2; 22 U.S.C. § 6204(a)(5) (“To make and supervise grants...”). Lake signed RIF notices for 639 employees. *See* ECF No. 202-3 ¶ 12 (same); 22 U.S.C. § 6204(a)(11) (“to appoint . . . personnel”). Lake’s testimony that she signed the RIF notices after Morales “refused to do his job and do that” is also unrefuted. Lake Dep. Tr. 311:4-6, 308:9-14; *see* ECF No. 202-3 ¶ 12 (disputed as not being supported by transcript pages, but not pointing to any pages with contrary testimony or other evidence). Thus, for Appointments Clause purposes, Lake was an officer who needed to be appointed in particular ways, but was not.³

Second, to the extent Defendants are trying to claim Napoli actually was Acting CEO, there is no legal basis for that. When Amanda Bennett, the last Senate-confirmed USAGM CEO, resigned on January 20, 2025, the only way someone could temporarily perform the CEO’s functions and duties was through the FVRA. The FVRA provides three paths to become an acting officer, but Napoli traveled none of them. Napoli was not the first assistant to the CEO. *See* 5 U.S.C. § 3345(a)(1). He was not Senate-confirmed for another position. *See id.* § 3345(a)(2). And even if he was a senior officer or employee who had worked at USAGM for at least 90 days, he was not directed by the President to temporarily perform the CEO’s functions and duties. *See id.* § 3345(a)(3).⁴

³ Another court in this district has found similar powers to constitute “significant authority.” *See New Mexico v. Musk*, 784 F. Supp. 3d 174, 203-04 (D.D.C. 2025) (finding Elon Musk exercised significant authority where he directed “DOGE personnel within seventeen agencies, and those personnel have accessed and edited sensitive data, terminated contracts, transferred or cancelled leases, taken down websites, and placed employees on leave”); *see also Does 1-26 v. Musk*, 771 F. Supp. 3d 637, 665 (D. Md. 2025) (closure of USAID headquarters was an “exercise of significant authority that must be performed by an Officer of the United States”); *cf. Andrade v. Regnery*, 824 F.2d 1253, 1256 (D.C. Cir. 1987) (deciding Appointments Clause issue in RIF case).

⁴ On January 3, 2025, President Biden had issued a memorandum invoking the FVRA to set an order of succession for USAGM, such that if the CEO position became vacant, the Director of

Because Napoli lacked authority to appoint principal or inferior officers, Lake's appointment as Senior Advisor was invalid and her actions as Senior Advisor must be vacated.

III. Defendant Lake's appointment as Deputy CEO was invalid.

Defendants' contention that Lake was properly appointed as Deputy CEO by Acting CEO Victor Morales on July 16, 2025, is also flawed because she was, in reality, serving as a principal officer in that position, and thus could not be appointed other than via Presidential nomination and Senate confirmation. Opp. at 9. As discussed above, it is beyond dispute that Lake exercised significant authority. It is also beyond dispute that she did so without supervision and direction by the CEO. Not only did she fire 639 employees in June after her supposed boss Morales refused to do so, but she also then helped orchestrate her own elevation and Morales's ouster as Acting CEO. Specifically, her appointment in July as Deputy CEO was the result of her expressing interest in the position to the Presidential Personnel Office, an office within the White House. Likewise, Morales's placement on administrative leave days later (which led to Lake becoming Acting CEO) was the result of her raising concerns about Morales with the same White House office. That is also not disputed. ECF No. 202-3 ¶ 16 ("Ms. Lake testified that she spoke to someone in the Presidential Personnel Office (PPO) about her interest in becoming Deputy CEO . . ."; not disputing Lake's testimony that she told PPO she "lost confidence" in Morales, Lake Dep. Tr. 76:17-77:5).

Voice of America would serve as Acting CEO, provided the Director was not an acting official and was otherwise eligible to serve under the FVRA. Designation of Officials of the United States Agency for Global Media to Act as Chief Executive Officer, 90 Fed. Reg. 2,599 (published Jan. 13, 2025). If not the Director, then the General Counsel, Chief Financial Officer (Napoli's position), or Chief Management Officer would serve as Acting CEO, with the same caveats. *Id.* On January 20, President Trump chose to revoke the January 3 memorandum, but did not replace the order of succession or otherwise use his authority under the FVRA, 5 U.S.C. § 3345(a)(2) or (3), to direct someone to serve as Acting CEO. *See* E.O. 14,148, Initial Rescissions of Harmful Executive Order and Actions, 90 Fed. Reg. 8,237 (published Jan. 28, 2025).

Morales had no authority to appoint an officer like Lake. Under the Appointments Clause, an officer who exercises significant authority without being directed and supervised by another officer standing between them and the President is a principal officer who must be appointed by the President and confirmed by the Senate, *Kennedy v. Braidwood Mgmt., Inc.*, 606 U.S. 748, 761 (2025), which Lake was not. Thus, her appointment as Deputy CEO was invalid and her actions as Deputy CEO must be vacated.

IV. Defendant Lake’s service as Acting CEO violates the FVRA and the Appointments Clause.

A. Defendant Lake was not the first assistant when the CEO office became vacant.

Defendant Lake is not eligible to serve as Acting CEO under § 3345(a)(1) because she was not the Deputy CEO at the time the CEO vacancy arose on January 20, 2025, when the last Senate-confirmed CEO Amanda Bennett resigned. Numerous courts have adopted this reading of the FVRA, based on the same analysis that Plaintiffs provided. Mot. at 13-15; *see, e.g., United States v. Giraud*, 160 F.4th 390, 397-401 (3d Cir. 2025); *In re Grand Jury Subpoenas to Off. of New York State Att’y Gen.*, No. 25 MISC. 19 (LGS), 2026 WL 60793, at *7-9 (N.D.N.Y. Jan. 8, 2026), *appeal filed* (No. 26-156, 2d Cir. Jan. 23, 2026); *United States v. Garcia*, No. 2:25-CR-00227-DGC-BNW, 2025 WL 2784640, at *4-11 (D. Nev. Sept. 30, 2025); *cf. SW Gen., Inc. v. NLRB*, 796 F.3d 67, 76 (D.C. Cir. 2015), *aff’d*, 580 U.S. 288, (2017) (“Although we do not decide its meaning today, subsection (a)(1) may refer to the person who is serving as first assistant when the vacancy occurs.”). Defendants have not cited any case law in support of their contrary interpretation and Plaintiffs are not aware of any.

Defendants’ two arguments are unsupported and unpersuasive. First, as anticipated, Defendants argue that, because the statute applies to “the first assistant to the office of such officer,” and not the first assistant to the officer, § 3345(a)(1) should be read as not requiring the

person to be first assistant to the particular officer who left the position. Opp. at 15.⁵ But as already explained, Mot. at 15, “this language can be read just as readily to ensure that the ‘assistant’ covered by subsection (a)(1) is the first assistant to the office and not a personal assistant to the departed officer—an important distinction.” *Garcia*, 2025 WL 2784640, at *8. Moreover, “this small variation in wording” does not overcome the other textual and structural indicators that support Plaintiffs’ reading. *See Giraud*, 160 F.4th at 398 (rejecting government’s “first assistant to the office” argument). Section 3345(a)(1)’s if-then structure and present-tense verbs indicate “a single, immediate occurrence.” *Id.*; *see* 5 U.S.C. § 3345(a)(1) (“*If* a PAS⁶ officer “*dies, resigns, or is otherwise unable to perform the functions and duties of the office . . . the first assistant . . . shall perform the functions and duties of the office . . .*”) (emphases added). Section 3345(a)(1)’s “use of the definite article ‘the’ in reference to ‘the first assistant,’ rather than ‘a’ first assistant, ‘clearly refers to the deputy already in place at the time the vacancy arises.’” *Giraud*, 160 F.4th at 398. And reading § 3345(a)(1) as broadly as the government does “would render subsections (a)(2) and (a)(3) mostly superfluous” because they would only be needed in the “rare circumstance” when “the first assistant job itself is a PAS office,” leaving subsection (a)(1) to otherwise “in effect” allow the appointment of “almost anyone.” *Id.* at 399 (citing *TRW Inc. v. Andrews*, 534 U.S. 19, 29 (2001) (rejecting statutory interpretation that “would in practical effect render [a statutory] exception entirely superfluous in all but the most unusual circumstances”)).

⁵ The government cites General Accounting Office (“GAO”) and DOJ Office of Legal Counsel (“OLC”) materials. Opp. at 14 & n.2. But “GAO and OLC have answered this question differently at different times,” *Garcia*, 2025 WL 2784640, at *8, and this flipflopping “undermines the persuasiveness of agency opinions,” *id.* Moreover, “the Supreme Court has recently emphasized that courts need not defer to agency interpretations of statutes.” *Id.* (citing *Loper Bright Enters., Inc. v. Raimondo*, 603 U.S. 369 (2024)).

⁶ “PAS” refers to offices requiring Presidential appointment and Senate confirmation.

Second, Defendants claim that Plaintiffs’ reading “would upend the functioning of the Executive Branch” because the Executive Branch routinely relies on post-vacancy assistants to serve as acting officers, particularly when new Administrations come in. Opp. at 13.⁷ But this type of policy argument has been rejected by the courts and should be rejected by this Court too. As the Third Circuit noted in *Giraud*, “just because a practice previously went unchallenged does not mean it complies with the FVRA.” 160 F.4th at 400. In enacting the FVRA, Congress was combating the “Executive branch’s widespread practice—dating back through several administrations—of appointing temporary designees in contravention of existing law and the Appointments Clause.” *Id.* Given that history, it is implausible that Congress intended § 3345(a)(1) to give the Executive Branch free rein to appoint post-vacancy first assistants to run agencies for extended periods of time without requiring those individuals to go through Senate confirmation.

The government’s policy concerns are also overstated. “[I]n 2020, the Government ‘failed to identify a single example of a post-vacancy first assistant serving in an acting capacity prior to enactment of the FVRA.’” *Id.* (quoting *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d 1, 27-28 (D.D.C. 2020)). “This indicates that any existing practice of elevating later-named first assistants is a recent development ripe for review—not a practice to which Congress has acquiesced or a process essential to the Government’s ability to function.” *Id.* Further, as Plaintiffs explained, even if a post-vacancy assistant cannot serve under § 3345(a)(1), the FVRA permits the President to direct a senior officer or employee who has been at the agency for at least 90 days to temporarily perform the duties of the vacant PAS office. 5 U.S.C. § 3345(a)(3). The President can also direct someone

⁷ The only authority Defendants offer to support this argument is the government’s own brief in *Cuccinelli*, see Opp. at 14, which, of course, is not law. Also, the government lost in *Cuccinelli*, and while the court there did not rule on this argument in particular, it did express “doubt on whether Congress intended the phrase ‘first assistant’ to encompass those appointed to the first-assistant position after the vacancy arose.” *Cuccinelli*, 442 F. Supp. 3d at 28.

who has been Senate-confirmed for another office. *Id.* § 3345(a)(2). Or, a President can simply follow the regular procedure contemplated by the Appointments Clause: nominate someone for the vacant office “and seek quick confirmation by the Senate.” *Garcia*, 2025 WL 2784640, at *14. In any event, at the end of the day, “[the courts] are not tasked with resolving such policy concerns.” *Giraud*, 160 F.4th at 406.

B. Defendant Lake was never an “assistant” to the CEO.

Additionally, because Defendant Lake was never the first “assistant” to the CEO, Lake could not and cannot serve as Acting CEO based on § 3345(a)(1). *See Cuccinelli*, 442 F. Supp. 3d at 24 (finding FVRA violation where Mr. Cuccinelli “never did and never will serve in a subordinate role—that is, as an ‘assistant’—to any other USCIS official”). An “assistant” is “one who acts as a subordinate to another or as an official in a subordinate capacity.” *Id.* at 25-26 (quoting *Assistant*, Webster’s Third New International Dictionary at 132 (1993)). During Lake’s tenure as Senior Advisor, she had all of the CEO’s powers except writing reports, including the power to override the Acting CEO and fire over 600 employees. As Deputy CEO—to the same Acting CEO whose authority to lay off the vast majority of staff she had already overridden—she continued to have the same powers. *See Lake Dep. Tr.* 63:18-64:4, 66:4-19 (agreeing that she had roughly 95% of the CEO’s authority until the point she became acting CEO); *see also* ECF No. 202-3 ¶ 17 (no specific dispute with this testimony). To characterize such a role as “subordinate” or an “assistant” role stretches those words beyond their natural meaning.

C. Delegation cannot be used as an end-run around the FVRA.

Defendants try to defend Lake’s actions on the ground that “it would be plausible that Victor Morales would have delegated various tasks to Ms. Lake while she was serving in the Senior Advisor role, and later, in the Deputy CEO role to which he appointed her.” *Opp.* at 15. As a preliminary matter, it is unclear why Defendants cannot say for sure what powers Morales

delegated to Lake; they have produced no evidence of any formal delegation. In any event, Defendants do not meaningfully dispute Lake's testimony that she was delegated virtually all of the CEO's powers as Senior Advisor and as Deputy CEO. *See supra* Argument Part II.

As a matter of law, the government cannot get around the FVRA by delegating all, or virtually all, powers of a PAS office to someone. *Giraud*, 160 F.4th at 403 (holding "broad delegation" of the "full panoply" of U.S. Attorney powers to be "directly contrary to the exclusivity provision of the FVRA"); *In re Grand Jury Subpoenas*, 2026 WL 60793, at *9 (rejecting attempt to use general delegation to create an Acting U.S. Attorney outside the FVRA's statutory framework); *Garcia*, 2025 WL 2784640, at *2-14 ("The Court cannot conclude that Ms. Chattah's role is anything less than Acting U.S. Attorney, a position she cannot hold under § 3345(a) and cannot perform by delegated powers."); *cf. Bullock v. U.S. Bureau of Land Mgmt.*, 489 F. Supp. 3d 1112, 1126-27 (D. Mont. 2020) (finding Secretary's delegation of all functions, duties, and responsibilities of the Bureau of Land Management Director, a PAS office, to an individual not qualified to act in that position under the FVRA violated the Appointments Clause and FVRA, despite boilerplate language that the delegation covered only functions or duties not required by statute or regulation to be performed by the Senate-confirmed official).

The FVRA is the "exclusive means for temporarily authorizing an acting official to perform the functions and duties of" a vacant PAS office, unless "a statutory provision expressly— (A) authorizes the President, a court, or the head of an Executive department, to designate an officer or employee to perform the functions and duties of a specified office temporarily in an acting capacity; or (B) designates an officer or employee to perform the functions and duties

temporarily in an acting capacity.” 5 U.S.C. § 3347(a)(1).⁸ Some agencies have statutes that “provid[e] general authority” to the agency head “to delegate duties statutorily vested in that agency head,” but the FVRA explicitly provides that those statutes do not count as statutes authorizing the President or an agency head to designate an officer or employee to temporarily perform the functions and duties of a vacant PAS office under § 3347(a)(1)(A). *See id.* § 3347(b). If even an express vesting and delegation statute is insufficient to overcome the FVRA’s exclusivity provision, then so is whatever implicit, uncited delegation authority that Defendants hypothesize for USAGM.

D. Because Defendant Lake’s appointment as Acting CEO violates the FVRA, it also violates the Appointments Clause.

Because the FVRA is the exclusive means by which the President or an agency head could temporarily authorize Lake to perform the functions and duties of the vacant CEO office, and because Lake was not eligible under the FVRA to be so authorized, her service as Acting CEO also violated the Appointments Clause. The Appointments Clause requires that principal officers be confirmed by the Senate, which Lake was not. Even if she as Acting CEO was an inferior officer, by default, inferior officers must also be confirmed by the Senate, unless Congress permits the President or an agency head to appoint them without Senate confirmation. Here, the only non-Senate mechanism Congress provided was the FVRA, and Lake did not meet its requirements.

Defendants claim that, aside from the FVRA, the President has “concomitant authority, incident to his Article II power, to designate an acting CEO.” *Opp.* at 10. The government’s theory contradicts the plain text of the Appointments Clause, which describes only two methods for the appointment of officers, both of which require the participation of Congress. *See Freytag v.*

⁸ The other exception, if the President makes a recess appointment, is not relevant here. *See* 5 U.S.C. § 3347(a)(2).

Comm'r, 501 U.S. 868, 884 (1991) (The Appointments Clause “divid[es] the power to appoint the principal federal officers—ambassadors, ministers, heads of departments, and judges—between the Executive and Legislative Branches.”). The first method allows the President to appoint principal officers only “with the Advice and Consent of the Senate.” U.S. Const., art. II., § 2, cl. 2. Under the second method, “Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.” *Id.* Apart from the possibility of a recess appointment under the Recess Appointment Clause, U.S. Const., art. II., § 2, cl. 3, the Constitution contains no other mechanism for appointing federal officers.

Every court to have considered Defendants’ theory has rejected it, and this Court should as well. *See Aviel v. Gor*, No. 25-5105, 2025 WL 1600446, at *2 (D.C. Cir. June 5, 2025) (Katsas, J., concurring, joined by Judge Pillard) (“Given these specific checks and balances regarding appointments, it is unlikely that the Take Care Clause gives the President unfettered discretion to designate acting principal officers with neither Senate confirmation nor a Senate recess nor even statutory authorization through the FVRA.”); *see also id.* at *4 n.1 (Rao, J., dissenting) (agreeing with her colleagues that “the text and structure of the Constitution strongly suggest the President has no inherent authority to appoint officers of the United States, like IAF Board members, outside the strictures of the Appointments Clause.”); *RDI*, 2025 WL 1807818, at *5.⁹

⁹ *Youngstown* does not support Defendants’ position. This is not a situation where the President “acts in absence of either a congressional or denial of authority,” where Justice Jackson suggested the President might have “independent presidential responsibility.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring). This is a situation where the President “takes measures incompatible with the expressed or implied will of Congress,” *id.*, as Congress expressly required USAGM CEOs be confirmed by the Senate, 22 U.S.C. § 6203(b)(1), and expressly specified who can temporarily perform the duties and functions of Senate-confirmed offices like the USAGM CEO, 5 U.S.C. § 3345(a). In these situations, the President’s “power is at

E. Defendant Lake is still serving as Acting CEO past the FVRA’s time limits.

Lake’s service as Acting CEO now also violates the FVRA’s time limitations (even if it had previously been lawful, which it was not). Generally, a person serving as an acting officer may serve “for no longer than 210 days beginning on the date the vacancy occurs.” 5 U.S.C. § 3346(a)(1). Where, as here, the vacancy occurred on a “transitional inauguration day,” the acting officer may serve for an additional 90 days, for a total of 300 days. *See id.* § 3349a. Since Amanda Bennett resigned as CEO on January 20, 2025, Lake could not serve as Acting CEO past November 16, 2025 (300 days).¹⁰

Defendant Lake has served past November 16, 2025. Defendants submitted a declaration from Neeraja Gumma, the Acting Human Resources Director at USAGM, stating her “understanding that the USAGM Office of General Counsel submitted a report to the U.S. Government Accountability Office (‘GAO’) on November 19, 2025 stating that Ms. Lake’s service as Acting CEO of USAGM began on July 31, 2025, and discontinued on November 19, 2025.” Gumma Decl. ¶ 9 (ECF No. 202-1) (emphasis added). As a preliminary matter, the Gumma declaration does not and cannot establish that Lake has ceased to serve as Acting CEO. The report, an out-of-court document that Gumma “understand[s]” to have been submitted to GAO, is not attached to the declaration, and Gumma does not declare that the report is true. *See also* Defs.’

its lowest ebb.” *Youngstown*, 343 U.S. at 637. Indeed, the President has no constitutional power to appoint outside of the Appointments and Recess Appointments Clauses.

¹⁰ The President nominated Leo Brent Bozell III for USAGM CEO on March 10, 2025, and withdrew the nomination on March 24, 2025. PN 26-6—Leo Brent Bozell III—United States Agency for Global Media, <https://www.congress.gov/nomination/119th-congress/26/6>. If the President nominates someone for the PAS office, then an acting person can serve while the nomination is pending and then “continue to serve . . . for no more than 210 days after the date” the President withdraws the nomination. 5 U.S.C. § 3346(a)(2), (b)(1). This can sometimes prolong an acting officer’s service beyond the 210 or 300 days ordinarily provided under §§ 3346(a)(1) and 3349a. Here, it did not because Bozell’s nomination was withdrawn so quickly; 210 days after March 24, 2025 was October 20, 2025.

SUMF ¶ 7 (ECF No. 202-2) (citing Gumma Decl. ¶ 9 for the proposition that “Ms. Lake’s service as Acting CEO of USAGAM began on July 31, 2025” but not stating any fact as to when that service ended, if ever).

In any event, the declaration itself states that Lake’s service as Acting CEO “discontinued on **November 19, 2025**,” Gumma Decl. ¶ 9 (emphasis added), three days past November 16, 2025, the 300-day limit. And Lake has in fact continued to serve as Acting CEO into January and February 2026. Neeper Decl. (Feb. 16, 2026) Ex. A, B, C. (two emails and an attached notice sent to employees, signed by Kari Lake as “Acting Chief Executive Officer” and “Acting CEO”). That is a flagrant violation of the FVRA. It also suggests Defendants have intentionally misled the Court. The emails and attachment Lake signed as Acting CEO—including one sent earlier this month announcing the resumption of agency operations in the wake of Congress appropriating a budget for USAGM—were sent from the email of “HR Customer Service” for USAGM, *id.*, which is notable because Gumma claims to have “been serving in the role of Acting Human Resources Director” for USAGM “since October 2, 2025.” Gumma Decl. ¶ 1.

V. The Court should vacate Defendant Lake’s unauthorized actions.

Because Defendant Lake lacked authority to serve as Senior Advisor, Deputy CEO, and Acting CEO, her actions should be vacated. Defendants argue that any injunctive relief should be limited to Plaintiffs. Opp. at 16 (incorporating ECF No. 189 at 38). But Plaintiffs ask for vacatur of Defendant Lake’s actions, consistent with the relevant case law and statutes. Courts routinely invalidate actions taken by officers improperly appointed under the Appointments Clause. Mot. at 17 (citing Supreme Court, D.C. Circuit, and lower court cases). The FVRA provides a similar statutory remedy for an FVRA violation: “An action taken by any person” not acting in accordance with the FVRA “shall have no force or effect.” 5 U.S.C. § 3348(d)(1); *Asylumworks v. Mayorkas*, 590 F. Supp. 3d 11, 26 (D.D.C. 2022) (“The plain terms of the FVRA remove remedial discretion

by directing that unlawful actions under that statute are void *ab initio*, thereby rendering the rules without ‘force or effect’ and requiring vacatur.”).

In the alternative, when someone exercises authority “in violation of the FVRA,” the officer’s actions are “not . . . ‘in accordance with law,’ and must, accordingly, be set aside under the APA.” *Cuccinelli*, 442 F. Supp. 3d at 34 (quoting 5 U.S.C. § 706(2)(A)) (setting aside directives). Courts’ “set aside” authority under the APA acts on the agency action itself and is not party-limited. *Harmon v. Thornburgh*, 878 F.2d 484, 495 n.21 (D.C. Cir. 1989) (“When a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated—not that their application to the individual petitioners is proscribed.”).¹¹

Thus, if the Court finds that Defendant Lake’s appointment as Senior Advisor, Deputy CEO, and/or Acting CEO was invalid, then every action she took in those capacities had no force or effect and must be vacated, including her decisions to cease VOA broadcasts, cut funding to USAGM grantee networks and issue RIF notices, including the August RIFs that she signed as “Acting CEO.” ECF No. 144-4; ECF No. 202-3 ¶ 22 (no dispute August RIF notice was signed by Lake).

CONCLUSION

For these reasons, the Court should grant Plaintiffs’ motion for partial summary judgment and deny Defendants’ cross-motion for summary judgment and motion to dismiss.

¹¹ *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), is not to the contrary. *See id.* at 847 n.10 (“Nothing we say today resolves the distinct question whether the Administrative Procedure Act authorizes federal courts to vacate federal agency action.”); *Make the Rd. New York v. Noem*, No. 25-5320, 2025 WL 3563313, at *36 (D.C. Cir. Nov. 22, 2025) (rejecting the government’s “procrustean effort to stretch *CASA*’s plaintiff-specific remedial framework onto the APA”). Moreover, neither *CASA* nor the other two cases cited by Defendants, *Opp.* at 16, addressed Appointments Clause or FVRA claims or remedies.

February 17, 2026

GOVERNMENT
ACCOUNTABILITY PROJECT

_____/s/
David Z. Seide (D.C. Bar # 421899)
1612 K Street, NW
Washington, DC 20006
(202) 457-0034
davids@whistleblower.org

*Counsel for Plaintiffs Patsy Widakuswara,
Jessica Jerreat, Kathryn Neeper, John Doe 1,
John Doe 2, John Doe 3, and John Doe 4*

AMERICAN FEDERATION OF
STATE, COUNTY, AND
MUNICIPAL EMPLOYEES, AFL-
CIO (AFSCME)

_____/s/
Teague Paterson (D.C. Bar # 144528)
Matthew Blumin (D.C. Bar # 1007008)
Georgina Yeomans (D.C. Bar #
1510777)
1625 L Street, N.W.
Washington, D.C. 20036
(202) 775-5900
Tpaterson@afscme.org
Mblumin@afscme.org
Gyeomans@afscme.org

*Counsel for Plaintiff American
Federation of State, County, and
Municipal Employees, AFL-CIO
(AFSCME)*

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO

/s/

Respectfully submitted,

EMERY CELLI BRINCKERHOFF
ABADY WARD & MAAZEL LLP

_____/s/
Andrew G. Celli, Jr.
Debra L. Greenberger
Daniel M. Eisenberg (D.C. Bar #
90017823)
Nick Bourland
One Rockefeller Plaza, 8th Floor
New York, New York 10020
(212) 763-5000
acelli@ecbawm.com
dgreenberger@ecbawm.com
deisenberg@ecbawm.com
nbourland@ecbawm.com

*Counsel for Plaintiffs Patsy
Widakuswara, Jessica Jerreat,
Kathryn Neeper, John Doe 1, John
Doe 2, John Doe 3, John Doe 4,
American Federation of State, County
and Municipal Employees
(AFSCME); American Federation of
Government Employees (AFGE);
American Foreign Service
Association (AFSA); and the
NewsGuild-CWA*

AMERICAN FOREIGN SERVICE
ASSOCIATION

_____/s/
Sharon Papp (D.C. Bar # 107992)
Raeka Safai (D.C. Bar # 977301)
2101 E Street, N.W.
Washington, D.C. 20037
(202) 338-4045
papp@afsa.org
safai@afsa.org

Rushab Sanghvi (DC Bar # 1012814)
80 F. Street, NW
Washington, DC 20001
(202) 639-6424
SanghR@afge.org

*Counsel for American Federation of
Government Employees, AFL-CIO (AFGE).*

DEMOCRACY FORWARD FOUNDATION

s/
Kristin Bateman (D.C. Bar # 90037068)
Cynthia Liao (D.C. Bar # 90036947)
Robin F. Thurston (D.C. Bar # 1531399)
Skye L. Perryman (D.C. Bar # 984573)
P.O. Box 34553
Washington, DC 20043
(202) 448-9090
kbateman@democracyforward.org
cliao@democracyforward.org
rthurston@democracyforward.org
sperryman@democracyforward.org

*Counsel for Plaintiffs American Federation of
State, County and Municipal Employees
(AFSCME); American Federation of
Government Employees (AFGE); American
Foreign Service Association (AFSA); and the
NewsGuild-CWA*

*Counsel for Plaintiff American
Foreign Service Association (AFSA)*

DEMOCRACY DEFENDERS
FUND

/s/
Norman L. Eisen (D.C. Bar #
435051)
Joshua Kolb
Taryn Wilgus Null (D.C. Bar #
985724)
Sofia Fernandez Gold (D.C. Bar. #
90010196)
600 Pennsylvania Avenue SE #15180
Washington, DC 20003
Norman@democracydefenders.org
Joshua@democracydefenders.org
Taryn@democracydefenders.org
Sofia@democracydefenders.org

*Counsel for Reporters Sans
Frontières, Reporters Without
Borders, Inc., American Federation
of State, County and Municipal
Employees (AFSCME); and
American Federation of Government
Employees (AFGE)*

MEDIA FREEDOM &
INFORMATION ACCESS CLINIC -
YALE LAW SCHOOL¹²

/s/
David A. Schulz (D.C. Bar # 459197)
127 Wall Street
New Haven, CT 06520
David.schulz@YLSCLinics.org

*Counsel for Plaintiffs Patsy
Widakuswara, Jessica Jerreat,
Kathryn Neeper, and John Does 1-4*

¹² The views expressed herein do not purport to represent the institutional views of Yale Law School, if any.

