UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN FRIENDS SERVICE COMMITTEE; CENTER FOR CONSTITUTIONAL RIGHTS; HUMAN RIGHTS WATCH; and OPEN SOCIETY INSTITUTE,

Plaintiffs,

-v-

DONALD J. TRUMP, in his official capacity as President of the United States; UNITED STATES DEPARTMENT OF STATE; MARCO A. RUBIO, in his official capacity as Secretary of State; UNITED STATES DEPARTMENT OF THE TREASURY; SCOTT K. H. BESSENT, in his official capacity as Secretary of the Treasury; UNITED STATES DEPARTMENT OF JUSTICE; TODD BLANCHE, in his official capacity as United States Attorney General; OFFICE OF FOREIGN ASSETS CONTROL; and BRADLEY T. SMITH, in his official capacity as Director, Office of Foreign Assets Control,

Defendants.

No. 26 Civ. 6830 (JMF)

SUPPLEMENTAL MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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Defendants (the "Government") respectfully submit this supplemental memorandum of law pursuant to the Orders issued by the Court on October 13, 2026 (Dkt. No. 71) and October 20, 2026 (Dkt. No. 75), which directed the parties to brief the effect of this Court's recently issued Opinion and Order granting plaintiffs preliminary relief in *Democracy for the Arab World Now, Inc. v. Trump*, No. 26-cv-5957 (JMF) (S.D.N.Y.) ("*DAWN*"), Dkt. No. 40 ("*DAWN* Opinion") and the recent designation of the International Criminal Court ("ICC"), *see* *Imposing Sanctions on the International Criminal Court*, U.S. Dep't of State, Press Statement (Oct. 9, 2026) ("ICC Press Release").

I. Government's Position on the *DAWN* Opinion

A. The Government Strongly Disagrees with the Issuance of Preliminary Relief in *DAWN*

The Government respectfully disagrees with the Court's holdings in *DAWN* and in *Rona v. Trump*, 797 F. Supp. 3d 278 (S.D.N.Y. 2025). In *DAWN*, as it did in *Rona*, the Court concluded that plaintiffs are entitled to some injunctive relief because the prohibition on services imposed by Executive Order 14,203 violates the First Amendment as a content-based restriction that does not satisfy strict scrutiny. *DAWN* Opinion at 16–22; *Rona*, 797 F. Supp. 3d at 287–93. While the Government acknowledges the Court's issuance of injunctive relief in *Rona*, it submits that Plaintiffs in *Rona* were not entitled to injunctive relief, and that Plaintiffs in *DAWN* and in this case also have not demonstrated an entitlement to any injunctive relief. As such, the Government urges the Court to reconsider its analysis here, and deny injunctive relief.

i. Executive Order 14,203's Services Prohibition is Content-Neutral and Triggers at Most Intermediate Scrutiny

The Government maintains, as it explained in its briefing in this case, *DAWN*, and *Rona*, that Executive Order 14,203 does not violate Plaintiffs' First Amendment rights. Executive Order 14,203 is both content- and viewpoint-neutral: it regulates transactions with blocked *persons*; it is

agnostic to viewpoint or subject matter, making no distinction among the goods, funds or services based on the message or content. Gov't Opp. 11–13; *DAWN* Gov't Opp. 13–17; *Rona* Gov't Opp. 11–14. Plaintiffs' assertions that Executive Order 14,203 would prevent them from activities such as filing briefs in support of ICC jurisdiction or speaking with Palestinian NGOs regarding messaging are speculative, as nothing in the text of Executive Order 14,203 or IEEPA supports them. The Government takes the same view that it did in *Rona*: restrictions implemented by Executive Order 14,203 do not restrict constitutionally-protected speech consistent with the Berman Amendment to the IEEPA, which prohibits the Government from using IEEPA "to regulate or prohibit, directly or indirectly . . . the importation from any country, or the exportation to any country . . . of any information or informational materials." 50 U.S.C. § 1702(b)(3). Gov't Opp. 11; *DAWN* Gov't Opp. 15–16; *Rona* Gov't Opp. 20–21.

The Court concluded otherwise, holding that the Services Prohibition is "content based because it 'regulates speech based on its function or purpose.'" *DAWN* Opinion at 18–19 (quoting *Rona*, 797 F. Supp. 3d at 288-89). The Court explained that this conclusion was "compelled" by *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010). *Id*. But in *Holder*, the challenged statute differentiated between permissible and impermissible types of communications on its face: whether plaintiffs may "speak to the PKK and LTTE . . . under § 2339B *depends on what they say*." *Holder*, 561 U.S. at 27 (emphasis added). Here, the Services Prohibition makes no such distinction: speech is prohibited based on the status of the recipient, not based on its content. Because the Services Prohibition is content-neutral, intermediate scrutiny should apply. *See Butler v. City of New York*, 559 F. Supp. 3d 253, 267 (S.D.N.Y. 2021) ("when a regulation is content neutral, intermediate scrutiny applies.").

ii. Executive Order 14,203 Satisfies Strict Scrutiny

Even if strict scrutiny were to apply, Executive Order 14,203 satisfies it. Executive Order 14,203 is narrowly tailored to serve a compelling government interest in national security and foreign policy. Gov't Opp. 11–12; *DAWN* Gov't Opp. 18–20; *Rona* Gov't Opp. 14–17. While the Court observed that "concerns of national security and foreign relations do not warrant abdication of the judicial role" *Dawn* Opinion at 19 (quoting *Rona*, 797 F. Supp. 3d at 91), it is also true that "[n]o governmental interest is more compelling than the security of the Nation." *Hassoun v. Searls*, 968 F.3d 190, 201 (2d Cir. 2020) (internal quotation marks and citation omitted). Consequently, courts give "heightened deference to the judgments of the political branches with respect to matters of national security." *Id.* at 203 (internal quotation marks and citations omitted). As such, the Government maintains, just as it asserted in *Rona*, that the national security and foreign policy considerations implicated here establish a compelling government interest.

In keeping with the Government's view that Plaintiffs fail to allege an as-applied First Amendment challenge, the Government also maintains that Plaintiffs consequently cannot show that they face irreparable harm. Gov't Opp. 24–25; *DAWN* Gov't Opp. 26–27. Where, as here, weighty national security and foreign policy interests are implicated, public policy counsels against the imposition of an injunction. The Court interprets the Government's statement that OFAC sanctions do not penalize U.S. citizens for engaging in constitutionally-protected activities as support for the Cour's conclusion that injunctive relief would not impede national and foreign security interests. *DAWN* Opinion at 24. The Government disagrees with this interpretation. As the Government has stated, the national security and foreign policy interest the Government seeks to advance is its interest in protecting U.S. personnel from arrest, investigation or prosecution by the ICC when the U.S. has not consented to its jurisdiction. *DAWN* Gov't Opp. 18. The injunctive

relief requested here impedes the Government's ability to advance this interest, as it allows Plaintiffs to continue to aid in ICC efforts targeting U.S. personnel.

B. The Court Properly Rejected Plaintiffs' Facial Attack

The Court correctly concluded that Plaintiffs in *DAWN* could not sustain a facial First Amendment challenge. As the Government maintains and the Court noted in its Opinion, "'[f]acial challenges are disfavored' because "'[c]laims of facial invalidity often rest on speculation' and 'run contrary to the fundamental principle of judicial restraint that courts should neither anticipate a question of constitutional law in advance of the necessity of deciding it nor formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.'" *DAWN* Opinion at 26 (quoting *Rona*, 797 F. Supp. 3d at 287). The Court also rightfully concluded that, contrary to Plaintiffs' assertions, the Executive Order reaches "a wide range of non-expressive services" meaning Plaintiffs cannot show it is facially invalid. *Id.* at 28.

Plaintiffs here argue in the motion for a preliminary injunction that the Executive Order is facially overbroad because "'[t]here are no constitutional applications of Executive Order 14,203, and even if there were (*quod non)*, the restrictions on speech are facially overbroad in violation of the First Amendment." Dkt. No. 41 at 70. Plaintiffs' argument runs headlong into the Court's ruling in *DAWN*. Consistent with its finding that Plaintiffs in *DAWN* could not sustain a facial challenge because there are a wide range of constitutional applications of Executive Order 14,203, the Court should also reject the facial challenge seek to raise in this action.

C. The Scope of Relief Was Properly Limited

As discussed above, the Government maintains that the *DAWN* plaintiffs should not have been granted any relief whatsoever. *See supra* Section I.A; *see also* *DAWN* Gov't Opp. 10–27. Should the Court grant Plaintiffs' motion here—which it should not—any relief should be similarly

limited in scope. Plaintiffs have sought an order enjoining Defendants from "implementing or enforcing Executive Order 14,203, its implementing regulations, and all designations thereunder." Gov't Opp. 25 (quoting Dkt. No. 40-1). They also ask the Court to direct the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") to strike every person designated under the Executive Order from the Specially Designated Nationals and Blocked Persons List "within 1 business day." *Id.* (quoting Dkt. No. 40-1). And they ask the Court to categorically bar the Executive Branch from designating other foreign persons under Executive Order 14,203 in the future. *Id.* (citing Dkt. No. 40-1). Such broad relief would be at odds with the deference owed to the Executive Branch in an area "at the intersection of national security, foreign policy, and administrative law." *Islamic Am. Relief Agency v. Gonzales*, 477 F.3d 728, 734 (D.C. Cir. 2007); *see also, e.g.*, *Egbert v. Boule*, 596 U.S. 482, 494 (2022) ("'[m]atters intimately related to foreign policy and national security are rarely proper subjects for judicial intervention'").

Further, as the Government has explained, *CASA* forecloses such broad relief. Gov't Opp. 25–28. Courts have traditionally "issued injunctions prohibiting executive officials from enforcing a challenged law or policy only *against the plaintiffs* in the lawsuit." *Trump v. CASA, Inc.*, 606 U.S. 831, 837 (2025) (emphasis added). And "'[c]omplete relief' is not synonymous with 'universal relief.'" *Id.* at 851; *see* Gov't Opp. 25–26. Plaintiffs say their speech and association are chilled by fear of IEEPA-based penalties that have never been imposed on them. Gov't Opp. 26. An order barring the Government from imposing those penalties on Plaintiffs would fully remedy that injury. *Id.*

Consistent with the above, the Court in *DAWN* correctly declined to "go beyond the as-applied, plaintiff-specific injunction that the Court entered in *Rona*." *DAWN* Opinion at 25. The Court did not "enjoin the President" or give plaintiffs "universal relief." *Id.* In doing so, the Court

cited Supreme Court precedent explaining that "universal injunctions likely exceed the equitable authority that Congress has granted to federal courts" and that "the question is not whether an injunction offers complete relief to everyone potentially affected by an allegedly unlawful act" but whether it "will offer complete relief to the *plaintiffs before the court*." *Id.* at 28–29 (quoting *CASA*, 606 U.S. at 837, 852). Based on these concerns (in addition to the fact that the plaintiffs had only requested universal relief in their reply brief), the Court correctly declined to grant the broad relief requested by plaintiffs and instead enjoined the defendants, except President Trump, from "enforcing IEEPA's civil or criminal penalty provisions against Plaintiffs for the conduct specifically addressed in Plaintiffs' Complaint and in this Opinion and Order, to the extent that such conduct is alleged to have been committed in violation of" Executive Order 14,203's services prohibition. *DAWN* Opinion at 29–30. While the Government strongly disagrees that the *DAWN* plaintiffs were entitled to this relief, they were certainly not entitled to more relief, and neither are Plaintiffs here.

II. Designation of the ICC

Plaintiffs also plan to address the implications of the President's designation of the ICC on this case in their reply brief being filed today. *See* Dkt. No. 74. Based on the Complaint, the ICC's designation should not impact the scope of any relief that may be ordered by this Court based on the facts currently pled in the Complaint. The Government respectfully requests leave to file a letter addressing the substance of Plaintiffs' arguments regarding the ICC, if necessary, on or before November 6, 2026.

CONCLUSION

For these reasons and the reasons stated in the Government's opposition brief (Dkt. No. 69), the Court should deny Plaintiffs' motion for a preliminary injunction.

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October 29, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that this memorandum complies with the Court's October 20, 2026 Order, Dkt. No. 75, which imposed a 4,000 word limit for this submission. As measured by the word processing system used to prepare it, this memorandum contains 1,897 words.

/s/ Danielle J. Marryshow

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