GOVERNING FOR IMPACT

Challenging Agency Relocations

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Issue Brief

I. INTRODUCTION

Last month, the White House directed federal agencies to submit "[a]ny proposed relocations of agency bureaus and offices" by April 14th.[1] This directive followed reports that some administration officials were already contemplating relocations.[2] These announcements came as no surprise, given then-candidate Trump's 2023 pledge to "shatter the deep state" by moving entire federal agencies and subagencies from Washington, D.C., to parts of the country that are full of "patriots who love America."[3] Such moves can cause federal employees, who have built lives and families in the places where their agencies are currently located, to resign — grinding entire agency functions to a halt.

For President Trump, severe attrition seems to be the point. His administration has already taken drastic steps to fire potentially hundreds of thousands of federal employees.[4] In particular, he and his allies look suspiciously upon longtime civil servants who, in their telling, used bureaucratic jujitsu to stymie parts of Trump's first term agenda.[5] Experienced employees, though, have often accrued the strongest civil service protections against dismissal and reductions in force.[6] And, as those with the deepest local roots, longtime civil servants may also be the least likely to want to move. To the Trump administration, agency relocations may be an attractive tool to drive civil servants to "voluntarily" leave the government altogether rather than uproot their lives and families.

The resulting loss of experienced personnel could weaken agencies and hinder their ability to perform essential functions. Indeed, agency relocations during the first Trump administration had these effects and faced criticism for inadequate planning and decision-making, and some were found to violate statutory restrictions on agency funding.[7]

The second Trump administration is planning to pursue similar efforts, this time likely on a grander scale. As it does, defenders of the civil service might consider challenging these actions in court so as

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[1] Office of Management and Budget & Office of Personnel Management, Guidance on Agency RIF and Reorganization Plans Requested by Implementing The President's "Department of Government Efficiency" Workforce Optimization Initiative, (Feb. 26, 2025), https://www.opm.gov/policy-data-oversight/latest-memos/guidance-on-agency-rif-and-reorganization-plans-requested-by-implementing-the-president-s-department-of-government-efficiency-workforce-optimization-initiative.pdf.

[2] *See, e.g.*, Laura Barrón-López (@lbarronlopez), X.com (Feb. 20, 2025, 4:06 PM), https://x.com/lbarronlopez/status/1892682272588853376?s=46 (reporting that the Small Business Administrator told employees that she would move regional offices away from sanctuary cities).

[3] Agenda47, "President Trump's Plan to Dismantle the Deep State and Return Power to the American People," (Mar. 21, 2023), https://www.donaldjtrump.com/agenda47/agenda47-president-trumps-plan-to-dismantle-the-deep-state-and-return-power-to-the-american-people.

[4] Ted Odberg & Megan Lebowitz, *Trump administration tells federal agencies to fire probationary employees*, NBC News (Feb. 13, 2025), https://www.nbcnews.com/politics/white-house/trump-administration-federal-agencies-fire-probationary-employees-rcna192149.

[5] Chris Megerian, *Trump moves swiftly on his agenda in a departure from his first-term stumbles*, Associated Press, (Feb. 19, 2025), https://apnews.com/article/donald-trump-white-house-elon-musk-157a40167e63673e2c2f3a15e946a274.

[6] *See, e.g.*, 5 U.S.C. § 3502(a); 5 C.F.R. § 351.501 (listing "length of service" as a factor in ordering employees in agency reductions in force).

[7] *See, e.g.*, Government Accountability Office, Department of Agriculture — Application of Statutory Notification Requirement, B-334306, (Aug. 15, 2023), https://www.gao.gov/assets/830/828269.pdf (finding that the USDA violated a notification requirement in its appropriations law when it reprogrammed funds for a subagency relocation) (hereinafter "GAO USDA Notification Report").

to stop, slow, and discourage them. There are several sources of law that might restrict agencies' ability to relocate. Of course, whether a particular claim would be advantageous will depend on the details of a particular relocation and a party's litigation goals. This Issue Brief provides an overview of various legal claims that litigants might assert to stop or slow down an agency relocation. Such litigation could protect civil servants and vital government functions that serve us all.

II. TRUMP'S EFFORTS TO RELOCATE AGENCIES

As part of its strategy to dismantle the administrative state, the Trump administration reportedly plans to initiate several relocations of federal agencies and subagencies. The results of President Trump's first term relocations and his stated motivations for relocations in his second term indicate that such relocations could undermine governmental effectiveness.

In August 2018, the Secretary of Agriculture announced that two of his department's research agencies would relocate from the Washington, D.C., area to Kansas City, Missouri.[8] And in 2019, the Department of the Interior (Interior) announced that the Bureau of Land Management (BLM) headquarters would move from Washington, D.C., to Grand Junction, Colorado.[9] Both agencies and their leaders asserted that these agency relocations would improve governmental effectiveness and bring the agencies' resources closer to the entities and land that they regulate.[10] Despite skepticism about the purported benefits,[11] it does not seem that parties brought any litigation against these moves at the time.

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[8] General Accountability Office, EVIDENCE-BASED POLICY MAKING USDA's Decision to Relocate Research Agencies to Kansas City Was Not Fully Consistent with an Evidence-Based Approach (Report # GAO-22-104540, Apr. 2022), https://www.gao.gov/assets/gao-22-104540.pdf (Hereinafter "GAO Report on USDA Sub-Agency Relocations").

[9] Caitlyn Kim & Stina Sieg, *Gardner Says BLM Will Indeed Move To Grand Junction, After Yearslong Campaign*, CPR News, (Jul. 15, 2019), https://www.cpr.org/2019/07/15/gardner-says-blm-will-indeed-move-to-grand-junction-after-yearslong-campaign/; *see also* U.S. Department of the Interior, *Interior Statement on Funding for BLM Relocation*, (Sept. 24, 2019), https://www.doi.gov/pressreleases/interior-statement-funding-blm-relocation.

[10] The Secretary of Agriculture: "The Kansas City Region will allow ERS and NIFA to increase efficiencies and effectiveness and bring important resources and manpower closer to all of our customers." United States Department of Agriculture, *Secretary Perdue Announces Kansas City Region as Location for ERS and NIFA*, (Jun. 13, 2019), https://www.usda.gov/about-usda/news/press-releases/2019/06/13/secretary-perdue-announces-kansas-city-region-location-ers-and-nifa. The Secretary of the Interior: "This relocation strengthens our relationship with communities in the West by ensuring decisionmakers are living and working closer to the lands they manage for the American people. This effort will also save a great deal of money that can be reinvested in our field operations." Bureau of Land Management, *The Bureau of Land Management's Headquarters Officially Established in Grand Junction, Colorado*, (Aug. 10, 2020), https://www.blm.gov/press-release/The-Bureau-of-Land-Management-Headquarters-Officially-Established-in-Grand-Junction-Colorado.

[11] *See, e.g.*, Erich Wagner, *USDA, Union Reach Deal to Ease Relocation Impact on Feds*, Government Executive, (Aug. 9, 2019), https://www.govexec.com/management/2019/08/usda-union-reach-deal-ease-relocation-impact-feds/159084/ (explaining that the union "remain[ed] convinced that this forced relocation is bad for employees, bad for the agricultural community and bad for taxpayers").

These relocations were disastrous for personnel and the agencies' ability to carry out their statutorily mandated responsibilities. Roughly half of the BLM's staff decided to quit rather than move their lives and families to Colorado.[12] Roughly 75 percent of the Department of Agriculture's (USDA's) research agencies' employees declined to relocate and left the agencies.[13] Both relocations left the agencies with workforces that were less experienced—losing hard-earned institutional knowledge[14]—and less diverse.[15] The relocations also frustrated the agencies' missions. Among other concerns, the Government Accountability Office (GAO) reported that the USDA subagencies published far less research and disbursed far fewer grants than in the years before relocating.[16] Similarly, the BLM relocation led to delays in key agency processes like creating or clarifying guidance and policy.[17] GAO's retrospective analyses revealed significant flaws in how the agencies undertook these relocations.[18] According to GAO, they ignored recommendations that they consult stakeholders and consider staff attrition effects.[19] Additionally, GAO found that USDA unlawfully reprogrammed funds during one subagency's relocation.[20]

The second Trump administration has already taken steps to reshape and decimate the federal workforce,[21] and there are indications that agency relocations will be a part of its playbook. Then-candidate Trump himself promised to move federal employees and agencies out of Washington, D.C., boasting that it would be part of how he would "shatter the deep state."[22] After the 2024 election, President-elect Trump's transition team reportedly discussed relocating the Environmental Protection Agency out of Washington, D.C.[23] Project 2025 recommended relocating the BLM headquarters again after the Biden administration returned it to Washington, D.C.[24] Project 2025 also recommended

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[12] Anne-Marie Fennell & Frank Rusco, U.S. Gov't Accountability Off., GAO-20-397r, Bureau of Land Management: Agency's Reorganization Efforts Did Not Substantially Address Key Practices for Effective Reforms 4 (2020), https://www.gao.gov/assets/gao-20-397r.pdf (hereinafter "GAO BLM Reforms Report").
[13] Genevieve K. Croft, Congressional Research Service, IF11527, Relocation of the USDA Research Agencies: NIFA and ERS 2, (May 1, 2020), https://crsreports.congress.gov/product/pdf/IF/IF11527/2 (hereinafter "USDA CRS Report").
[14] The number of employees who had been at the agencies for more than two years decreased from over 80 percent before the move to fewer than 40 percent after staff levels rebounded following the relocations of USDA's research agencies. Government Accountability Office, AGENCY RELOCATIONS Following Leading Practices Will Better Position USDA to Mitigate the Ongoing Impacts on Its Workforce 58, GAO-23-104709, (Dec. 2022), https://www.gao.gov/assets/d23104709.pdf (hereinafter "GAO USDA Leading Practices Report").
[15] The share of BLM headquarter staff that was Black dropped from 21 percent before the move to 12 percent after. Government Accountability Office, Bureau of Land Management Better Workforce Planning and Data Would Help Mitigate the Effects of Recent Staff Vacancies 22, GAO-22-104247, (Nov. 2021), https://www.gao.gov/assets/d22104247.pdf (hereinafter "GAO BLM Staff Vacancies Report"). For USDA research agencies, one's Black employee share dropped from 22 percent to 9 percent and the other dropped from 47 percent to 19 percent. GAO USDA Leading Practices Report at 17.
[16] GAO USDA Leading Practices Report at 19.
[17] GAO BLM Staff Vacancies Report at 17 (explaining that "[o]ne staff member told us that, in some cases, the staff member's office relied on outdated policy guidance in order to make decisions.")
[18] *Id*.
[19] *Id* at 13, 17.
[20] GAO USDA Notification Report.
[21] *See, e.g.*, Meg Kinnard & The Associated Press, *Trump's firings, freezes and layoffs: Here are the president's moves against federal employees and programs so far*, Fortune, (Jan. 29, 2025), https://fortune.com/2025/01/29/firings-freezes-layoffs-trump-moves-against-federal-employees-programs/.
[22] Agenda47, "President Trump's Plan to Dismantle the Deep State and Return Power to the American People," (Mar. 21, 2023), https://www.donaldjtrump.com/agenda47/agenda47-president-trumps-plan-to-dismantle-the-deep-state-and-return-power-to-the-american-people.
[23] Coral Davenport & Lisa Friedman, With Ready Orders and an Energy Czar, Trump Plots Pivot to Fossil Fuels, (Nov. 8, 2024), https://www.nytimes.com/2024/11/08/climate/trump-transition-epa-interior-energy.html.
[24] Project 2025, Mandate for Leadership 524, (Accessed: Oct. 3, 2024), https://static.project2025.org/2025_MandateForLeadership_FULL.pdf.

relocating other subagencies, including the Department of the Interior's Office of Surface Mining Reclamation and Enforcement.[25] Small Business Administrator Kelly Loeffler reportedly told staff that she plans to move her department's regional offices away from sanctuary cities,[26] and Federal Bureau of Investigation leadership announced their plans to relocate 1,500 positions from Washington, D.C., to Alabama and other parts of the country.[27] More recently, the White House directed agencies to submit plans for relocations by April 14th.[28]

III. AGENCY RELOCATION DECISIONS ARE REVIEWABLE

Several courts have concluded that an agency's relocation decision is a final agency action reviewable under the Administrative Procedure Act (APA),[29] but it bears explaining why.[30] An agency action is final if it: 1) "mark[s] the consummation of the agency's decisionmaking" and 2) is an action "by which rights or obligations have been determined, or from which legal consequences will flow."[31] The finality element must be interpreted in a "pragmatic and flexible manner."[32]

Litigants likely would have been able to establish that agency relocation decisions during President Trump's first term met the first prong. They likely could do so with respect to future relocation decisions as well. A relocation decision is the "consummation" of the agency's decisionmaking when the agency announces an unconditional intention—rather than one that is "tentative or

[25] *Id.* at 535.
[26] Laura Barrón-López (@lbarronlopez), X.com(Feb. 20, 2025, 4:06 P.M.), https://x.com/lbarronlopez/status/1892682272588853376?s=46.
[27] Carol Leonnig (@CarolLeonnig), X.com (Feb. 21, 2025, 5:15 P.M.), https://x.com/carolleonnig/status/1893061782123565186?s=46.
[28] *See supra* note 1.
[29] *City of Albuquerque v. U.S. Dep't Of Interior*, 379 F.3d 901, 915 (10th Cir. 2004) (assuming without deciding that an agency relocation decision was final agency action); *City of Reading, Pa. v. Austin*, 816 F. Supp. 351, 357 (E.D. Pa. 1993) (finding that the GSA Administrator's decision to relocate five federal agency offices out of a city's central business district was reviewable under the Administrative Procedure Act.); *Jane D. v. Soc. Sec. Admin.*, No. CIV. A. 87-1867, 1987 WL 25625 (E.D. La. Nov. 30, 1987) (granting summary judgment to plaintiff city against the Social Security Administration for failing to give first consideration to New Orleans's central business district in its relocation).
[30] Our focus here is on finality; other barriers to APA review are unlikely to apply. The APA "creates a presumption favoring judicial review of administrative action." *Sackett v. EPA*, 566 U.S. 120, 128 (2012) (quotation omitted). The two statutory exceptions are narrow and typically will not make agency relocations unreviewable. The APA exempts from review actions 1) when "statutes preclude judicial review" and 2) where "agency action is committed to agency discretion by law." 5 U.S.C. § 701(a). As to the first exception, we are aware of no statutes that would preclude review of agency relocation decisions. The second exception is a very narrow one that applies only "in those rare instances where 'statutes are drawn in such broad terms that in a given case there is no law to apply.'" *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971); s*ee also Heckler v. Chaney*, 470 U.S. 821, 830 (1985) (explaining that the exception only applies when "the statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion"). As this Issue Brief explains, there are myriad sources of law that a court could apply to an agency relocation decision, including the Residence Act, Executive Order 12072, various restrictions on appropriations, and statutory civil service protections. *See, e.g., City of Albuquerque*, 379 F.3d at 916-17 (explaining that EO 12072 and various implementing regulations were sufficiently specific and provided ample direction to the court to support reviewability).
[31] *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (internal quotation marks omitted).
[32] *Oregon Nat. Desert Ass'n v. U.S. Forest Serv.*, 465 F.3d 977, 982 (9th Cir. 2006) (internal citation omitted).

interlocutory"[33] — to relocate an agency or subagency.[34] For example, during the first Trump administration, the USDA's relocation announcement was attributed to the highest ranking official at the agency (the cabinet secretary), offered a cost-benefit analysis purporting to support the decision, and used formal and unequivocal language about the agency's final decision to relocate its research subagencies.[35]

Under the second prong, a court considers whether the agency action binds any parties or has an effect on the "day-to-day business" of subject parties.[36] And, importantly, the inquiry looks at both the effect on the plaintiffs and on the relevant agency.[37] An agency relocation could meet this prong in at least two ways. First, the agency will be bound by its decision through a variety of contractual commitments (e.g., leases, employment agreements, and contractor relationships). And second, the decision no doubt impacts the "day-to-day business" of, and creates legal consequences for, several parties: agency employees (who may be subject to disciplinary action for failing to relocate),[38] entities and individuals with business before the agency (who may be less able to vindicate their rights due to staff attrition, agency reorganization, and the necessity to travel to the agency), the agency itself (which may become subject to local or state laws in their new locations), municipalities that currently host agencies (which face job, tax, and population loss), and vendors and service providers that have contracts with the agency, among others.

IV. LEGAL CONSTRAINTS ON AGENCY RELOCATIONS

Litigants might bring a number of claims against an agency relocation decision. Depending on the details of a particular relocation effort, relevant sources of law may include: the APA, the Federal Property and Administrative Services Act, the National Environmental Policy Act, Executive Order 12072, appropriations statutes and the Antideficiency Act, the Residence Act and its progeny, the Civil Rights Act, and the Federal Labor Relations Act.

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[33] *Bennett*, 520 U.S. at 178.
[34] Ripeness and finality, Administrative Law Practice and Procedure § 6:9; *See also Abbott Labs. v. Gardner*, 387 U.S. 136, 151 (1967) (explaining that a court considers whether the action is "informal, or only the ruling of a subordinate official, or tentative."); *see also, e.g., Tinian Women Ass'n v. United States Dep't of the Navy*, No. 16-CV-00022, 2017 WL 4564188 (D. N. Mar. I. Oct. 13, 2017), *aff'd on other grounds*, 976 F.3d 832 (9th Cir. 2020) (explaining that the Navy's record of decision in announcing personnel relocation was formal and unconditional).
[35] United States Department of Agriculture, *Secretary Perdue Announces Kansas City Region as Location for ERS and NIFA*, (Jun. 13, 2019), https://www.usda.gov/about-usda/news/press-releases/2019/06/13/secretary-perdue-announces-kansas-city-region-location-ers-and-nifa.
[36] *Oregon Nat. Desert Ass'n v. U.S. Forest Serv.*, 465 F.3d 977, 987 (9th Cir. 2006) (internal citations omitted).
[37] *Tinian Women Ass'n*, 2017 WL 4564188 at *7 (explaining that the final decision to move personnel had already been made and "unquestionably ha[d] practical and legal effects and sets forth the Departments' respective obligations" even though construction for the new location had not yet begun, because the final decisions delineated the agency's future obligations.").
[38] Mike Spies & J. David McSwane, *Inside the Trump Administration's Chaotic Dismantling of the Federal Land Agency*, ProPublica, (Sept. 20, 2019), https://www.propublica.org/article/inside-the-trump-administrations-chaotic-dismantling-of-the-federal-land-agency (discussing mass resignations and firings as a result of the BLM headquarters move).

An agency's justification for relocating might be arbitrary and capricious. Among other things, the APA requires agencies to engage in reasoned decisionmaking.[39] To enforce this requirement, courts look to an agency's contemporaneous rationale for a decision.[40] In contrast to a rulemaking process, where an agency usually publishes a lengthy administrative record that includes its justification and responses to public comments, an agency relocation decision may only be announced in a short press release.[41] To the extent such a press release does not set forth the agency's rationale in a way that would furnish a basis for judicial review, a court might direct an agency to produce any contemporaneous decision memoranda or analysis as part of the administrative record,[42] or an agency official might prepare a declaration identifying the agency's rationale for taking action.[43] Any such submissions should be reviewed carefully to ensure they capture the agency's contemporaneous rationale, rather than a *post hoc* rationale tailored to pass litigation muster.[44]

To the extent agency officials provide an inaccurate or incomplete statement of their reasons for relocating an agency, litigants might have several options. They might move to compel the agency to complete the record by making "a *prima facie* showing that the agency excluded from the record evidence adverse to its position"[45] or that "materials exist that were actually considered by the agency decisionmakers but are not in the record as filed."[46] Alternatively, litigants could move to supplement the record to include prior press releases, public statements from agency officials, results from analyses conducted about the relocation, and any other information available to help the court discern the contemporaneous rationale and reasoning for the agency's decision.[47]

With an agency's rationale thus identified, a court considers a variety of factors in deciding whether an agency action is "arbitrary and capricious:"

> Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.[48]

Litigants might pursue a number of claims applying these criteria, depending on the details of a particular agency relocation decision.

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[39] *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 52 (1983).
[40] *Id.* at 50 (explaining that a court cannot accept counsel's "post hoc rationalizations for agency action.");
[41] *See, e.g.,* United States Department of Agriculture, *Secretary Perdue Announces Kansas City Region as Location for ERS and NIFA*, (Jun. 13, 2019), https://www.usda.gov/about-usda/news/press-releases/2019/06/13/secretary-perdue-announces-kansas-city-region-location-ers-and-nifa; *see also Women Involved in Farm Econ. v. U.S. Dep't of Agric.*, 876 F.2d 994, 999 (D.C. Cir. 1989) (permitting defense counsel to offer *post hoc* rationalizations during litigation when the APA did not require an agency to offer rationales at the time of final agency action) ("*WIFE*").
[42] *See Tourus Recs., Inc. v. Drug Enf't Admin.*, 259 F.3d 731, 738 (D.C. Cir. 2001) (considering "internal agency memoranda" that provided agency's contemporaneous rationale).
[43] *See Olivares v. Transportation Sec. Admin.,* 819 F.3d 454, 463 (D.C. Cir. 2016) (considering agency declaration where it "contain[ed] no new rationalizations" and was "merely explanatory of the original record").
[44] *See Sec. & Exch. Comm'n v. Chenery Corp.*, 318 U.S. 80, 95 (1943) ("We merely hold that an administrative order cannot be upheld unless the grounds upon which the agency acted in exercising its powers were those upon which its action can be sustained.").
[45] *Kent Cnty. v. EPA*, 963 F.2d 391, 395–96 (D.C. Cir. 1992).
[46] *Comprehensive Community Dev. Corp. v. Sebelius*, 890 F. Supp. 2d 305, 308–09 (S.D.N.Y. 2012).
[47] Motions to supplement the record with new evidence are generally frowned upon, but may be permissible when a plaintiff shows that it is "necessary to determine whether the agency has considered all relevant factors and explained its decision." *San Luis & Delta-Mendota Water Auth. v. Locke*, 776 F.3d 971, 992 (9th Cir. 2014) (internal quotation marks omitted).
[48] *State Farm*, 463 U.S. at 43.

First, agencies cannot base a decision on a "contrived" reason. A court should not readily accept an agency's justification for its action when it is clear that the decisionmaker's stated reason actually "played an insignificant role in the decisionmaking process."[49] Relatedly, courts should be skeptical if it is apparent that the decisionmaker "had made up his mind" before beginning the decisionmaking process.[50] The entire point of the "reasoned explanation requirement of administrative law," after all, is "to ensure that agencies offer genuine justifications…that can be scrutinized by courts…"[51]

Of course, agencies announcing their relocation decisions may offer justifications that sound reasonable. As during President Trump's first term, they might claim that relocating will save taxpayer money, improve agency operations by getting closer to the lands and people they serve, or increase employee retention.[52] But courts are "not required to exhibit a naiveté from which ordinary citizens are free."[53] President Trump and his allies have repeatedly and clearly stated that they view agency relocation as one way to decimate the federal workforce.[54] And experience from the first Trump administration confirms that poorly executed relocations do have those deleterious effects, hollowing out the government of institutional knowledge and expertise.[55] GAO explained how agency leadership at USDA and Interior made the decisions to relocate and then designed a decisionmaking process and contrived reasons that would support that decision. For example, GAO found that USDA's economic analysis of its relocation cut corners to arrive at the agency's preordained decision to leave Washington, D.C.[56]

Litigants and courts might not take agency statements at face value when agencies' true motivations are readily apparent. Specifically, litigants might identify statements and inconsistencies in the decisionmaking process that help establish pretextual reasoning. This could include statements as to the true motivations of a move (e.g., "shattering the deep state" or rewarding allies in particular

[49] *Dep't of Com. v. New York*, 588 U.S. 752, 782 (2019).
[50] *Id.*
[51] *Id.* at 785.
[52] *See, e.g.*, United States Department of Agriculture, *Secretary Perdue Announces Kansas City Region as Location for ERS and NIFA*, (Jun. 13, 2019), https://www.usda.gov/about-usda/news/press-releases/2019/06/13/secretary-perdue-announces-kansas-city-region-location-ers-and-nifa.
[53] *Dep't of Com.*, 588 U.S. at 785 quoting *United States v. Stanchich*, 550 F. 2d 1294, 1300 (2nd Cir. 1977).
[54] Agenda47, "President Trump's Plan to Dismantle the Deep State and Return Power to the American People," (Mar. 21, 2023), https://www.donaldjtrump.com/agenda47/agenda47-president-trumps-plan-to-dismantle-the-deep-state-and-return-power-to-the-american-people; Eric Katz, *Musk, Ramaswamy focus on slashing telework and federal employee attrition in initial meetings with Republicans*, Government Executive, (Dec. 5, 2024), https://www.govexec.com/management/2024/12/musk-ramaswamy-focus-slashing-telework-and-federal-employee-attrition-initial-meetings-republicans/401480/ (Vivek Ramaswamy talking about actions like ending telework and agency relocations, explaining: "If you have many voluntary reductions in force of the workforce in the federal government along the way, great. That's a good side effect of those policies as well.")
[55] *See supra* Section II.
[56] GAO Report on USDA Sub-Agency Relocations at 12 (noting that the USDA did not consider all relevant alternatives, *including that of no action*.) (emphasis added); And GAO also found that the Department of the Interior did not describe its methodology for choosing the BLM's new headquarters, nor did it create an implementation plan for the move to ensure continued delivery of headquarters-related services during the reorganization. GAO BLM Reforms Report at 9.

relocation destinations that are full of "patriots who love America"[57]) and motivated analyses (e.g., choosing data to arrive at a desired outcome). Governing for Impact has elsewhere described in greater detail claims involving pretextual agency rationales.[58]

Second, agencies must provide a "more detailed justification" when their actions unsettle "serious reliance interests."[59] That principle carries particular force when parties have relied upon the agency's conduct over "decades."[60] Specifically, an agency must "assess whether there were reliance interests, determine whether they were significant, and weigh any such interest against competing policy concerns."[61]

Litigants might demonstrate that agency relocations have the potential to disrupt significant reliance interests. The agency's employees rely on the location of their jobs to build and maintain their lives and families. States and localities that currently house agencies rely on the tax revenue and economic activity generated by the presence of the agency. Entities regulated and populations protected by agencies often rely upon the agency's physical presence in their efforts to influence the agency's policymaking. Given these significant disruptions, an agency deciding to relocate may need to explicitly acknowledge the changes and offer a more detailed explanation to justify the move.

Third, agencies must not fail "to consider important aspects of the problem" they are addressing.[62] Agencies need to, for example, adequately explain their change in particular methodologies[63] or their omission of obviously relevant pieces of data.[64] Additionally, an agency cannot offer an "explanation for its decision that runs counter to the evidence before the agency."[65]

An agency that chooses to relocate must, at a minimum, consider the disruption that relocation might wreak on the agency's personnel and operations. GAO criticized USDA in the first Trump administration for failing to consider important aspects of the relocation decision.[66] For example, USDA excluded "critical costs"—like those associated with employee attrition—"from its estimates of savings to taxpayers."[67] And the agency failed to consider other economic effects caused by relocation, like "potential secondary effects from disruption of [agency] activities and lower productivity" and the financial effects of relocations on employees and their families.[68] The

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[57] For example, Republican Senator Cory Gardner bragged that he led a yearslong campaign to convince the Department of the Interior to relocate to Colorado. Caitlyn Kim & Stina Sieg, *Gardner Says BLM Will Indeed Move To Grand Junction, After Yearslong Campaign*, CPR News, (Jul. 15, 2019), https://www.cpr.org/2019/07/15/gardner-says-blm-will-indeed-move-to-grand-junction-after-yearslong-campaign/. Small Business Administrator Kelly Loeffler reportedly told staff on her first day that she intended to move SBA offices out of sanctuary cities. Post from @lbarronlopez, (Feb. 20, 2025), https://x.com/lbarronlopez/status/1892682272588853376?s=46.

[58] *See* Challenging Agency Action Based on Pretextual Reasons, Governing for Impact, (March 2025), https://governingforimpact.org/wp-content/uploads/2025/03/Challenging-Agency-Pretext.pdf.

[59] *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *see also Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221-22 (2016).

[60] *Encino*, 579 U.S. at 222.

[61] *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 33 (2020).

[62] *State Farm*, 463 U.S. at 43.

[63] *See, e.g., Ass'n of Oil Pipe Lines v. FERC*, 281 F.3d 239, 248 (D.C. Cir. 2002) ("we conclude that FERC has [not] articulated reasons for changing its averaging methodology").

[64] *State Farm*, 463 U.S. at 43 ("the agency must examine the relevant data").

[65] *Id.*

[66] GAO Report on USDA Sub-Agency Relocations at 18.

[67] *Id.* at 19. ("Such costs include the following: losses of human capital and institutional knowledge when new employees replace experienced employees; hiring and training costs of new employees to replace old employees; reduced productivity due to loss of experienced employees; and costs of disruptions to agency operations while full employment levels are reestablished.").

[68] *Id.*

non-comprehensive economic analysis, GAO concluded, had "significant limitations,"[69] and likely tipped the scales toward the outcome that the agency desired. In addition, GAO found that USDA subagencies' output dropped precipitously, impairing the interests of entities that rely on USDA grantmaking and research.[70]

In this second Trump administration, potential challengers might carefully review the agency's stated reasons and underlying analyses to ensure that they take into account all relevant factors. If an agency omits or manipulates key data to justify its decision, it could indicate that the agency did not engage in the reasoned decisionmaking that the law requires.

Fourth, agencies must consider alternatives to their chosen course of action, including less disruptive ones.[71] Even where agencies offer potentially plausible rationales for a relocation — like saving taxpayer money or reducing staff turnover — litigants might also assert that the agencies either insufficiently or altogether failed to consider available alternatives, like not relocating at all, or delaying or phasing a relocation plan, as applicable.

During the first Trump administration, GAO criticized USDA for failing to adequately consider the alternatives of not relocating at all and of relocating within the Washington area.[72] By eliminating the Washington, D.C., area early on in its deliberations due to its higher cost-of-living, USDA "may have limited its ability to achieve the [stated] relocation objective of attracting and retaining highly qualified staff" because of the region's high levels of education and proximity to institutions of higher learning.[73] Similarly, litigants during the second Trump administration might explain how a relocation decision discounts or omits the benefits of not relocating an agency at all.

An agency relocation might violate the Federal Property and Administrative Services Act of 1949. The General Services Administration (GSA) — informally known as the "government's landlord"[74] — is responsible for arranging workspace for government employees by constructing, managing, and preserving government buildings.[75] Federal law allows the GSA Administrator to "assign or reassign space for an executive agency in any Federal Government-owned or leased building" based on "a determination by the Administrator that the assignment or reassignment is advantageous to the Government in terms of economy, efficiency, or national security."[76] The GSA's implementing regulations also require that management policy be "adequate to meet the agencies' missions…"[77]

Experience from the first Trump administration shows that some agency relocations do not promote but rather damage the economy and efficiency of government functions, and thereby hamper agencies' ability to fulfill their missions. One of the USDA relocations, for example, caused delays in grantees' ability to receive awarded funds from the subagency,[78] and another led the subagency to delay or discontinue multiple research products.[79] The BLM relocation led to a sharp drop in headquarters staff levels, which GAO wrote, led to delays in key agency functions like creating or

[69] *Id.* at 21.
[70] *Id.* at 20.
[71] *State Farm*, 463 U.S. at 50–51.
[72] GAO Report on USDA Sub-Agency Relocations at 12 (noting that USDA did not consider all relevant alternatives, *including that of no action*).
[73] *Id.*
[74] United States General Services Administration, GSA at 75: A federal landlord and a good neighbor (Jul. 10, 2024), https://www.gsa.gov/blog/2024/07/10/gsa-at-75-a-federal-landlord-and-a-good-neighbor.
[75] United States General Services Administration, Mission and Background, (Accessed: Jan. 31, 2025), https://www.gsa.gov/about-us/mission-and-background.
[76] 40 U.S.C. § 584(a)(2)(C).
[77] 41 C.F.R. § 102-74.10(b).
[78] USDA CRS Report at 2.
[79] *Id.*

clarifying guidance or policy.[80] Vacancies persisted long after the relocation and agency staff reported to GAO that the increased reliance on short-term contractors reduced the performance of their office.[81]

By the same token, litigants challenging an agency relocation decision might raise questions about the veracity of GSA's conclusions as to a relocation's impact on government efficiency and economy.

An agency might fail to complete a required environmental assessment. The National Environmental Policy Act (NEPA) requires agencies to prepare a detailed environmental impact statement (EIS) before undertaking a "major Federal action significantly affecting the human environment."[82] NEPA does not impose a substantive constraint on agency actions, but rather a procedural requirement to consider environmental effects. A "'major Federal action' means an action that the agency carrying out such action determines is subject to substantial Federal control and responsibility"[83] Courts consider: "the amount of federal funds expended by the action, the number of people affected, the length of time consumed, and the extent of the government planning involved."[84] "The agency's ability to influence or control the outcome is the dominant factor to consider."[85] Courts are relatively deferential to an agency's determination of whether an action "significantly affect[s] the human environment."[86] Through "searching and careful review, they ask whether the agency adequately studied the issue and took a hard look at the environmental consequences of its decision, not whether the agency correctly assessed the proposal's environmental impacts.[87]

Several courts have found that a decision to relocate agencies or personnel can meet the definition of "major Federal action significantly affecting the human environment," and therefore require an EIS.[88] In *S. W. Neighborhood Assembly v. Eckard*, for example, neighborhood groups argued that GSA's decision to relocate 2,300 government employees to an office building in Washington, D.C., required an EIS under NEPA.[89] The district court agreed that "[b]y definition," the relocation was a "major Federal action," citing an $11 million lease and the relocation of "2,300 federal employees who must commute primarily by automobile."[90] The court then rejected GSA's finding that the relocation would only minimally affect the environment (and therefore be exempt from EIS requirements).[91] It found that the assessment was made "pretty quickly" and cursorily,[92] failed to consider key environmental concerns in its determination,[93] and did not attempt to quantify or otherwise consider the traffic and

[80] GAO BLM Staff Vacancies Report at 17 (explaining that "[o]ne staff member told us that, in some cases, the staff member's office relied on outdated policy guidance in order to make decisions.")
[81] *Id.*
[82] 42 U.S.C. § 4332(2)(C).
[83] 42 U.S.C. § 4336e(10)(A); *see also* 40 C.F.R. § 1508.1(q).
[84] 53 A.L.R. Fed. 2d 489.
[85] *Id.*
[86] *Klein v. U.S. Dep't of Energy*, 753 F.3d 576, 580–81 (6th Cir. 2014).
[87] *Id.* (internal quotation marks and citations omitted).
[88] *S.W. Neighborhood Assembly v. Eckard*, 445 F. Supp. 1195 (D.D.C. 1978); *McDowell v. Schlesinger*, W.D. Mo., 404 F. Supp. 221 (W.D. Mo. 1975) (finding that a relocation of "7,500 persons from [a] Missouri air force base to [a] Illinois air force base" required preparation of an EIS); *Prince George's Cnty., Maryland v. Holloway*, 404 F. Supp. 1181 (D.D.C. 1975) (holding that transfer and consolidation of a naval oceanographic program constituted "major Federal action").
[89] 445 F. Supp. 1195 (D.D.C. 1978).
[90] *Id.* at 1198.
[91] *Id.* at 1200.
[92] *Id.*
[93] *Id.* (criticizing GSA for providing "little or no discussion" of considerations like "the need for roadbuilding and upgrading, the safety threat (particularly to children and senior citizens) from the increased traffic in the area, the need for secondary community development (e.g., stores, restaurants, shops, etc.), [] the impact on housing, community services, [] the economic condition of the area," and the "consequences to the neighborhood of the possible abandonment of" the building upon termination of the GSA lease.).

air pollution impact of more than 700 additional automobiles in the neighborhood and shifts in federal employee commuting from public transit to driving.[94] To the extent the Trump administration elects to move agencies from areas with mass transit options to areas where the primary method of commuting is by car, Eckard's reasoning might be particularly applicable.

Some minor relocations may not rise to the threshold of requiring an EIS.[95] But NEPA's requirement that agencies "utilize a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment"[96] applies "to all decision making of federal agencies concerning all agency actions, even where the [EIS provisions] of NEPA are not applicable."[97] One court found that a transfer of 7,500 servicemembers failed this test in part because the Department of Defense consulted an expert from only one discipline — industrial health.[98]

Litigants challenging relocation decisions in the second Trump administration might assert claims that agencies failed to prepare an EIS for planned relocations. As part of or in addition to those claims, they might criticize agencies' failure to methodically consider all of the potential environmental impacts of a relocation, including traffic, air pollution, and potential blight.

An agency relocation might violate Executive Order 12072, "Federal Space Management." EO 12072 places several requirements on federal facilities and federal use of space in urban areas. These include procedural commands to agencies (like giving "serious consideration to the impact a site selection will have on improving social, economic, environmental, and cultural conditions" in the selected urban area) and substantive ones (like ensuring that federal use of space serves "to strengthen the Nation's cities and to make them attractive places to live and work").[99]

Cities have historically had some success in suing agencies and GSA for their failure to comply with EO 12072's central command, which is to prioritize central business districts and "other specific areas which may be recommended by local officials" for site selection over suburban or rural locations.[100] Similarly, GSA's regulations implementing EO 12072[101] have provided ammunition for cities' challenges.[102]

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[94] *Id.* (explaining that "[t]raffic and air quality are two of the most fragile elements of the Washington area environment," and that GSA failed to quantify the "effect of 2,300 commuting employees in more than 700 private automobiles upon air pollution" as well as the traffic and air pollution caused by "government employees who, but for their transfer, would have had better access to public transportation or would have otherwise been able to get to work without using an automobile." Additionally, the court criticized GSA for advancing "no persuasive suggestions for avoiding or ameliorating those traffic and air quality impacts which it does identify.")
[95] *See, e.g., Maryland-Nat'l Cap. Park & Plan. Comm'n v. Martin*, 447 F. Supp. 350, 352 (D.D.C. 1978) (finding no "major Federal action" for an office relocation "involving a limited number of people, minimal time to effect, and no new construction").
[96] 42 U.S.C. § 4332(2)(A).
[97] *McDowell v. Schlesinger*, W.D.Mo.1975, 404 F.Supp. 221, 252 (W.D. Mo. 1975).
[98] *Id.*
[99] EO 12072 § 1-1.
[100] *City of Albuquerque*, 379 F.3d at 901 (finding that the district court had subject matter jurisdiction over the city's claim and that the city had standing to bring action against the Department of Interior's failure to follow EO 12072's procedural commands); *City of Reading, Pa.*, 816 F. Supp. at 351 (holding that the GSA's decision to relocate five federal agency offices outside of the city's central business district was subject to review, GSA was required to accord preference to the central business district, GSA was required to review justifications from federal agencies before relocating the agencies, and GSA was required to consult with city officials.)
[101] Throughout 41 C.F.R. Chapter 101.
[102] *City of Reading*, 816 F. Supp. at 351 (reviewing the GSA's failure to follow its own regulations that required it to review an agency's proffered justification for a particular site selection).

As parties did successfully in past litigation, litigants challenging future agency relocation might directly bring claims under EO 12072 to require additional deliberations from agencies or to require them to consider primarily downtown areas for relocations (as opposed to outlying areas that may be less desirable for relocating federal workers). Additionally, litigants could point to the factors set forth in the EO as elements that an agency must consider to survive arbitrary and capricious review.

An agency relocation might violate appropriations laws. The Antideficiency Act prohibits federal agencies from incurring expenses beyond the amounts authorized by Congress.[103] Additionally, some appropriations statutes require an agency to notify Congress or seek its approval to reprogram funding.[104] Without the predicate notification or approval, certain funds may not be validly appropriated to an agency, and therefore an agency's use of them could constitute an Antideficiency Act violation.

GAO found that USDA violated the notification requirements attached to its appropriations, and therefore the Antideficiency Act, in the course of relocating one subagency.[105] USDA failed to notify Congress about money it was transferring for the purpose of its subagency relocation. Without that notification, the amounts were not legally appropriated and therefore their use violated the Antideficiency Act.[106]

Depending on the appropriations statutes that govern a particular agency's actions, litigants might consider challenging relocation decisions under the Appropriations Clause or the Antideficiency Act. Such claims could seek to enjoin an agency from undertaking future action without sufficient appropriations or to undo actions an agency has already taken when it lacked proper appropriations. There is limited authority about the remedy for an Appropriations Clause or Antideficiency Act violation, but the Fifth Circuit and President Trump himself have asserted that actions taken without valid appropriations should be undone. In *Community Financial Service Association of America v. CFPB*, the Fifth Circuit held that the plaintiffs were "entitled to a rewinding of" agency actions that the court held were taken in violation of the Appropriations Clause.[107] And in his prosecution in Florida, then-defendant Trump relied on this opinion to assert that an agency cannot retroactively "cure [an] Appropriations Clause defect," but instead "the remedy in those cases" must be "invalidation of the unlawful actions."[108]

An agency relocation might violate the Residence Act and its progeny. Legislative language and historical practice dating back to the nation's founding suggests that headquarters of executive agencies may need to be located in Washington, D.C., absent a statutory exception.[109] Current federal

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[103] 31 U.S.C. § 1341.

[104] *See, e.g.*, Pub. L. No. 115-141, 132 Stat. at 385 ("None of the funds provided by this Act . . . shall be available for obligation or expenditure through a reprogramming, transfer of funds, or reimbursements as authorized by the Economy Act, or in the case of the Department of Agriculture, through use of the authority provided by section 702(b) of the Department of Agriculture Organic Act of 1944 (7 U.S.C. 2257) or section 8 of Public Law 89-106 (7 U.S.C. 2263), that— . . . (4) relocates an office or employees; . . . unless the Secretary of Agriculture . . . notifies in writing and receives approval from the Committees on Appropriations of both Houses of Congress at least 30 days in advance of the reprogramming of such funds or the use of such authority."). GAO did not address the agency's compliance or noncompliance with the appropriations law's approval requirement because it assumed that such a requirement is unconstitutional under *Immigration & Naturalization Service v. Chadha*, which invalidated the legislative veto. 462 U.S. 919 (1983). GAO USDA Notification Report at 9.

[105] GAO USDA Notification Report at 1.

[106] *Id.*

[107] 51 F.4th 616, 643 (5th Cir. 2022), *rev'd on other grounds*, 601 U.S. 416 (2024).

[108] Pres. Trump's Reply Br. at 7, *United States v. Trump*, No. 9:23-cr-80101-AMC (S.D. Fla. Mar. 24, 2024), ECF No. 414, https://perma.cc/2E4W-HCCR.

[109] The Constitution contemplates the creation of a federal district that would be "the Seat of the Government of the United States." Art. I § 8, cl. 17. President George Washington signed the Residence Act in 1790, which

law states that "[a]ll offices attached to the seat of government shall be exercised in the District of Columbia, and not elsewhere, except as otherwise expressly provided by law."[110]

No court has addressed head on the definition of "offices attached to the seat of government." Relevant cases seem to agree that this provision, § 72, permits agencies to carry out many of their regular duties in the field away from the District.[111] Throughout the wars of the twentieth century, Presidents moved agencies out of the District to avoid the national security risks of concentrated administration.[112] Some in Congress cited § 72 to criticize the moves, but others acquiesced either because they deferred to presidents' national security concerns or because they interpreted § 72 to apply only to headquarters offices.[113] Separately, Congress has repeatedly "expressly provided" that various agency headquarters may move outside of Washington, D.C., an implicit acknowledgement that § 72 must place some restriction on at least some agency relocations.[114] And congressional Republicans clearly see these statutory restrictions on agency locations as a barrier to President Trumps's relocation plans: they have repeatedly introduced legislation that would repeal them.[115]

Taken together, the scant case law and congressional discussions suggest that at least offices that perform headquarters functions — that is, high-level policy development duties — must be located in Washington, D.C., absent a statutory directive otherwise.[116] This comports with broader rationales for

established the permanent capital on the Potomac River and directed that "all offices attached to the said seat of government, shall accordingly be removed thereto" and "cease to be exercised elsewhere." *See* L. Elaine Halchin, Location of Federal Government Offices, Congressional Research Service, (Jan. 28, 2003), https://www.everycrsreport.com/files/20030128_RS21390_46fda8922bfc2cc90cf862102522f82f84687f70.pdf (explaining that "it appears that, at a minimum, the main offices of executive departments are required to be located in DC proper unless a statutory waiver is granted").

[110] 4 U.S.C. § 72.

[111] *See, e.g., Hughes v. United States*, 953 F.2d 531, 542 (9th Cir. 1992) (dismissing tax crime defendants' arguments about § 72 restricting the jurisdiction of the Internal Revenue Service on the grounds that statute authorized the President to establish internal revenue districts outside of Washington, D.C., and that the Secretary of the Treasury can lawfully delegate tax collecting authorities subordinate officials located around the country; *see also United States v. Springer*, 444 F. App'x 256, 261 (10th Cir. 2011) (rejecting as frivolous defendants' argument that the IRS cannot collect taxes outside of Washington, D.C., due to § 72).

[112] Whit Cobb, Democracy in Search of Utopia: The History, Law, and Politics of Relocating the National Capital, 99 Dick. L. Rev. 527, 587, 593 (1995) (describing wartime relocations out of Washington, D.C.).

[113] Senator McCarran introduced a resolution that designated President Roosevelt's wartime agency relocations as *ultra vires* because there had been no statutory authority to permit relocation. *Id.* at 587-88.

[114] Congress directly authorized the following to be located outside of Washington, D.C.: Internal Revenue Service, Department of War, Central Intelligence Agency, Atomic Energy Commission (the authority of which was later vested in the Nuclear Regulatory Commission, located in Rockville, Maryland), and federal district courts. *See Hughes v. United States*, 953 F.2d 531, 542 (9th Cir. 1992) (also distinguishing between exercising offices, prohibited under § 72, and exercising "authority"); Title I, "War Department, Civil Functions, Quartermaster Corps," P.L. 77-247 (55 Stat. 669; August 25, 1941); Section 401 of P.L. 84-161 (69 Stat. 324; July 15, 1955) (CIA location). P.L. 84-31 (69 Stat. 47; May 6, 1955) (Atomic Energy Commission). *United States v. Focia*, No. 2:15CR17-MHT, 2015 WL 1539771, at *1 (M.D. Ala. Apr. 6, 2015) (federal district courts). The original legislation creating the National Capital Transportation Authority included explicit direction to establish offices outside of the District. The legislative history indicated that was to comply with § 72. Joint Committee on Washington Metropolitan Problems, Preliminary Financial and Organizational Report Regarding Metropolitan Transportation 26, (1959), https://heinonline.org/HOL/P?h=hein.leghis/natcta0002&i=426.

[115] H.R. 987, "Drain the Swamp Act of 2023," https://www.congress.gov/bill/118th-congress/house-bill/978/text; *see also* H.R. 38, "Expressing the sense of the House of Representatives that offices attached to the seat of Government should not be required to exercise their offices in the District of Columbia," (2017), https://www.congress.gov/bill/115th-congress/house-resolution/38/text.

[116] L. Elaine Halchin, Location of Federal Government Offices, Congressional Research Service, (Jan. 28, 2003), https://www.everycrsreport.com/files/20030128_RS21390_46fda8922bfc2cc90cf862102522f82f84687f70.pdf (explaining that "it appears that, at a minimum, the main offices of executive departments are required to be located in DC proper unless a statutory waiver is granted").

centralizing policymaking and decentralizing execution and delivery. Geographic proximity to the White House and other Washington, D.C., fixtures makes the most sense for offices that are "concerned with establishing national policies," are "involve[d in] … general supervision over agency operations throughout the country," and "require close coordination" with other agencies' headquarters.[117] On the other hand, offices that are "engaged in operations to carry out well-defined policies and programs which require only limited day-to-day headquarters supervision" are ripe for relocation to be closer to "clientele in a particular region of the country other than Washington."[118]

An agency relocation might cause a discriminatory impact. Title VII of the Civil Rights Act of 1964 generally prohibits employment practices that cause a "disparate impact on the basis of race, color, religion, sex, and national origin."[119] An employer can rebut a *prima facie* claim of disparate impact by demonstrating "that the challenged practice is job related for the position in question and consistent with business necessity."[120] If the employer carries its burden, then the employee may only prevail if they show that there is an alternative employment practice that would achieve the same business purpose without the discriminatory effect.

Title VII has previously been invoked in the context of challenges to relocation decisions. For example, after the Federal Bureau of Investigation moved its Criminal Justice Information Services (CJIS) Division from Washington, D.C., to Clarksburg, West Virginia, a Black employee who was terminated for not relocating filed an Equal Employment Opportunity Commission (EEOC) complaint claiming disparate impact under Title VII.[121] The EEOC found that she established a *prima facie* case, considering that the proportion of Black workers at CJIS dropped from 50 percent to 6 percent during the relocation and 219 of the 265 employees terminated during the relocation were Black.[122] The Bureau then carried its burden by establishing a legitimate business purpose for the move: to decrease the agency's backlog by automating the identification division and moving to a region where employee turnover would be lower than in Washington, D.C.[123] Ultimately, the complainant failed to proffer an alternative business practice that could have achieved the same business purpose without the same discriminatory effect.

EEOC complainants challenging other office relocations have failed to sustain other aspects of their disparate impact claims. For example, one manager challenging the relocation of his office failed to show a statistically significant difference in commuting time increases between Blacks and non-Blacks.[124] Another federal worker did not establish that an office relocation constituted an agency "practice or policy" that caused the identified disparate impact.[125]

Relocations away from Washington, D.C., are especially likely to have a disparate impact on non-white federal employees, due to the capital region's demographics. Indeed, all three relocations during the first Trump term caused the share of non-white employees to drop sharply.[126] Whether complaints to

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[117] Criteria for Decentralizing Federal Activities from the Nation's Capital. H. REP. No. 2481, 87th Cong., 2d Sess. (Sept. 26, 1962) (reporting on H.R. 8248, "A bill to amend the Federal Property and Administrative Services Act of 1949 to provide an orderly program of decentralization and relocation of facilities and employees in the Washington, D.C., metropolitan area"), https://www.govinfo.gov/content/pkg/SERIALSET-12441_00_00-017-2481-0000/pdf/SERIALSET-12441_00_00-017-2481-0000.pdf.
[118] *Id.*
[119] 42 U.S.C. § 2000e–2(k)(1).
[120] *Id.*
[121] *Rose M. Mells, Complainant*, EEOC DOC 05A20763, 2004 WL 2147825, at *1 (Sept. 14, 2004).
[122] *Id.*
[123] *Id.*
[124] *Vernon M. Fuller, Complainant*, EEOC DOC 0120112446, 2013 WL 3279195, at *9 (June 20, 2013).
[125] *Keith D. Bertrand, Complainant*, EEOC DOC 0120110365, 2011 WL 2433170, at *6 (June 6, 2011).
[126] *See supra* note 15.

the EEOC can succeed will likely turn on the specific business justifications that agencies offer for their move and whether complainants can come up with a less biased alternative employment practice that would achieve the same goals.[127]

It is worth noting, however, that disparate impact claims can be increasingly difficult to assert.[128] And complainants are often required to bring employment discrimination claims to administrative agencies like the EEOC and the Merit Systems Protection Board before accessing the federal courts. It may therefore be harder to use such claims to forestall an agency relocation entirely, as opposed to seeking some sort of remedy for a relocation decision after the fact.

An agency's relocation approach might violate the Federal Labor Relations Act. The Federal Labor Relations Act (FLRA) defines the rights of federal employees, labor organizations, and agencies.[129] Under the law's management rights protections, an agency's decision to move its offices is likely not something that the agency must negotiate with the union.[130] However, the Federal Labor Relations Authority has repeatedly held that agencies do have a duty to bargain over procedures for carrying out relocations and appropriate arrangements for adversely affected employees.[131] To trigger a duty to bargain, employee unions could negotiate provisions governing relocation planning in their collective bargaining agreements or request to bargain at the time of relocation,[132] and they could then only enforce those rights through the FLRA grievance procedures before getting to court. Thus, and similar to the disparate impact claims sketched out above, FLRA rights might only serve to force the agency to be more thoughtful in how it manages employee adjustment concerns associated with a relocation.

V. STANDING TO CHALLENGE AGENCY RELOCATIONS

In order to assert any of the above claims in court, prospective litigants would need standing to sue. The test for constitutional standing requires that a party suffer an injury caused by the defendant that could be redressed through a judicial outcome in their favor.[133] Employees of an agency subject to relocation might be the most obvious plaintiffs: relocating the agency for which they work might force them to make a difficult decision to either relocate themselves or risk exposing themselves to

[127] If the stated goal is to increase the pool of available talent, the complainants could suggest telework, for example.
[128] *See generally* Melissa Hart, Disparate Impact Discrimination: The Limits of Litigation, the Possibilities for Internal Compliance, 33 J.C. & U.L. 547 (2007), available at https://scholar.law.colorado.edu/faculty-articles/328.
[129] 5 U.S.C. § 7101 *et seq.*
[130] 5 U.S.C. § 7106(a)(1); *National Fed'n of Fed. Emps. Loc. 7 v. Dep't of Agriculture*, 53 FLRA 1435, 1438 (1998) (holding that "[t]his right encompasses an agency's determination as to how it will structure itself to accomplish its mission and functions, including such matters as the geographic locations in which an agency will provide services or otherwise conduct its operations").
[131] *EPA*, 25 FLRA 787, 789 (1987)(holding that the agency was obligated "to bargain with the Union over the impact and implementation of its decision to unilaterally relocate 12 employees."); *see also SSA, Office of Hearings & Appeals, Region II, N.Y.C., N.Y.*, 19 FLRA 328, 328 (1985); *Dep't of Treasury, IRS, Dallas Dist.*, 19 FLRA 979, 980 (1985); *see also NFFE Local 7*, 53 FLRA 1435 (1998).
[132] Parties are obligated to bargain during the term of a collective bargaining agreement on negotiable proposals concerning matters not "contained in" or "covered by" the existing agreement unless the parties have waived their right to bargain about the subject matter. *U.S. Dep't of the Interior, Wash., D.C. & U.S. Geological Survey, Reston, Va.*, 56 FLRA 45 (2000); *U.S. INS, U.S. Border Patrol, Del Rio, Tex.*, 51 FLRA 768 (1996).
[133] *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992).

termination. However, questions remain about whether and when employees are able to file suit in federal court without first exhausting their administrative remedies.[134]

In addition to federal employees, there are at least a few categories of other plaintiffs that may have standing to sue over an agency relocation, including:

- States and municipalities where agencies are currently located: states and municipalities that could lose a federal agency or subagency may claim injury based on direct financial harm.[135] Generalized loss of tax revenue is not usually sufficient to show injury,[136] except when the party can identify a "direct injury in the form of a loss of specific tax revenues."[137] States and municipalities may be able to clear this bar by offering expert testimony and analysis about the specific revenues that an agency relocation would affect, like income, payroll, and property taxes, as well as other sources of revenue like parking fees.[138] Doing so could demonstrate a "realistic" "chain of economic events" that would be sufficient for a court to find standing based on lost revenues.[139] Additionally, unquantified or aesthetic harm (e.g., frustrated economic development goals or increased blight) may be sufficient for some

[134] Courts have held that claims challenging federal personnel actions, and even broader personnel policies, generally must be heard by the Merit Systems Protection Board (MSPB), an Executive Branch adjudicative body, before proceeding to federal court. *See, e.g., Fed. Law Enforcement Officers' Ass'n v. Ahuja*, 62 F.4th 551, 558, 560 (D.C. Cir. 2023). The Trump administration, however, appears set to weaken the MSPB. It recently purported to remove one of the MSPB's members, possibly as a first step toward depriving it of a two-member quorum. Parker Purifoy, *Trump Fires Democratic Member of Federal Staff Appeals Board*, Bloomberg Law (Feb. 11, 2025). Without a quorum, the MSPB would be unable to hear or decide federal employees' claims. The Supreme Court has explained that when Congress creates a statutory system to adjudicate certain types of claims (like the MSPB review scheme), that might implicitly deprive the federal courts of jurisdiction over those claims. *See Axon Enters. v. FTC*, 598 U.S. 175, 185–188 (2023) (explaining, in general, that "[a] special statutory review scheme . . . may preclude district courts from exercising jurisdiction over challenges to federal agency action"); *see id.* at 187 (explaining that "federal employees challenging discharge decisions" must "seek review in the MSPB and then, if needed, in the Federal Circuit"). But a crucial premise of that so-called "channeling" doctrine is that Congress's remedial scheme is, in fact, capable of affording claimants "meaningful judicial review." *Elgin v. Dep't of Treasury*, 567 U.S. 1, 15–16 (2012). That reasoning breaks down if the MSPB, deprived of a quorum, grinds to a halt. That consideration could weigh in favor of federal jurisdiction. *Id.*; *Am. Fed'n of Gov't Emps. v. Trump*, 929 F.3d 748, 755–59 (D.C. Cir. 2019). After all, as the Supreme Court has explained, "Congress rarely allows claims about agency action to escape effective judicial review." *Axon Enters.*, 598 U.S. at 186. Nevertheless, federal courts may remain reluctant to take jurisdiction over claims arising out of federal personnel actions. One district court, for example, concluded (albeit with little analysis in a *pro se* case), that the MSPB's lack of a quorum did not give rise to district court jurisdiction under the Uniformed Services Employment and Reemployment Rights Act. *Jolley v. United States*, 549 F. Supp. 3d 1, 6 (D.D.C. 2021) ("The court sympathizes with Plaintiff's predicament and understands his frustration. But it finds no basis, statutory or otherwise, to say that a court's subject matter jurisdiction can turn on the presence or absence of political gridlock.").

[135] *General Land Off. v. Biden*, 71 F.4th 264, 272 & n.11 (5th Cir. 2023) (showing of "unrecoverable costs" imposed by federal regulation sufficient); *see, e.g., McDowell v. Schlesinger*, 404 F. Supp. 221, 259 (W.D. Mo. 1975) (a county challenging a relocation had standing because it "demonstrated: first, that it will suffer a decrease in tax revenue as a result of the relocation ...; second, that it will suffer a decrease in population, and third, that the quality of the human environment within the County will suffer").

[136] *Arias v. DynCorp*, 752 F.3d 1011, 1015 (D.C. Cir. 2014).

[137] *Wyoming v. Oklahoma*, 502 U.S. 437, 448 (1992) (emphasis added).

[138] *New York v. Yellen*, 15 F.4th 569, 577 (2d Cir. 2021) (explaining that the plaintiff states had combined enough "basic economic logic" and "declarations from tax and budgetary experts" to demonstrate to the court that the injury was "predictable" enough to satisfy the *Wyoming* test).

[139] *Id.*

parties to claim standing against an agency relocation decision.[140] States and municipalities that face potential agency loss might consider conducting analyses ahead of time to demonstrate the harm they could suffer as a result of a relocation.

- Federal sector unions: Unions might be able to establish standing to sue in their own right. An agency action's direct effect on a party's "core business activities" can constitute injury-in-fact.[141] To prove injury, unions representing federal employees could argue that a more geographically dispersed workforce would make it harder for them to be responsive to increasingly diverse employee demands, leading to a reduction in membership and related union income. A more geographically dispersed workforce would also force unions to incur additional costs like added spending on staff travel, event management, and office space. For example, the National Treasury Employees Union represents tens of thousands of employees in 36 departments and agencies.[142] Sending thousands of those employees across the country would likely impose significant new costs on the organization, potentially reduce its revenues, and impair its ability to bargain effectively on behalf of its members.[143]
- Agency beneficiaries and stakeholders: An agency relocation may make it more difficult to conduct business with or access benefits from the agency. For example, one court found that increased difficulty of attending Social Security Administration hearings was sufficient for a car-less beneficiary to establish injury-in-fact in challenging the move from an office from downtown New Orleans to a suburban location.[144]
- Local businesses and their advocates: If agency relocations lead to decreased foot traffic and revenues for local businesses, they may be able to establish direct financial harm.[145]
- Agency vendors or service providers: Businesses local to an agency's current location that provide services to the agency may suffer an injury, especially if an agency seeks to sever its contracts during the course of a move.[146]

Litigants might have various goals in pursuing challenges against particular agency relocations, and their claims might reflect them. In some cases, litigants may be seeking to stop relocations altogether, or at least slow them down, which could lead them to bring immediate claims when an agency announces its decision. In others, unions seeking to protect employees during relocations might

[140] *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 486 (1982) (explaining that standing can be based on "noneconomic injury"); *see, e.g., City Of Albuquerque v. U.S. Dep't Of Interior*, 379 F.3d 901, 913 (10th Cir. 2004) (finding that potential harm to a city's ability to be an "attractive place[] to live and work" is sufficient to establish injury).

[141] *FDA v. All. for Hippocratic Med.*, 602 U.S. 367 (2024) discussing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). We should note that a district court recently rejected public sector unions' standing to challenge the Office of Personnel Management's so-called "Fork in the road" email because the unions were not "directly impacted." *AFGE v. Ezell*, NO. 25-10276-GAO, at 2-3 (D. Mass. Feb. 12, 2025), https://storage.courtlistener.com/recap/gov.uscourts.mad.280398/gov.uscourts.mad.280398.66.0_2.pdf. In our view, that court took a too-narrow view of *FDA*'s standing test. But, regardless, an agency relocation is distinguishable from the "Fork" email because of the practical realities of how the location of employees impacts unions' core business.

[142] NTEU, What We Do, (Accessed: Feb. 3, 2025), https://www.nteu.org/who-we-are/what-we-do.

[143] *See, e.g., Int'l Ass'n of Machinists & Aerospace Workers, AFL-CIO by Negron v. Union De Carpinteros De Puerto Rico*, 615 F. Supp. 3d 87, 95 (D.P.R. 2022) (finding irreparable harm where union was "unable to protect the rights of [their] members in their relationship with their employer").

[144] *Jane D.*, 1987 WL 25625 at *3.

[145] *See, e.g., Danvers Motor Co. v. Ford Motor Co.*, 432 F.3d 286, 293 (3d Cir. 2005)("Monetary harm is a classic form of injury-in-fact").

[146] *Servicios Azucareros de Venezuela, C.A. v. John Deere Thibodeaux, Inc.*, 702 F.3d 794, 800 (5th Cir. 2012) ("Injuries to rights recognized at common-law — property, contracts, and torts — have always been sufficient for standing purposes.").

attempt to bargain over the process of relocation, assuming the topic of relocation is not already covered in their bargaining agreement.[147]

VI. CONCLUSION

President Trump is likely to pursue agency relocation efforts in his second term, as he did in his first. To the extent that such moves threaten the civil servants that make the government work or threaten agencies' ability to fulfill their statutory missions, challengers might consider litigation that can stop or slow these harmful efforts.

[147] Parties are obligated to bargain during the term of a collective bargaining agreement on negotiable proposals concerning matters not "contained in or covered by" the existing agreement unless the parties have waived their right to bargain about the subject matter. *U.S. Dep't of the Interior, Wash., D.C. & U.S. Geological Survey, Reston, Va.*, 56 FLRA 45 (2000); *U.S. INS, U.S. Border Patrol, Del Rio, Tex.*, 51 FLRA 768 (1996).