

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

ACCOUNTABILITY NOW USA

Plaintiff,

v.

KEVIN GRIESS, *et al.*,

Defendants.

No. 1:26-cv-1385 (RDM)

**APPLICATION FOR A TEMPORARY RESTRAINING ORDER**

Plaintiff hereby applies for a temporary restraining order to prevent Defendants from taking enforcement action against them because of their display of a flag with the legend “8647.”

Plaintiff respectfully requests that this application be heard tomorrow (May 28) at 3:00 p.m., at the time this Court has already set for a scheduling conference in this case. Defendants’ counsel has indicated that Defendants will convey their position on this application by COB today.

At approximately 5 a.m. today (May 27), sixteen hours after Plaintiff filed its motion for a preliminary injunction, four cars of U.S. Park Police officers pulled up to Plaintiff’s demonstration site near the General Meade statue on the 300 block of Constitution Avenue, N.W. One officer approached the volunteer on duty and, reading from a clipboard, announced: “18 U.S. Code 8741 Threats against the President. Right now, we’re looking at the 8647 as a threat against the President. Can I ask you to take it down please? The sign here?” After it was taken down, he said “Thanks so much. And please refrain from putting it back up. If it comes back up we’ll be by here again, OK, and then it will be a violation of the permit.” A video of that interaction is available at <https://photos.app.goo.gl/jtM8Tj7sCnkS4Smg9>.

The photograph below shows the flag that Plaintiff was displaying:



Plaintiff has been displaying this flag for more than two weeks. On May 12, two Secret Service officers inquired about it and after being assured that it was part of Plaintiff's message calling for the impeachment and removal of President Trump, departed without complaint. The flag is commercially available from Amazon.com, which is where Plaintiff obtained it, as are flags with many other designs displaying the same message. See [https://www.amazon.com/s?k=8647+flag&crid=2RKVB692ORO2C&srefix=8647+Flag%2Caps%2C129&ref=nb\\_sb\\_ss\\_p13n-expert-pd-ops-ranker\\_ci\\_hl-bn-left\\_1\\_9](https://www.amazon.com/s?k=8647+flag&crid=2RKVB692ORO2C&srefix=8647+Flag%2Caps%2C129&ref=nb_sb_ss_p13n-expert-pd-ops-ranker_ci_hl-bn-left_1_9).

Plaintiff's display of this popular flag is not a threat against the President within the meaning of 18 U.S.C. § 8741. In fact, there is no section 8741 of the United States Code. Presumably the Park Police officer intended to say 18 U.S.C. § 871, which does prohibit threats against the President. But Plaintiff's display of its flag is not a threat within the meaning of that statute because it is not a threat at all. As Merriam-Webster explains, "*Eighty-six* is slang meaning 'to throw out,' 'to get rid of,' or 'to refuse service to.' It comes from 1930s soda-counter slang meaning that an item was sold out." *Eighty-six*, Merriam-Webster, <https://www.merriam-webster.com/wordplay/eighty-six-meaning-origin> (last visited May 27, 2026).

Even if “8647” could be deemed a threat in some other context, it is clear that in the present context it is core political speech protected by the First Amendment, as Supreme Court case law makes clear.

In *Watts v. United States*, 394 U.S. 705 (1969), the defendant was prosecuted for saying, “if they ever make me carry a rifle the first man I want in my sights is L.B.J.” *Id.* at 706. In context—which was a public demonstration against the War in Vietnam—the Court found it clear that this “political hyperbole” was not a “true threat” *Id.* at 708.

Similarly, in *Rankin v. McPherson*, 483 U.S. 378 (1987), the Court held that a Deputy Constable’s remark, after hearing of the attempted assassination of President Reagan, “if they go for him again, I hope they get him,” “plainly dealt with a matter of public concern” and was protected political speech. *Id.* at 380, 386.

As in *Watts* and *Rankin*, Plaintiff’s display of an 8647 flag in the context of its ongoing, peaceful demonstration calling for the impeachment and removal of President Trump, cannot be understood as anything but a call for the President’s removal. It would be entirely unreasonable to view it in any other way. And the timing of Defendants’ action, coming just sixteen hours after Plaintiff filed its motion for a preliminary injunction in this case, after Plaintiff had been displaying this flag for more than two weeks, strongly suggests retaliation against Plaintiff’s decision to protect its rights in court.

Defendants’ warning that if the flag is put back up, “it will be a violation of the permit,” is an actionable violation of Plaintiff’s First Amendment rights. As the Supreme Court explained just last month, a First Amendment injury “[o]ccurs not just when a demand is enforced, but when it is made and for as long as it remains outstanding.” *First Choice Women’s Res. Centers, Inc. v. Davenport*, 608 U. S. \_\_\_, 146 S. Ct. 1114, 1125 (2026).

“Motions for TROs and preliminary injunctions are governed by the same standard.” *Smith v. Fin. Indus. Regul. Auth., Inc.*, 2025 WL 985447, at \*2 (D.D.C. Apr. 2, 2025). Briefly, a party “must show that (1) it ‘is likely to succeed on the merits’; (2) it ‘is likely to suffer irreparable harm in the absence of preliminary relief’; (3) ‘the balance of equities tips in [its] favor’; and (4) the issuance of [relief] ‘is in the public interest.’” *Alpine Sec. Corp. v. Fin. Indus. Regul. Auth.*, 121 F.4th 1314, 1324 (D.C. Cir. 2024) (quoting *Changji Esquel Textile Co. Ltd. v. Raimondo*, 40 F.4th 716, 721 (D.C. Cir. 2022)).

Plaintiffs are likely to succeed on the merits for the reasons explained above. Their ongoing injury is irreparable, because “the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Mahmoud v. Taylor*, 606 U.S. 522, 569 (2025); *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (same). And the balance of equities and the public interest weigh in Plaintiff’s favor, because “there is always a strong public interest in the exercise of free speech rights otherwise abridged by an unconstitutional’ government action.” *Media Matters for Am. v. Paxton*, 138 F.4th 563, 585 (D.C. Cir. 2025) (quoting *Pursuing Am. ’s Greatness v. Fed. Election Comm’n*, 831 F.3d 500, 511 (D.C. Cir. 2016)). Indeed, as Judge Leon noted earlier this month, “protecting the freedom of speech is ‘always’ in the public interest.” *L.C. v. Trump*, 2026 WL 1329750, at \*12 (D.D.C. May 13, 2026) (quoting *Pursuing Am. ’s Greatness*, 831 F.3d at 511). Conversely, “the government ‘cannot suffer harm from an injunction that merely ends an unlawful practice,’” *Susman Godfrey LLP v. Exec. Off. of President*, 789 F. Supp. 3d 15, 57 (D.D.C. 2025) (quoting *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 191 (D.D.C. 2015)), *appeal pending*, No. 25-5310 (D.C. Cir. argued May 14, 2026); “[t]here is generally no public interest in the perpetuation of unlawful agency action.” *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016).

**CONCLUSION**

For the foregoing reasons, this Court should grant this application and enter the attached proposed order.

May 27, 2026

Respectfully submitted,

*/s/ Arthur B. Spitzer*

Arthur B. Spitzer (D.C. Bar No. 235960)

Aditi Shah (D.C. Bar No. 90033136)

Laura K. Follansbee (D.C. Bar No. 1782046)

AMERICAN CIVIL LIBERTIES UNION FOUNDATION

OF THE DISTRICT OF COLUMBIA

529 14th Street, N.W., Suite 722

Washington, D.C. 20045

(202) 457-0800

ashah@acludc.org

lfollansbee@acludc.org

aspitzer@acludc.org

*Counsel for Plaintiff*

**UNITED STATES DISTRICT COURT  
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Defendants.

No. 1:26-cv-1385 (RDM)

**CERTIFICATE OF COUNSEL REQUIRED BY LOCAL RULE 65.1(a)**

Pursuant to Local Rule 65.1(a), undersigned counsel for Plaintiff hereby certifies as follows:

1. Copies of all pleadings and papers filed in this action to date, or to be presented to the Court at the hearing on the application for a Temporary Restraining Order, have been delivered to Defendants as follows: The complaint was served on Defendants by email on April 24, 2026; proof of service was filed on the docket. The Motion for a Preliminary Injunction was served by email upon Assistant United States Attorney William Thanhauser, who has entered an appearance in this case, by email to William.Thanhauser@usdoj.gov on May 26, 2026. The TRO application and second declaration of Anita Carey were served upon Mr. Thanhauser shortly before these papers were filed on the docket. The amended complaint will be served on Defendants via ECF.

2. Mr. Thanhauser has been notified that Plaintiff is requesting that the Court hear the TRO application on May 28 at 3:00 p.m., and that the Court has not yet set a time for such hearing.

May 27, 2026

Respectfully submitted,

/s/ Arthur B. Spitzer

Arthur B. Spitzer (D.C. Bar No. 235960)  
Aditi Shah (D.C. Bar No. 90033136)  
Laura K. Follansbee (D.C. Bar No. 1782046)  
AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
OF THE DISTRICT OF COLUMBIA  
529 14th Street, N.W., Suite 722  
Washington, D.C. 20045  
(202) 457-0800  
ashah@acludc.org  
lfollansbee@acludc.org  
aspitzer@acludc.org

*Counsel for Plaintiff*

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**SECOND DECLARATION OF ANITA CAREY**

Anita Carey deposes and says:

1. I am an Organizer with Accountability NOW. I am also the permit holder for the National Park Service permit issued to Accountability NOW for a demonstration near the George Meade Statue on Constitution Avenue in Washington, D.C.

2. At approximately 5 a.m. today (May 27), sixteen hours after Plaintiff filed its motion for a preliminary injunction in this case, four cars of U.S. Park Police officers pulled up to Plaintiff's demonstration site. One officer approached the volunteer on duty and, reading from a clipboard, announced: "18 U.S. Code 8741 Threats against the President. Right now, we're looking at the 8647 as a threat against the President. Can I ask you to take it down please? The sign here?" After it was taken down, he said "Thanks so much. And please refrain from putting it back up. If it comes back up we'll be by here again, OK, and then it will be a violation of the permit." A video of that interaction is available at <https://photos.app.goo.gl/jtM8Tj7sCnkS4Smg9>.

3. The photograph below shows the flag that Plaintiff was displaying:



4. Plaintiff has been displaying this flag for more than two weeks. On May 12, two Secret Service officers inquired about it and after being assured that it was part of Plaintiff's message calling for the impeachment and removal of President Trump, departed without complaint.

5. This flag is commercially available from Amazon.com, which is where Plaintiff obtained it. Amazon also distributes flags with many other designs displaying the same message. See

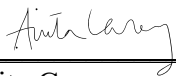
[https://www.amazon.com/s?k=8647+flag&crd=2RKVB692ORO2C&srefix=8647+Flag%2Cap s%2C129&ref=nb\\_sb\\_ss\\_p13n-expert-pd-ops-ranker\\_ci\\_hl-bn-left\\_1\\_9](https://www.amazon.com/s?k=8647+flag&crd=2RKVB692ORO2C&srefix=8647+Flag%2Cap s%2C129&ref=nb_sb_ss_p13n-expert-pd-ops-ranker_ci_hl-bn-left_1_9).

6. Plaintiff's display of this flag is not in any way a threat against the President. Plaintiff's demonstration, which has been ongoing (with a few interruptions) for more than five months, calls attention to the rise of fascism in the United States and demands the impeachment and removal of President Trump. The phrase "86" is widely understood to mean "throw out" or "get rid of," see <https://www.merriam-webster.com/wordplay/eighty-six-meaning-origin>, and the slogan "8647" is now widely used to mean "get rid of President Trump" in a political manner (through impeachment or the 25th Amendment).

7. Because of the Park Police officer's threat that re-display of the flag will be deemed a violation of Plaintiff's permit, Plaintiff is not now displaying the flag. It wishes to resume displaying it, but reasonably fears that if it does so its permit will be summarily revoked and/or its demonstration forcibly broken up. Plaintiff intends to display the flag again as soon as it receives legal protection from those consequences.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in San Jose, California, on May 27, 2026.

  
\_\_\_\_\_  
Anita Carey

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**[Proposed]  
TEMPORARY RESTRAINING ORDER**

Upon consideration of Plaintiff's application for a temporary restraining order, the accompanying declaration, and any opposition thereto,

It appearing to the Court that Plaintiff is likely to succeed on the merits of its application, that it will suffer irreparable injury if the requested relief is not issued, and that the balance of equities and the public interest favor the entry of such an order, it is therefore,

**ORDERED** that Plaintiffs' application is **GRANTED**; and it is further

**ORDERED** that Defendants, their agents and employees, and all persons acting in concert with them, are hereby restrained, for 14 days from the date of this Order, from taking any action in retaliation against Plaintiff's display of its "8647" flag depicted in its TRO application, including revocation of Plaintiff's demonstration permit or seizure of said flag; and it is further

**ORDERED** that this order shall be effective upon the posting of a bond in the amount of \$1.00 with the Clerk of the Court.

Dated: May \_\_, 2026

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Randolph D. Moss  
United States District Judge