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Notes on the Crises Legal Research Memorandum No. 3

From: Anonymous

To: Nathan Tankus

Re: ACH Amendments to Complaint in *City of New York v. Trump* (1:25-cv-01510)

Date: May 9, 2025

Link: <https://memos.crisisnotes.com/notclegal3>

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1. *Introduction*

On February 21, 2025 the City of New York (“the City”) filed a Complaint against President Donald Trump and other federal defendants titled *City of New York v. Trump* (1:25-cv-01510). The suit challenged the federal government’s removal of \$80.5 million in funds from the City’s central treasury account at Citibank. Though the federal government removed the funds by sending a reversal entry to Citibank through the Automated Clearing House (ACH) payment system, that system was barely referenced in the original Complaint. The City filed an Amended Complaint as of right on March 20, 2025, which adds numerous references to ACH and bases its request for relief in part on the federal government’s violation of the regulations and rules that govern its use of the ACH system.

The record in *City of New York v. Trump* reveals that the City began to feature ACH more prominently in its filings as additional information about the reversal entry came to light through the defendants’ declarations and filings in this case and related cases. However, it is notable that the City incorporated a robust description of ACH and the rules that govern it only after Notes on the Crises published its first Legal Research Memorandum (“NOTC Memo No. 1”) on March 13, 2025. This memorandum will track the timeline of ACH-related additions to the City’s filings in *City of New York v. Trump*, and note where those additions match the ACH overview in NOTC Memo No. 1.

2. *Events leading to the reversal*

In 2023, Congress authorized the Federal Emergency Management Agency (“FEMA”) to establish the Shelter and Services Program (“SSP”) to relieve overcrowding in U.S. Customs and Border Patrol holding facilities by “reimburs[ing] non-federal entities providing shelter and related services to noncitizen migrants following their release from” Department of Homeland Security (“DHS”) custody.¹ The City applied for and was awarded two grants amounting to roughly \$80.5 million through the SSP program.² The City opted to receive the grants on a reimbursement basis, meaning that FEMA must approve a line-item budget of expected expenditures before the City could spend the money. After the City made the pre-approved expenditures, it could submit a

¹ Am. Compl. ¶ 38.

² *Id.* ¶¶ 66-68. The City was awarded other grants under the SSP program as well. *Id.* ¶¶ 40-50. Because the details of these grants are not relevant to the ACH reversal, they are not recounted here.

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reimbursement request.³ FEMA approved the City’s grant budgets on January 8 and 10, 2025.⁴ Following the City’s request for reimbursement in late January or early February, the City received the \$80.5 million in two ACH credit entries on February 4, 2025.⁵

On January 20, 2025, Trump issued Executive Order 14159 titled “Protecting the American People Against Invasion,” which “require[d] federal agencies to immediately pause funding to non-governmental organizations providing services to ‘illegal aliens.’”⁶ On January 27, 2025 OMB issued an accompanying memorandum directing federal agencies to “identify and review all Federal financial assistance programs and supporting activities consistent with the President’s policies and requirements,” as set forth in Executive Order 14159 and other Executive Orders.⁷

On January 28, 2025, DHS Secretary Kristi Noem issued a memorandum titled “Direction on Grants to Non-governmental Organizations” (“Noem Memo”), which placed on hold pending review all DHS payments to NGOs that touched in any way on immigration.⁸ Also on January 28, 2025, a coalition of 22 states brought a lawsuit against various federal defendants seeking to temporarily restrain and preliminarily and permanently enjoin the funding pause ordered in OMB Memorandum M-25-13.⁹ A temporary restraining order was imposed on January 28, 2025.¹⁰

3. *Reversal and initiation of the lawsuit*

On February 11, 2025, \$80.5 million disappeared from the City’s central treasury account.¹¹ Several hours later, some of the defendants in *New York v. Trump* filed an emergency motion requesting permission to continue withholding FEMA and other funding.¹² FEMA Acting Administrator Cameron Hamilton attached a declaration to this emergency motion which stated that as of February 11, 2025, FEMA “had paused funding to the Shelter and Services Program based on significant concerns that the funding is going to entities engaged in or facilitating illegal activities.”¹³

³ *Id.* ¶¶ 71-72.

⁴ *Id.* ¶¶ 73-74.

⁵ *Id.* ¶¶ 77-79. The City submitted an earlier reimbursement request in mid-January. Am. Compl. ¶ 75. On January 31, 2025 FEMA informed the City that these requests would need to be reduced to reflect an error rate in matching the identification numbers of migrants to eligibility for reimbursement. The City’s late January or early February reimbursement request complied with FEMA’s error rate accounting. *Id.* ¶¶ 77-78.

⁶ *Id.* ¶¶ 81, 83.

⁷ OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB MEMORANDUM M-25-13, TEMPORARY PAUSE OF AGENCY GRANT, LOAN, AND OTHER FINANCIAL ASSISTANCE. This OMB memorandum has since been rescinded. *See* OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB MEMORANDUM M-25-14, RESCISSION OF M-25-13.

⁸ SECRETARY KRISTI NOEM, DEPT. HOMELAND SECURITY, MEMORANDUM FOR COMPONENT AND OFFICE HEADS, DIRECTION ON GRANTS TO NON-GOVERNMENTAL ORGANIZATIONS (Jan. 28. 2025).

⁹ *Id.* ¶ 87 (citing *New York v. Trump*).

¹⁰ *Id.* ¶ 89.

¹¹ *Id.* ¶ 107.

¹² *Id.* ¶ 111.

¹³ Feb. 11 Hamilton Decl. ¶ 6.

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Specifically, these concerns were based on New York Post reporting that the “Venezuelan gang Tren De Aragua ha[d] taken over [the Roosevelt Hotel] and [was] using it as a recruiting center and base of operations to plan a variety of crimes.”¹⁴ This same justification was used in a “Noncompliance Letter” sent by Hamilton to the Deputy Assistant Director of the New York City Office of Management and Budget on February 18, 2025.

On February 21, 2025, the City filed a [Motion for Preliminary Injunction and Temporary Restraining Order Under Federal Rule of Civil Procedure 65](#) (“Motion for PI & TRO”) and a [Complaint](#) in the U.S. District Court for the Southern District of New York against Trump, the U.S. Department of Treasury, the U.S. Federal Emergency Management Agency, the U.S. Department of Homeland Security, and others.¹⁵ The Complaint requested that the court (i) declare the removal of \$80.5 million from New York City’s bank account with Citibank as unlawful and (ii) issue temporary restraining orders and preliminary and permanent injunctions ordering the defendants to “reverse the SSP24 \$80 million money grab by returning the \$80 million to the City’s bank account,” and enjoin the defendants from taking any further grant money, among other relief.¹⁶

4. *Defendants’ Opposition and the City’s Reply*

The defendants filed an [Opposition](#) to the Motion for PI & TRO on February 28, 2025. Attached to the Opposition as Exhibit A was another declaration made by Hamilton. In this declaration, Hamilton states that he was advised on February 10, 2025 that the \$80.5 million payment was made under a misapprehension of the terms of the Noem Memo, and that FEMA did not have the authority to make the payment.¹⁷ Hamilton also gave more technical details about the reversal, including that FEMA’s Acting Chief Financial Officer contacted Treasury by phone, certified that the \$80.5 million payment to the City was improper, and submitted an Improper Recovery Request via the Treasury Check Information System to recover the payment pursuant to 31 C.F.R. § 210.6(f).¹⁸ Hamilton represented that Treasury processed this request and returned the payment to FEMA as a Treasury cancellation.¹⁹

¹⁴ *Id.* ¶ 7.

¹⁵ Also named in the Complaint were Scott Bessent in his official capacity as Secretary of the Treasury, Patricia Collins in her official capacity as Treasurer of the U.S., Cameron Hamilton in his official capacity as Senior Official Performing the Duties of the Administrator, U.S. Department of Homeland Security, Federal Emergency Management Agency and Kristi Noem in her official capacity as Secretary of the U.S. Department of Homeland Security. A U.S. Department or Agency of Unknown Identity and John or Jane Doe in his or her official capacity as head of U.S. Department or Agency of Unknown Identity were named as placeholders. The Court initially rejected the Complaint as deficient on February 21, 2025, and the City refiled the Complaint on February 24, 2025. The refiled Complaint was accepted.

¹⁶ Compl. at 47-48.

¹⁷ Feb. 28, 2025 Hamilton Decl. ¶ 9.

¹⁸ *Id.* ¶ 11.

¹⁹ *Id.*

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The City filed a [Reply](#) in Further Support of its Motion for TRO & PI on March 3, 2025, which argues that the reversal of the funds was clearly not an error “akin to sending a check to the wrong address, and then cancelling it,” as the reversal was “preceded by a series of public statements from Defendants” criticizing the City’s use of the funds, criticizing Congress for enacting the legislation authorizing the program under which the payment was appropriated, and calling for the money to be returned.²⁰ The Reply also includes a footnote which states that Defendants did not comply with the applicable rules or regulations for a reversal of an ACH payment. Specifically, the footnote states:

Under 31 C.F.R. § 210.6(f), which incorporates by reference the National Automated Clearing House Association (“NACHA”) 2021 Operating Rules & Guidelines (“NACHA Rules”) an “erroneous entry” subject to reversal is (1) an exact duplicate of an earlier ACH payment; (2) a payment not to the intended recipient; (3) an incorrect dollar amount or date; or (4) a payment to a former employee duplicative of a check already delivered to that employee. 31 C.F.R. 210.3(b). An ACH reversal is improper if initiated for any other reason. NACHA Rules 2.9.5. FEMA’s reasons for reversal are not within any of the allowable criteria.²¹

So, as of March 3, 2025, the City knew about 31 C.F.R. Part 210 and the Nacha Rules, and had begun to incorporate arguments based on these rules into its filings.

5. *Denial of the City’s motion for temporary restraining order and filing of the Amended Complaint*

The Honorable Jennifer H. Rearden held [oral argument](#) on the Motion for TRO & PI on March 5, 2025. Judge Rearden orally denied the City’s Motion for a Temporary Restraining Order at that hearing. On March 10, 2025, the City submitted a [letter](#) to the Court withdrawing its Motion for TRO & PI and stating that the City was considering whether to file an amended complaint as of right on or before March 20, 2025. NOTC Memo No. 1 was published several days later, on March 13, 2025. The City filed its [First Amended Complaint](#) on March 20, 2025.

The Amended Complaint changes and bolsters the theory of the case in several ways. First and most relevant for the purposes of this memorandum, the Amended Complaint adds a theory that the ACH reversal was impermissible under 31 C.F.R. Part 210 and the Nacha Rules, and that it therefore violated the Administrative Procedure Act (“APA”) as arbitrary and capricious, ultra vires, contrary to law, and in excess of statutory authority. Second, the Amended Complaint adds claims that the continued withholding of SSP funds violates the APA and the Impoundment Control Act. Third, the Amended Complaint adds context derived from other lawsuits and from statements made by Trump and other government officials after the filing of the initial Complaint.

Context from the other suits mainly originates from (i) the aforementioned *New York v. Trump* case and (ii) *Does v. Musk*, No. 8:25-cv00462-TDC (D.M.D. filed Feb. 13, 2025), a class action lawsuit brought by government employees to challenge the legality of their firings. The information

²⁰ Reply at 3-4.

²¹ *Id.* at 4 n.1.

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recounted above with respect to Hamilton’s February 11, 2025 declaration in *New York v. Trump* was a new addition to the Amended Complaint. Hamilton submitted another declaration in that case on March 14, 2025, wherein he affirms that FEMA is also withholding SSP grants from other state and local governments.²² Mary Comans, the former Chief Financial Officer of FEMA, filed a declaration in *Does v. Musk* that provides insight into the behind-the-scenes deliberations over the reversal of the SSP funding.²³ Though this memorandum focuses on the ACH-related changes, the other additions are extensive and could alone have justified the filing of an Amended Complaint.

6. *ACH-related changes to the Amended Complaint*

As compared with the initial Complaint—which mentioned ACH only once in reference to the initial deposit of the \$80.5 million in the City’s central treasury account—the Amended Complaint discusses ACH at length in nearly every section. The Introduction, Facts, Claims for Relief, and Prayer for Relief all depend on a thorough and detailed understanding of the rules that govern the ACH system to make a case for the return of the \$80.5 million to New York City.

The Amended Complaint begins with a description of the reversal. While the Introduction to the original Complaint focused on the illegality of the seizure of funds under laws governing FEMA grants, the Amended Complaint also raises the illegality of the ACH reversal entry. The third paragraph of the Amended Complaint reads:

The federal government achieved this illegal seizure of the City’s funds using an Automatic Clearing House (“ACH”) reversal, a process in which the originator of an ACH electronic funds transfer initiates a request to reverse a payment that has already been processed. Originators are permitted to use the ACH reversal process under very limited and essentially ministerial circumstances not present here, such as to reverse a duplicate payment, a payment made to an incorrect recipient, or a payment made in the incorrect amount.

²² Am. Compl. ¶ 157.

²³ *Does v. Musk*, ECF No. 36 at 49. Specifically, Comans declares that she participated in a February 5, 2025 meeting with the leadership of FEMA and DHS and three DOGE team members: Brad Smith, John Burham, and Kyle Schutt. Comans Decl. ¶ 2. The DOGE team members stated at that meeting that they wanted to ensure that FEMA was not sending SSP funding to NGOs that aided undocumented immigrants, but indicated that similar payments to state and local governments should be continued. *Id.* ¶¶ 3-4. On February 9, 2025, a DOGE team member embedded at Treasury flagged that FEMA had recently paid NYC tens of millions of dollars under SSP. *Id.* ¶ 7. Comans spent the rest of that night analyzing “the amount of funds paid and in what manner.” *Id.* Following a series of tweets by Elon Musk and Hamilton, Comans spent the following day “recouping the funds from New York City.” *Id.* ¶ 9. At 3:45 p.m. on February 10, 2025, “FEMA’s Acting Administrator [Hamilton] sent an email to DHS confirming that the process to claw back funding was occurring” and at 5:29 p.m. Comans “reported to [] leadership that [she] had successfully coordinated with Treasury and the funds were being returned.” *Id.* Comans believed that the decision to claw back funds was made by Elon Musk and/or DOGE. *Id.* ¶ 10. The following day, February 11, 2025, Comans was terminated “effective immediately” from FEMA and federal employment “for circumventing leadership to unilaterally make egregious payments for luxury NYC hotels for migrants.” Am. Compl. ¶ 106.

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This corresponds closely with language from NOTC Memo No. 1, which provides a detailed overview of the participants in an ACH entry, including originators, and which states that “[u]nder the Nacha Rules and Part 210, ACH entries that have already been settled can only be reversed where the entry was a duplicate or sent in the wrong amount or to the wrong account.”²⁴

The City also asserts in the Introduction that any review of compliance with grant requirements “must be done in a manner that is consistent with regulatory procedures, which do not allow the government to misuse the ACH system to seize money it has already approved and paid.”²⁵ This new allegation is central to the ACH-related Claims for Relief, which charge the agency defendants with abusing their discretion and acting contrary to law, ultra vires, and in excess of their statutory authority under the APA by “violat[ing] the rules governing action by the federal government to reverse ACH transactions, as incorporated in and modified by 31 C.F.R. Part 210” and effectuating the ACH reversal “for reasons other than those for which reversal is permitted under the C.F.R.”²⁶ The City backs up these Claims for Relief with an extensive set of allegations in the Facts section that explain how the federal government misused the ACH system.

The allegations in the Facts section of the Amended Complaint lay out many of the same provisions of 31 C.F.R. Part 210 and the Nacha Rules that were highlighted in NOTC Memo No. 1. The City discusses how 31 C.F.R. § 210.6(f) only permits reversals for duplicate or erroneous entries and explains that the C.F.R. incorporates by reference the 2021 Operating Rules and Guidelines published by Nacha. The City also provides the narrow definition of an erroneous entry under the 2021 version of the Nacha Rules, and explains why a policy reversal does not fit this narrow definition.²⁷ The City concludes that based on this narrow definition of an erroneous entry “[n]one of the reasons Defendants have articulated for the money grab are an allowable basis for an ACH reversal.”²⁸

Similar to the Amended Complaint, the NOTC Memo No. 1 states that 31 C.F.R. § 210.6(f) provides that an agency may reverse “any duplicate or erroneous entr[ies].”²⁹ The NOTC Memo also describes how the preamble to 31 C.F.R. Part 210 lays out the parameters of that regulation’s incorporation of the Nacha Rules, including that Part 210 “impose[s] upon agencies that originate or receive ACH entries the obligations and liabilities imposed on ODFIs and RDFIs, respectively, for purposes of the [Nacha] Rules.”³⁰ The Amended Complaint cites to 31 C.F.R. § 210.3(b) to support its claim that the 2021 Nacha Rules are incorporated into Part 210 by reference, rather than reproducing the more extensive discussion of incorporation in the preamble. Still, like NOTC Memo No. 1, the incorporation of the Nacha Rules into Part 210 undergirds the Amended Complaint’s conclusion that the reversal entry was improperly initiated in violation of the C.F.R.

²⁴ NOTC Memo No. 1 at 1, 7.

²⁵ Am. Compl. ¶ 10.

²⁶ *Id.* ¶¶ 172, 195.

²⁷ Am. Compl. ¶¶ 144-150.

²⁸ *Id.* ¶ 146.

²⁹ NOTC Memo No. 1 at 4.

³⁰ NOTC Memo No. 1 at 2 (quoting 64 Fed. Reg. 17,472, 17,473 (Apr. 9, 1999)).

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NOTC No. 1 explains that under 31 C.F.R. § 210.6(f) and the Nacha Rules, “[r]eversing entries must be transmitted to the RDFI within 5 banking days following the settlement date for the erroneous entry.”³¹ After noting that the \$80.5 million payment to the City “was reversed almost exactly five weekdays after it was initially credited,” the NOTC Memo concludes that FEMA likely attempted to reverse the funds within the allowed time period under Part 210 and the Nacha Rules.³² The Amended Complaint similarly notes that “the reversal was accomplished within the five-day window for reversals of ACH transfers under the rules and procedures governing [ACH] transfers[.]”³³ The Amended Complaint then applies this observation to a piece of Trump’s March 4, 2025 address to Congress where he states that that he “[took] back a lot of that money, we got it just in time.”³⁴ The City labels Trump’s statement “a seeming reference to the money grab, which was completed near close of business on the last day for which an ACH reversal could be effectuated under the ACH rules.”³⁵ Prior to the publication of the NOTC Memo, the City had not referenced the five-day window in any of its filings.

7. *Conclusion*

Seven days after the publication of NOTC Memo No. 1, the City filed an Amended Complaint containing a nuanced legal theory based on the rules and regulations that govern the federal government’s use of the ACH system. It is possible that Hamilton’s reference to the ACH reversal in his February 28, 2025 Declaration spurred the City to independently research 31 C.F.R. Part 210 and the Nacha Rules. However, prior to the release of the NOTC Memo, the City had only cited 31 C.F.R. Part 210 once in a footnote.

The federal government’s use of the ACH system is an obscure, complicated topic. The City’s legal team probably had little to no prior knowledge of this body of law. Moreover, NOTC Memo No. 1 appears to be the first publicly available analysis of the rules that structure the federal government’s use of ACH. Even if the City did not rely entirely on NOTC Memo No. 1 for its ACH research, without the groundwork laid by the memo, the City might not have been willing or able to devote the resources needed to craft the sophisticated ACH-related arguments that now reinforce the Claims for Relief in the Amended Complaint.

³¹ NOTC Memo No. 1 at 5.

³² *Id.* at 7.

³³ Am. Compl. ¶ 107.

³⁴ *Id.* ¶ 153.

³⁵ *Id.*