

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LEANDRA ENGLISH,
Plaintiff,

v.

DONALD J. TRUMP and
JOHN M. MULVANEY,
Defendants.

Case No. 1:17-cv-02534

PLAINTIFF’S MOTION FOR A PRELIMINARY INJUNCTION

Plaintiff Leandra English hereby requests, pursuant to Fed. R. Civ. P. 65(a) and Local Rule 65, that this Court issue a preliminary injunction preventing the defendants from appointing, causing the appointment of, or recognizing the appointment of an Acting Director of the Consumer Financial Protection Bureau via any mechanism other than that provided for by 12 U.S.C. § 5491(b)(5)(b). The plaintiff requests expedited treatment due to the exigency of the circumstances and the irreparable nature of the injury the injunction would prevent.

The plaintiff is the Acting Director of the CFPB and, as set forth in greater detail in an accompanying memorandum in support of this motion, she is required and empowered by the Dodd-Frank Act to “serve as [the CFPB’s] acting Director in the absence or unavailability of the Director.” 12 U.S.C. § 5491(b)(5)(b). The former Director of the CFPB, Richard Cordray, announced his resignation effective midnight on November 24, 2017, triggering this provision. But the President has sought to bypass this statutory requirement by using the Federal Vacancies Reform Act, 5 U.S.C. § 3345 *et seq.*, to appoint an Acting Director from outside the CFPB.

The President’s action violates the clear provisions of the Dodd-Frank Act. The Dodd-Frank Act was enacted after the FVRA, and its more-specific, later-in-time provision regarding

the succession plan for the CFPB governs. The legislative history of the Act also indicates that Congress initially considered whether to use the FVRA's mechanisms to provide for an Acting Director of the CFPB, but specifically rejected this path in favor of having the Deputy Director accede to the position. And finally, the President's chosen appointee would threaten the CFPB's statutorily guaranteed independence. Defendant Mulvaney currently serves as Director of the Office of Management and Budget, an agency within the President's Executive Office. For Mr. Mulvaney to continue in his role as Director of OMB while purporting to serve as Acting Director of the CFPB severely undermines Congress's goal of insulating the CFPB from presidential influence or control.

In light of this illegal action, this Court should issue a preliminary injunction to preserve the rights of the parties pending a resolution of this matter on the merits. As explained at greater length in the accompanying memorandum, the balance of hardships favors granting an injunction. The plaintiff therefore requests that this Court issue an injunction preventing the President from appointing, causing the appointment of, or recognizing the appointment of an Acting Director of the Consumer Financial Protection Bureau via any mechanism other than that provided for by 12 U.S.C. § 5491(b)(5)(b), and restraining Mr. Mulvaney from asserting or exercising any authority as Acting Director of the CFPB.

Respectfully submitted,

/s/ Deepak Gupta

DEEPAK GUPTA (D.C. Bar No. 495451)

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December 6, 2017

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2017, I electronically filed this motion for a preliminary injunction through this Court's CM/ECF system. I understand that notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ Deepak Gupta

Deepak Gupta

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[PROPOSED] PRELIMINARY INJUNCTION

Upon consideration of the plaintiff's motion for a preliminary injunction and accompanying memorandum in support, it is hereby

ORDERED that the defendant Donald J. Trump shall refrain from appointing any individual to the position of Acting Director of the Consumer Financial Protection Bureau, recognizing any individual other than the plaintiff as the holder of that office, or causing any person to recognize someone other than the plaintiff as the holder of that office, until further orders are issued by this Court. The President shall withdraw any appointment of an Acting Director that has been made since the resignation of Richard Cordray from the position of Director. This order shall not be construed in any way to prevent the President from appointing a Director of the Bureau via the usual process of nomination before the United States Senate. It is further

ORDERED that defendant John Mulvaney shall refrain from accepting any appointment to the position of acting Director of the Consumer Financial Protection Bureau, or exercising or asserting in any way the authority of that office, until further orders are issued by this Court.

DATE: _____

TIME: _____ [Signature]_____