No. 24A

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., APPLICANTS

v.

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, ET AL.

APPLICATION TO STAY THE ORDER ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY

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PARTIES TO THE PROCEEDING

Applicants (defendants-appellants below) are Donald J. Trump, President of the United States; the Office of Management and Budget; Russell Vought, Director of the Office of Management and Budget; the Office of Personnel Management; Charles Ezell, Acting Director of the Office of Personnel Management; the Department of Government Efficiency; Elon Musk; Amy Gleason, Acting Administrator of the Department of Government Efficiency; the Department of Agriculture; Brooke Rollins, Secretary of Agriculture; the Department of Commerce; Howard Lutnick, Secretary of Commerce; the Department of Defense; Pete Hegseth, Secretary of Defense; the Department of Energy; Chris Wright, Secretary of Energy; the Department of Health and Human Services; Robert F. Kennedy, Jr., Secretary of Health and Human Services; the Department of Homeland Security; Kristi Noem, Secretary of Homeland Security; the Department of Housing and Urban Development; Scott Turner, Secretary of Housing and Urban Development; the Department of Justice; Pam Bondi, Attorney General; the Department of the Interior; Doug Burgum, Secretary of the Interior; the Department of Labor; Lori Chavez-Deremer, Secretary of Labor; the Department of State; Marco Rubio, Secretary of State; the Department of the Treasury; Scott Bessent, Secretary of the Treasury; the Department of Transportation; Sean Duffy, Secretary of Transportation; the Department of Veterans Affairs; Doug Collins, Secretary of Veterans Affairs; AmeriCorps (a.k.a. the Corporation for National and Community Service); Jennifer Bastress Tahmasebi, Interim Agency Head of AmeriCorps; the Environmental Protection Agency; Lee Zeldin, Administrator of the Environmental Protection Agency; the General Services Administration; Stephen Ehikian, Acting Administrator of the General Services Administration; the National Labor Relations Board; Marvin Kaplan, Chairman of the National Labor

Relations Board; William Cowen, General Counsel of the National Labor Relations Board; the National Science Foundation; Brian Stone, Acting Director of the National Science Foundation; the Small Business Administration; Kelly Loeffler, Administrator of the Small Business Administration; the Social Security Administration; Leland Dudek, Acting Commissioner of the Social Security Administration.

Respondents (plaintiffs-appellees below) are the American Federation of Government Employees, AFL-CIO; American Federation of State County and Municipal Employees, AFL-CIO; Service Employees International Union, AFL-CIO; AFGE Local 1122; AFGE Local 1236; AFGE Local 2110; AFGE Local 3172; SEIU Local 1000; Alliance for Retired Americans; American Geophysical Union; American Public Health Association; Center for Taxpayer Rights; Coalition to Protect America's National Parks; Common Defense Civic Engagement; Main Street Alliance; Northeast Organic Farming Association, Inc.; VoteVets Action Fund Inc.; Western Watersheds Project; County of Santa Clara, California; City of Chicago, Illinois; Martin Luther King, Jr. County, Washington; Harris County, Texas; City of Baltimore, Maryland; and City and County of San Francisco, California.

RELATED PROCEEDINGS

United States District Court (N.D. Cal.):

American Federation of Government Employees, AFL-CIO v. *Donald J. Trump*, No. 25-cv-3698 (May 9, 2025) (granting temporary restraining order)

United States Court of Appeals (9th Cir.):

American Federation of Government Employees, AFL-CIO v. *Donald J. Trump*, Nos. 25-3030, 25-3034 (May 13, 2025) (setting briefing schedule on stay motion)

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Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Solicitor General—on behalf of applicants Donald J. Trump, President of the United States, et al.—respectfully files this application to stay the May 9, 2025 order issued by the United States District Court for the Northern District of California (App., *infra*, 11a-52a). In addition, the Solicitor General respectfully requests an administrative stay of the district court's order.

In this case, the district court entered a nationwide injunction that governs the personnel practices of 21 federal agencies, including 11 Cabinet-level agencies, and grants universal relief that far exceeds anything necessary to remediate the parties' putative injuries. See, *e.g.*, *Gill* v. *Whitford*, 585 U.S. 48, 50 (2018) ("a 'remedy must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established'") (quoting *Lewis* v. *Casey*, 518 U.S. 343, 357 (1996)).

That far-reaching order bars almost the entire Executive Branch from formulating and implementing plans to reduce the size of the federal workforce, and re-

quires disclosure of sensitive and deliberative agency documents that are presumptively protected by executive privilege—and it does all of that based on the extraordinary view that the President lacks authority to direct executive agencies how to exercise their statutory powers to conduct large-scale personnel actions within the Executive Branch. This Court recently intervened to stop a single district judge from undoing the effects of lawful terminations of thousands of government employees. See *Office of Personnel Mgmt.* v. *American Fed'n of Gov't Emps.*, No. 24A904 (Apr. 8, 2025). It should take the same course here, where the order sweeps far more broadly—to cover most of the federal government—and restrains the Executive from even *planning* reductions in force pursuant to presidential direction. As this Court has recognized, federal courts "do not possess a roving commission" to "exercise general legal oversight of the * * * Executive Branch[]," *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 423-424 (2021)—including its personnel practices. Furthermore, "[i]t clearly is within the President's constitutional and statutory authority to prescribe the manner in which" his subordinates conduct their business, and "this mandate of office must include the authority to prescribe reorganizations and reductions in force." *Nixon* v. *Fitzgerald*, 457 U.S. 731, 757 (1982).

In February, pursuant to his lawful authority to direct executive agencies regarding personnel decisions, President Trump issued an Executive Order directing federal agencies to "promptly undertake preparations to initiate large-scale reductions in force (RIFs), consistent with applicable law," including laws that "mandate[]" the performance of certain "functions" or "require[]" certain agency "subcomponents." App., *infra*, 2a. The President's order rested on firm legal footing and followed in a long historical tradition. For at least about 150 years, Congress has recognized the Executive Branch's authority to carry out reductions in its workforce as the need

arises, subject to statutory preferences for veteran status and other factors. See 5 U.S.C. 3502; *Hilton* v. *Sullivan*, 334 U.S. 323, 336-339 (1948). The Executive has repeatedly exercised RIF authority. In 1993, for example, President Clinton ordered all federal agencies with more than 100 employees to "eliminate not less than 4 percent of [their] civilian personnel positions" within three years. Exec. Order No. 12,839, § 1, 58 Fed. Reg. 8515 (Feb. 12, 1993).

Nearly three months after President Trump issued his order, however, several labor unions, advocacy groups, and local governments (respondents) sued the President, almost every executive department, and other federal defendants (applicants) in the United States District Court for the Northern District of California. They sought to enjoin implementation of the Executive Order and a follow-on memorandum (Memo) jointly issued to executive agencies by the Office of Personnel Management (OPM) and the Office of Management and Budget (OMB). The district court quickly granted a universal injunction, captioned as a putative temporary restraining order (TRO), enjoining applicants from planning any future RIFs or proceeding with any existing RIFs pursuant to the Executive Order or Memo, even ones that have no effect on respondents or their members. App., *infra*, 50a. To boot, the court ordered applicants to disclose several categories of RIF-related documents exchanged between agencies and OPM and OMB, without even considering those materials' deliberative and privileged status. *Ibid.* The district court summarily refused to stay its injunction against the Executive Order and Memo. *Id.* at 52a. The next business day, applicants moved for a stay pending appeal in the Ninth Circuit and requested a prompt ruling, but that court has set a schedule under which briefing will not be complete until May 22—the day before the TRO is set to expire unless extended, *id.* at 50a.

This Court should stay the district court's order, which suffers from multiple fatal flaws. Although respondents' evident objective is to prevent the agencies from conducting RIFs, they cannot directly challenge those RIFs in this action, and so they have manufactured an objection to the Executive Order and Memo that provide direction and guidance about the RIFs. Respondents cannot directly challenge the RIFs for at least four reasons: RIFs are indisputably permitted by federal law, see 5 U.S.C. 3502; the Executive Order directs preparation of RIFs only as "consistent with applicable law," App., *infra*, 2a, an admonition that the Memo repeatedly reaffirmed, see *id.* at 5a; many of the RIFs have not yet commenced; and any challenges to the RIFs themselves are channeled into specialized administrative and judicial review schemes concerning federal employment under the Civil Service Reform Act, 5 U.S.C. 2301 *et seq.*, and the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101 *et seq.*, see, *e.g.*, *Elgin* v. *Department of the Treasury*, 567 U.S. 1 (2012). Respondents cannot end-run all those obstacles merely by challenging the Executive Order and Memo instead, for both procedural and substantive reasons.

Procedurally, an objection to the direction and guidance about agency RIFs that the President and OPM and OMB have provided is subject to Congress's preclusion of district-court jurisdiction over federal employment and labor-management disputes. See *American Fed'n of Gov't Emps., AFL-CIO* v. *Trump*, 929 F.3d 748, 761 (D.C. Cir. 2019) (applying the same preclusion principle to claims challenging executive orders involving labor-management relations and employee grievances). And regardless, respondents' inability to directly challenge agency RIFs does not entitle them to instead attack the Executive Branch's "whole 'program'" of RIFs by seeking to enjoin implementation of the Executive Order and Memo government-wide. *Lujan* v. *National Wildlife Fed'n*, 497 U.S. 871, 894 (1990); see *id.* at 893 (holding that al-

leged "flaws in the entire 'program' * * * cannot be laid before the courts for wholesale correction").

Substantively, moreover, the general directions and guidance contained in the Executive Order and Memo are unquestionably lawful. Because "[t]he entire 'executive power' belongs to the President alone," he must have "'the power of * * * overseeing[] and controlling those who execute the laws'" on his behalf. *Seila Law LLC* v. *Consumer Fin. Prot. Bureau*, 591 U.S. 197, 213 (2020) (citation omitted). That includes the power to effectuate policy objectives by directing agencies to exercise their statutory authority to conduct RIFs, subject to the guidance of OPM and OMB, but only in a manner that is fully consistent with law. See *Fitzgerald*, 457 U.S. at 757. The district court turned the constitutional structure upside down by treating as smoking-gun "evidence" of "unlawful action" the prospect that "agencies are acting at the direction of the President and his team." App., *infra*, 41a. Equally meritless is the district court's objection that "the President may not, *without Congress*, fundamentally reorganize the federal agencies." *Id.* at 39a. The Executive Order makes clear that, in proposing RIFs, agencies should ensure that they do *not* eliminate any "subcomponents" that are "statutorily required" or prevent the performance of "functions" that are "mandated by statute or other law," *id.* at 2a, and the Memo reaffirms that "[a]gencies should review their statutory authority and ensure that their plans and actions are consistent with such authority," *id.* at 5a. There is no coherent reason why the President needs statutory authorization to direct agencies to conduct RIFs to further a reorganization within the statutory bounds permitted by Congress, let alone when it is undisputed that the agencies could have done the exact same thing unilaterally. And here, respondents fail to allege that a single agency's organic statute would be violated by any proposed RIFs.

Exacerbating matters, the district court joined the parade of courts entering improper universal injunctions, extending relief far beyond what was necessary to redress respondents' alleged injuries. It enjoined almost two dozen executive entities, plus anyone acting under the President's authority, from implementing any RIFs pursuant to the Executive Order or Memo, regardless of whether the termination of the employees at issue would have any effect whatsoever on respondents. App., *infra*, 49a-50a. That abuse of equitable power alone calls for a stay. See *Grupo Mexicano de Desarrollo S.A.* v. *Alliance Bond Fund, Inc.*, 527 U.S. 308, 327 (1999).

Turning to the equities, the district court's flawed order inflicts ongoing and severe harm on the government requiring this Court's intervention. The order interferes with the Executive Branch's internal operations and unquestioned legal authority to plan and carry out RIFs. More concretely, the order has brought to a halt numerous in-progress RIFs at more than a dozen federal agencies, compelling the government to retain—at taxpayer expense—thousands of employees whose continuance in federal service is determined by agencies not to be in the government and public interest. By broadly enjoining implementation of the Executive Order's provision merely directing agencies to "undertake preparations" for RIFs, App., *infra*, 2a, 50a, the Order has caused mass confusion throughout the Executive Branch over agencies' latitude to engage in a wide variety of internal planning and organizational activities. Meanwhile, the court's disclosure requirement threatens to reveal highly sensitive information that would undermine government operations if disclosed to the public—such as agency plans and strategies for union negotiations and engagement with Congress, as well as proposals for personnel actions that may never be implemented. Although the court has since temporarily paused the disclosure requirement while it conducts an *in camera* review of illustrative documents, it could reinstate that order

as early as next week. D. Ct. Doc. 109 (May 15, 2025).

Neither Congress nor the Executive Branch has ever intended to make federal bureaucrats "a class with lifetime employment, whether there was work for them to do or not." *Ramspeck* v. *Federal Trial Examiners Conf.*, 345 U.S. 128, 143 (1953). This Court should stay the district court's order.

STATEMENT

A. Federal Government Reductions In Force

Federal law expressly recognizes that the government may conduct RIFs, an "administrative procedure by which agencies eliminate jobs and reassign or separate employees who occupied the abolished positions." *James* v. *Von Zemenszky*, 284 F.3d 1310, 1314 (Fed. Cir. 2002). Section 3502 of Title 5 directs OPM to "prescribe regulations for the release of competing employees in a reduction in force." 5 U.S.C. 3502(a). That statute further provides, among other things, for notice of a RIF (generally 60 days) to agency employees and their collective-bargaining representatives, including notice of "any appeal or other rights which may be available." 5 U.S.C. 3502(d)(1)(A) and (2)(E); see 5 U.S.C. 3502(d)(1)(B) and (3) (additionally requiring 60 days' notice to certain state and local entities "if the reduction in force would involve the separation of a significant number of employees"). OPM's detailed and longstanding RIF regulations, 5 C.F.R. Pt. 351, address everything from the order of employee retention to competition for remaining positions. The regulations specify that "OPM may examine an agency's preparations for reduction in force at any stage" and require "appropriate corrective action." 5 C.F.R. 351.205. "An employee who has been furloughed for more than 30 days, separated, or demoted by a reduction in force action may appeal to the Merit Systems Protection Board [MSPB]." 5 C.F.R. 351.901.

That statutory and regulatory scheme reflects Congress's longstanding recog-

nition of federal agencies' authority to engage in RIFs. The first such statute, enacted in 1876, provided a veterans' preference, requiring any department head "making any reduction in force" to "retain those persons who may be equally qualified who have been honorably discharged from the military or naval service of the United States, and the widows and orphans of deceased soldiers and sailors." Act of Aug. 15, 1876, Ch. 287, § 3, 19 Stat. 169; see *Hilton* v. *Sullivan*, 334 U.S. 323, 336-339 (1948) (summarizing history of veterans' preferences in RIFs). Courts have repeatedly rejected challenges to agencies' decisions to conduct RIFs, recognizing that such reductions are a matter of executive discretion. See, *e.g.*, *Keim* v. *United States*, 177 U.S. 290, 295 (1900) (statute authorizing RIFs "do[es] not contemplate the retention in office of a clerk who is inefficient, nor attempt to transfer the power of determining the question of efficiency from the heads of departments to the courts"); *Markland* v. *OPM*, 140 F.3d 1031, 1033 (Fed. Cir. 1998) (an agency is accorded "wide discretion in conducting a reduction in force") (citation omitted).

As World War II concluded, it was widely understood that the federal government would need to shrink dramatically as the Nation shifted to a peacetime footing. Congress enacted the forerunner of 5 U.S.C. 3502 in the Veterans' Preference Act of 1944, which directed that "[i]n any reduction in personnel in any civilian service of any Federal agency, competing employees shall be released in accordance with Civil Service Commission regulations which shall give due effect to tenure of employment, military preference, length of service, and efficiency ratings." Pub. L. No. 78-359, § 12, 58 Stat. 390; see 9 Fed. Reg. 9575 (Aug. 8, 1944) (promulgating Civil Service Commission RIF regulations). In the decades since, the federal government has exercised its authority to conduct RIFs on numerous occasions. In 1993, for example, President Clinton issued an executive order (entitled *Reduction of 100,000 Federal*

Positions) that directed "[e]ach executive department or agency with over 100 employees [to] eliminate not less than 4 percent of its civilian personnel positions * * * over the next 3 fiscal years." Exec. Order No. 12,839, § 1, 58 Fed. Reg. 8515 (Feb. 12, 1993). The order required "[a]t least 10 percent of the reductions [to] come from the Senior Executive Service, GS-15 and GS-14 levels or equivalent," and imposed annual benchmarks for the agency RIFs. *Id.* §§ 1, 3.

B. Executive Order 14,210 And The OPM-OMB Memorandum

1. On February 11, 2025, President Trump issued an Executive Order seeking, like President Clinton's order, to reduce the size of the federal government through RIFs. Exec. Order No. 14,210, 90 Fed. Reg. 9669 (Feb. 14, 2025) (App., *infra*, 1a-3a). The provision of the Executive Order that is most relevant here directs agency heads to "promptly undertake preparations to initiate large-scale reductions in force (RIFs), consistent with applicable law," and in doing so to prioritize RIFs for "offices that perform functions not mandated by statute or other law." App., *infra*, 2a. The Executive Order provides for various exclusions, including for military personnel and "functions related to public safety, immigration enforcement, or law enforcement," and it authorizes further exemptions by agency heads and OPM. *Ibid.* The Executive Order separately addresses agency reorganizations, by directing each agency head to submit a report to OMB that "identifies any statutes that establish the agency, or subcomponents of the agency, as statutorily required entities" and that "discuss[es] whether the agency or any of its subcomponents should be eliminated or consolidated." *Ibid.*

2. About two weeks later, OPM and OMB jointly issued a memorandum to all executive-branch agencies regarding the implementation of the President's Executive Order through Agency RIF and Reorganization Plans (Plans). *Guidance on*

Agency RIF and Reorganization Plans Requested by Implementing the President's "Department of Government Efficiency" Workforce Optimization Initiative (Feb. 26, 2025) (App., *infra*, 4a-10a). The Memo provided guidance on the principles that should inform the Plans, including objectives and priorities like providing "[b]etter service for the American people" and "[i]ncreased productivity." App., *infra*, 4a-5a. Furthermore, the Memo repeatedly emphasized the need to comply with statutory mandates in conducting RIFs and reorganizations. See, *e.g.*, *id.* at 5a (urging agencies to "focus on the maximum elimination of functions that are not statutorily mandated while driving the highest-quality, most efficient delivery of their statutorily-required functions" and to "review their statutory authority and ensure that their plans and actions are consistent with such authority").

The Memo directed each agency to submit a "Phase 1" Plan, focusing on "initial agency cuts and reductions," to OMB and OPM for review and approval by March 13, 2025. App., *infra*, 6a. It explained that "[e]ach Phase 1 [Plan] should identify," among other things, "[w]hether the agency or any of its subcomponents should be eliminated or consolidated" and the "specific tools the agency intends to use to achieve efficiencies," such as regular employee attrition or "[a]ttrition achieved by RIFs"—and, as to the latter, "[t]he agency's target for reductions in [full-time] positions via RIFs." *Id.* at 7a. The Memo further provided that the agency should next submit a "Phase 2" Plan to OMB and OPM by April 14, 2025, which would "outline a positive vision for more productive, efficient agency operations going forward" and "be planned for implementation by September 30, 2025." *Ibid.* The Phase 2 Plan would address such matters as the agency's "proposed future-state organizational chart" and plans for "subsequent large-scale RIFs." *Id.* at 7a-8a.

C. The Present Controversy

1. Respondents are labor unions, advocacy organizations, and local governments. D. Ct. Doc. 1, at 1 (Apr. 28, 2025). Eleven weeks after the President issued the Executive Order, they brought suit in federal district court against the President, OPM, OMB, the U.S. DOGE Service, and 21 federal agencies—including every Cabinet-level agency except the Department of Education. *Id.* at 20-25. Respondents alleged that the Executive Order exceeded the President's authority and violated the separation of powers; that the OPM-OMB Memo was likewise *ultra vires* and violated the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, 701 *et seq.*; and that the agencies' RIF Plans also violated the APA. See D. Ct. Doc. 1, at 94-104. Respondents sought declaratory and injunctive relief against, and vacatur of, the Executive Order, Memo, and Plans. *Id.* at 104-105. They also filed a motion for a temporary restraining order, supported by a 50-page brief and more than 1300 pages of affidavits and exhibits. D. Ct. Doc. 37 (May 1, 2025); D. Ct. Doc. 70 (May 8, 2025).

The district court held a hearing on Friday, May 9, 2025, and issued a 42-page opinion granting the putative TRO the same day. App., *infra*, 11a-52a. The court concluded that at least some respondents had standing, *id.* at 21a-28a, and it rejected the government's contention that district-court jurisdiction was precluded by federal statutes channeling these claims related to federal employment to specialized administrative tribunals, see *id.* at 28a-35a. The court then found that respondents were likely to succeed on at least some of their claims. It viewed the Executive Order as *ultra vires* because "the President may broadly restructure federal agencies only when authorized by Congress," and Congress here has "passed no agency reorganization law for the President to execute." *Id.* at 38a, 41a. The court also deemed it objectionable that "the agencies are acting at the direction of the President and his

team," rather than making their own independent judgments "about how [they] should conduct RIFs." *Id.* at 41a. The court further found the Memo by OPM and OMB unlawful on the ground that those entities lack legal authority to order agencies to terminate their employees or restructure their components. *Id.* at 43a. In addition, the court concluded that OPM and OMB "engaged in rule-making without notice and comment required by the APA, in issuing the [Memo] and in approving the [Plans]," and that respondents faced irreparable harm absent emergency relief. *Id.* at 47a-48a.

Under the district court's order, 21 agency defendants and anyone else "acting under their authority or the authority of the President" are "enjoined and/or stayed from taking any actions to implement or enforce" the Executive Order or Memo, including any further approval of agency RIF Plans and "any further implementation" of the Executive Order, Memo, or Plans, such as through the issuance or execution of RIF notices and termination of agency employees. App., *infra*, 50a. Although the court acknowledged that its order "provide[d] relief beyond the named parties," it deemed limiting the relief "impracticable and unworkable, particularly where the agencies' RIF plans largely remain secret." *Id.* at 49a. The court provided that the TRO will last through May 23 (unless extended), and it scheduled a preliminary-injunction hearing for May 22. *Id.* at 50a, 52a. The district court refused to consider applicants' request for a stay, describing such consideration as "pointless." *Id.* at 52a.

In addition, to gather "more information to evaluate" the agency Plans, the district court ordered OMB and OPM to disclose, by May 13 at 4 p.m.—just two business days later—"the versions of all defendant agency [Plans] submitted to" and "approved by" OMB and OPM, "any agency applications for waivers of statutorily-mandated RIF notice periods," and "any responses by OMB or OPM to such waiver re-

quests." App., *infra*, 49a-50a. The court ordered that disclosure despite the fact that respondents had not even requested some of the covered materials and had requested others only during the TRO briefing and hearing, rather than in any formal discovery request. Gov't C.A. Mandamus Pet. 11. Nor did the court acknowledge applicants' objection that the Plans were "deliberative agency planning documents." D. Ct. Doc. 60, at 21 (May 7, 2025). The RIF Plans "include highly sensitive information that would seriously undermine agency operations if they were released." D. Ct. Doc. 88-1, at 1 (May 11, 2025) (Declaration of Stephen M. Billy, Senior Advisor for OMB).

2. Applicants noticed an appeal of the TRO to the Ninth Circuit on the same day, Friday, May 9, and they filed in the Ninth Circuit a petition for a writ of mandamus as to the discovery order (and the TRO, in the alternative) on the next business day, Monday, May 12. In between, on Sunday, May 11, applicants also moved the district court, with respect to the discovery order, for reconsideration or a protective order. D. Ct. Doc. 88. The court agreed to stay the discovery deadline pending a decision on that motion. D. Ct. Doc. 92 (May 12, 2025). On Thursday, May 15, the court ordered the government to submit agency RIF Plans for four agencies (two each chosen by the government and respondents, respectively) to the court for *in camera* review and to respondents' counsel by Monday, May 19, pending argument on the applicability of executive privilege at the May 22 hearing. D. Ct. Doc. 109, at 5. Respondents' counsel were barred from "shar[ing] the plans or their contents with their clients or any third parties unless or until the Court orders otherwise." *Ibid.*

On Monday, May 12, applicants also filed in the Ninth Circuit an emergency motion for a stay of the TRO pending appeal. Applicants requested that the Ninth Circuit rule by Thursday, May 15, in order to facilitate this Court's review. But on May 13, the court of appeals set a briefing schedule with the response to the stay

motion due on May 19 and a reply due on May 22. As a result, the Ninth Circuit will not rule on the stay until, at the earliest, the day of the preliminary-injunction hearing and the day before the TRO is set to expire unless extended. In these circumstances, given the irreparable harm that applicants will suffer in the interim, see pp. 28-30, 34-35, *infra*, they seek a stay from this Court. See Sup. Ct. R. 23.3.

ARGUMENT

I. THIS COURT SHOULD STAY THE DISTRICT COURT'S ORDER ENJOINING IMPLEMENTATION OF THE EXECUTIVE ORDER AND MEMO

Under Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Court may stay a district court's interlocutory order granting emergency relief. See, *e.g.*, *Trump* v. *International Refugee Assistance Project*, 582 U.S. 571 (2017) (per curiam); *Brewer* v. *Landrigan*, 562 U.S. 996 (2010); *Brunner* v. *Ohio Republican Party*, 555 U.S. 5, 6 (2008) (per curiam). An applicant must show (1) a likelihood of success on the merits, (2) a reasonable probability of obtaining certiorari, and (3) a likelihood of irreparable harm. See *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam). In "close cases," "the Court will balance the equities and weigh the relative harms." *Ibid.* Those factors strongly support relief from the district court's order enjoining implementation of the President's Executive Order and the OPM-OMB Memo.[1]

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[1] As in *Department of Education* v. *California*, 145 S. Ct. 966 (2025) (per curiam), "several factors counsel in favor of construing the District Court's order as an appealable preliminary injunction." *Id.* at 968. Among others, the order "carries * * * the hallmark[] of a preliminary injunction" in that it was supported by a lengthy opinion issued after full briefing (as well as amicus briefs and 1300 pages of affidavits and exhibits submitted by respondents) and an adversary hearing; the court's "basis for issuing the order is strongly challenged" on the jurisdictional and merits grounds set forth below; and the order inflicts irreparable harm by barring the Executive Branch from managing its internal affairs and workforce. *Ibid.* (quoting *Sampson* v. *Murray*, 415 U.S. 61, 87 (1974)) (brackets omitted); see *Abbott* v. *Perez*, 585 U.S. 579, 594-595 (2018). The order's "TRO" label thus presents no impediment to this Court's review.

A. The Government Is Likely To Succeed On The Merits

The government is likely to succeed in reversing the district court's order on both procedural and substantive grounds. Respondents' claims were not justiciable in district court, and those claims are meritless in any event.

1. Respondents' claims were not justiciable in district court

As a threshold matter, respondents brought their claims in the wrong forum challenging the wrong actions. The district court lacked jurisdiction over this dispute related to federal personnel actions, and respondents lacked a cause of action to challenge White House direction and guidance about plans for future agency RIFs.

a. "District courts have jurisdiction over civil actions arising under the Constitution and laws of the United States, 28 U.S.C § 1331, but Congress may preclude district court jurisdiction by establishing an alternative statutory scheme for administrative and judicial review." *American Fed'n of Gov't Emps., AFL-CIO* v. *Trump* (*AFGE*), 929 F.3d 748, 754 (D.C. Cir. 2019). Such an alternative scheme displaces district-court jurisdiction if it "displays a 'fairly discernible' intent to limit jurisdiction, and the claims at issue 'are of the type Congress intended to be reviewed within the statutory structure.'" *Free Enter. Fund* v. *Public Co. Acct. Oversight Bd.*, 561 U.S. 477, 489 (2010) (quoting *Thunder Basin Coal Co.* v. *Reich*, 510 U.S. 200, 207, 212 (1994)) (brackets omitted). That test is satisfied here by the Civil Service Reform Act (CSRA), 5 U.S.C. 2301 *et seq.*, and the Federal Service Labor-Management Relations Statute (FSLMRS), 5 U.S.C. 7101 *et seq.*

i. The CSRA "establishe[s] a comprehensive system for reviewing personnel action taken against federal employees." *United States* v. *Fausto*, 484 U.S. 439, 455 (1988). The statute provides that "[a]n employee * * * may submit an appeal to the Merit Systems Protection Board from any action which is appealable to the Board

under any law, rule, or regulation." 5 U.S.C. 7701(a); see 5 U.S.C. 1214(b) (authorizing the MSPB to issue emergency stay relief). And by longstanding regulation, "[a]n employee who has been furloughed for more than 30 days, separated, or demoted by a reduction in force action may appeal to the Merit Systems Protection Board." 5 C.F.R. 351.901; see *Alder* v. *Tennessee Valley Auth.*, 43 Fed. Appx. 952, 956 (6th Cir. 2002) (describing a "reduction-in-force decision" as "a fundamental employment claim subject to MSPB review"), cert. denied, 537 U.S. 1112 (2003). The MSPB can order relief to prevailing employees, including reinstatement. 5 U.S.C. 1204(a)(2), 7701(g). The Federal Circuit has exclusive jurisdiction to review final decisions of the MSPB. 5 U.S.C. 7703(b)(1); see, *e.g.*, *Knight* v. *Department of Def.*, 332 F.3d 1362, 1364 (Fed. Cir. 2003) (RIF demotion claim). The CSRA also includes the FSLMRS, which governs labor relations between the Executive Branch and its employees. See 5 U.S.C. 7101-7135; *AFGE*, 929 F.3d at 752. The Federal Labor Relations Authority (FLRA) is charged with adjudicating federal labor disputes. 5 U.S.C. 7105(a)(2). Congress has authorized review of the FLRA's decisions in the courts of appeals. 5 U.S.C. 7123(a).

This statutory framework should have precluded the district court from exercising jurisdiction over respondents' claims. At bottom, this case is a dispute concerning "employee relations in the federal sector" and "federal labor-management relations," the subject matters that Congress enacted the CSRA and FSLMRS to govern. *AFGE*, 929 F.3d at 755 (citations and internal quotation marks omitted). The essence of respondents' suit is a challenge to the legality of preparatory and procedural steps taken by the Executive Branch—principally the President, OPM, and OMB—to plan and facilitate reductions in agency workforces. Because Congress would not have enacted the "'elaborate' framework" of the CSRA and FSLMRS for reviewing federal-

employee terminations and labor disputes, *Elgin* v. *Department of the Treasury*, 567 U.S. 1, 11 (2012) (citation omitted), while allowing an end-run around those procedures in the form of a preemptive district-court action like respondents', the CSRA and FSLMRS statutory scheme evinces a fairly discernible intent to preclude district-court jurisdiction over claims of this nature. See *Free Enter. Fund*, 561 U.S. at 489.

As the district court here admitted, App., *infra*, 29a-32a, numerous courts in recent months and years have applied the same preclusion principle to similar federal-employment suits. See, *e.g.*, *AFGE*, 929 F.3d at 753, 761 (challenge to three executive orders governing collective bargaining and grievance processes); *American Foreign Serv. Ass'n* v. *Trump*, No. 25-cv-352, 2025 WL 573762, at *8-*11 (D.D.C. Feb. 21, 2025) (challenge to employees' placement on administrative leave); *National Treasury Emps. Union* v. *Trump*, No. 25-cv-420, 2025 WL 561080, at *5-*8 (D.D.C. Feb. 20, 2025) (challenge to terminations of probationary employees, anticipated RIFs, and deferred-resignation program); *American Fed'n of Gov't Emps., AFL-CIO* v. *Ezell*, No. 25-cv-10276, 2025 WL 470459, at *1-*3 (D. Mass. Feb. 12, 2025) (challenge to deferred-resignation program); but see *American Fed'n of Gov't Emps., AFL-CIO* v. *OPM*, No. 25-cv-01780, 2025 WL 900057 (N.D. Cal. Mar. 24, 2025) (asserting jurisdiction over challenge to probationary-employee terminations). Respondents' suit is likewise precluded.

ii. The district court's aberrant jurisdictional analysis was unsound. The court suggested that precluding respondents' suit would "foreclose meaningful judicial review" because they seek to challenge, on a pre-implementation basis, "'large-scale reductions in force' happening rapidly across multiple agencies." App., *infra*, 33a. But as the D.C. Circuit explained when rejecting a similar argument in *AFGE*, 929 F.3d at 755-756, this Court's decision in *Thunder Basin* held that district-court

jurisdiction was precluded by a statutory scheme that did not permit pre-enforcement review at all, see 510 U.S. at 212-216. The district court further suggested that it was "unlikely" that Congress intended to channel review of RIF claims because "employees' rights to appeal a RIF to the Merit Systems Protection Board comes not directly from statute but from regulation," *viz.* 5 C.F.R. 351.901. App., *infra*, 34a. That makes no sense, however, because Congress itself expressly authorized MSPB review of "any action which is appealable to the Board under any law, rule, *or regulation*." 5 U.S.C. 7701(a) (emphasis added). So Congress very likely intended for the same channeling requirements to apply to all such actions, regardless of the particular source of the right to appeal to the MSPB.

The district court also emphasized that respondents raise "fundamental questions of executive authority and separation of powers," "not the individual employee or labor disputes [the MSPB and FLRA] customarily handle." App., *infra*, 32a, 34a. But this Court has already held that the CSRA channels review of fundamental questions of constitutional law. See *Elgin*, 567 U.S. at 22-23; accord *AFGE*, 929 F.3d at 760-761. For good reason: When the federal government is the employer, practically any employment or labor-management-relations claim can be dressed up in constitutional garb.

The district court further noted that even if the union respondents and their federal-employee members could seek relief under the FSLMRS and CSRA, the other respondents (mainly nonprofits and local governments) could not. App., *infra*, 35a. This Court, however, has previously rejected a similar attempt to narrow the CSRA's preclusive scope based on the CSRA's limited remedies. See *Fausto*, 484 U.S. at 447-455 (CSRA precluded an employee's suit for backpay despite the unavailability of CSRA review). "[I]t is the comprehensiveness of the statutory scheme involved, not

the 'adequacy' of specific remedies," that precludes jurisdiction; accordingly, even where "the CSRA provides no relief," it "precludes other avenues of relief." *Graham* v. *Ashcroft*, 358 F.3d 931, 935 (D.C. Cir.) (Roberts, J.) (citation omitted), cert. denied, 543 U.S. 872 (2004); see *Block* v. *Community Nutrition Inst.*, 467 U.S. 340, 346-347 (1984). Given that the CSRA precludes federal employees and their unions from themselves going to court even to raise claims or remedies that the CSRA does not recognize, it would be perverse to read the CSRA to permit third parties who are at most indirectly affected by the treatment of employees to bring claims challenging that treatment outside the CSRA process.

b. Regardless of whether the district court had jurisdiction, respondents lack a viable APA or *ultra vires* cause of action to challenge the President's Executive Order and the OPM-OMB Memo in the abstract, divorced from any agency RIFs. The Executive Order is not agency action subject to review under the APA, because the President is not an agency. *Franklin* v. *Massachusetts*, 505 U.S. 788, 800-801 (1992). Nor does the Memo constitute "final agency action" subject to APA review, 5 U.S.C. 704—that is, action "mark[ing] the 'consummation' of the agency's decisionmaking process" and "by which 'rights or obligations have been determined,' or from which 'legal consequences will flow,'" *Bennett* v. *Spear*, 520 U.S. 154, 178 (1997) (citations omitted). In contrast to agency RIFs themselves, nothing in the Memo finally determines rights or obligations or imposes legal consequences. The Memo merely marked the beginning of an iterative process of engagement with executive agencies, setting forth an internal framework for OPM's and OMB's subsequent "review and approval" of plans for future agency RIFs and reorganizations. App., *infra*, 6a-7a. Indeed, the Memo does not constitute agency action under the APA at all. Instead, it sets forth a framework for preparation and review of proposed agency RIF plans. Such a gen-

eral programmatic document is not subject to APA review. See *Lujan* v. *National Wildlife Fed'n*, 497 U.S. 871, 893 (1990).

Furthermore, even assuming that an *ultra vires* action outside of the APA's framework may sometimes be cognizable, respondents' *ultra vires* claim is not. Neither the Executive Order nor the Memo directs agencies to take any actions inconsistent with law—they contain express language doing the opposite, emphasizing the need to comply with applicable law. See App., *infra*, 2a-3a ("consistent with applicable law"); see *id.* at 2a (recognizing that RIFs should not prevent the performance of "functions" that are "mandated by statute or other law"); *id.* at 6a ("Agencies should review their statutory authority and ensure that their plans and actions are consistent with such authority."); *Building & Constr. Trades Dep't, AFL-CIO* v. *Allbaugh*, 295 F.3d 28, 33 (D.C. Cir. 2002), cert. denied, 537 U.S. 1171 (2003). Insofar as respondents posit that the Executive Order and Memo could not lawfully provide guidance and direction to agencies in their preparation and execution of RIFs, that is plainly erroneous and cannot support an *ultra vires* claim. See *Pennhurst State Sch. & Hosp.* v. *Halderman*, 465 U.S. 89, 101 n.11 (1984) (an "officer may be said to act *ultra vires* only when he acts 'without any authority whatever'") (citation omitted).

2. Respondents' claims are meritless

In all events, respondents' claims are fundamentally flawed on the merits. The President's Executive Order and the OPM-OMB Memo rest on firm legal footing, consistent with the long historical tradition recognizing the federal government's authority to conduct RIFs.

a. The legal bases for the Executive Order and the Memo are straightforward. As the government explained below, "federal law expressly permits RIFs, the governing statute expressly directs OPM to promulgate regulations governing RIFs,

and Congress has consistently recognized agencies' authority to engage in RIFs since the nineteenth century." App., *infra*, 41a (citation omitted); see 5 U.S.C. 3502; pp. 7-9, *supra*. Even the district court appeared grudgingly to agree. See App., *infra*, 41a ("Maybe so."). That being so, the President unquestionably had the authority to direct agencies to conduct RIFs, consistent with law, in furtherance of his policy objectives and with the guidance of OPM and OMB.

i. Consider first the Executive Order. In addition to the President's own broad statutory authority to oversee and regulate the civil service, see, *e.g.*, 5 U.S.C. 3301, the President is empowered by Article II of the Constitution to supervise and direct agency heads in the exercise of their lawful authority. "Under our Constitution, the 'executive Power'—all of it—is 'vested in a President,' who must 'take Care that the laws be faithfully executed.'" *Seila Law LLC* v. *Consumer Fin. Prot. Bureau*, 591 U.S. 197, 203 (2020) (quoting U.S. Const. Art. II, § 1, Cl. 1; *id.*, § 3). To that end, the President has authority to exercise "'general administrative control of those executing the laws,' throughout the Executive Branch of government, of which he is the head." *Allbaugh*, 295 F.3d at 32 (quoting *Myers* v. *United States*, 272 U.S. 52, 164 (1926)). Indeed, this Court has applied this principle specifically in the RIF context. In *Nixon* v. *Fitzgerald*, 457 U.S. 731 (1982), the Court explained that "[i]t clearly is within the President's constitutional and statutory authority to prescribe the manner in which" his subordinates conduct their business, and "this mandate of office must include the authority to prescribe reorganizations and *reductions in force*." *Id.* at 757 (emphasis added).

Our constitutional structure presumes that federal officers and agencies will be "subject to [the President's] superintendence," *The Federalist* No. 72, at 487 (Alexander Hamilton) (Jacob E. Cooke ed., 1961), and the President concomitantly "bears

responsibility for the actions of the many departments and agencies within the Executive Branch," *Trump* v. *United States*, 603 U.S. 593, 607 (2024). Federal agencies depend for their "legitimacy and accountability to the public [on] a 'clear and effective chain of command' down from the President, on whom all the people vote." *United States* v. *Arthrex, Inc.*, 594 U.S. 1, 11 (2021) (citation omitted); see Elena Kagan, *Presidential Administration*, 114 Harv. L. Rev. 2245, 2331-2340 (2001). There is thus nothing plausibly unlawful about an Executive Order directing agency heads to "promptly undertake preparations to initiate large-scale reductions in force" consistent with all applicable statutory restrictions. App., *infra*, 2a.

ii. The Memo is similarly sound. In the main, it provides the agencies with high-level guidance, setting forth principles that agency RIF Plans "*should* seek to achieve," tools that agencies "*should* employ" in developing Plans, and information that Plans "*should* include." App., *infra*, 4a-5a, 7a (emphasis added). Insofar as the Memo issues directives to agencies, such as by instructing them to submit Plans to OPM and OMB "for review and approval" by specified dates, *id.* at 6a-7a, it falls comfortably within OPM's and OMB's statutory authorities and the process established by the President in the Executive Order.

As for OPM, that agency has express statutory authority, as discussed earlier, to "prescribe regulations for the release of competing employees in a reduction in force," 5 U.S.C. 3502(a), and other statutes supplement that authority, see, *e.g.*, 5 U.S.C. 1301 (OPM "shall aid the President, as he may request, in preparing the rules he prescribes under this title for the administration of the competitive service"); 5 U.S.C. 1302(b) (OPM "shall prescribe and enforce regulations for the administration of the provisions of this title, and Executive orders issued in furtherance thereof, that implement the Congressional policy" governing, *inter alia*, preferences for employee

"retention"); see also 5 U.S.C. 1103(a)(5)(A) and (c), 1104(b)(2). OPM exercised those authorities in promulgating detailed, Executive-wide RIF regulations, 5 C.F.R. Pt. 351, whose validity appears to be unquestioned. Those regulations provide for OPM to "establish further guidance and instructions for the planning, preparation, conduct, and review of reductions in force" and to "examine an agency's preparations for reduction in force at any stage," 5 C.F.R. 351.205, which squarely encompasses OPM's directives here. In short, OPM's RIF regulations "mandate a continuing exchange between each agency and the OPM." *National Treasury Emps. Union* v. *Devine*, 733 F.2d 114, 120 (D.C. Cir. 1984). So in directing agencies to prepare RIF plans, App., *infra*, 2a, the President's Executive Order clearly presumed that agencies should follow OPM's guidance.

As for OMB, that office is likewise statutorily authorized to "establish general management policies for executive agencies" and "[f]acilitate actions by * * * the executive branch to improve the management of Federal Government operations and to remove impediments to effective administration." 31 U.S.C. 503(b) and (b)(4). Moreover, the Executive Order expressly directs agency heads to submit reorganization plans to the Director of OMB. App., *infra*, 2a.

b. The district court's contrary reasons for enjoining the Executive Order and Memo view do not withstand analysis.

Most egregiously, while the district court did not meaningfully dispute that executive agencies may lawfully conduct RIFs, see App., *infra*, 41a, it treated as "evidence" of "unlawful action" the prospect that "the agencies are acting at the direction of the President and his team" in planning and executing RIFs, *ibid.* That contention turns Article II upside down, for the reasons set forth above. See *Trump*, 603 U.S. at 607; *Seila Law*, 591 U.S. at 203. The court articulated no reason why agency RIFs

would somehow be exempt from the fundamental constitutional principle that the President, as the repository of the entire executive power, may direct his subordinates in exercising their lawful functions. See *Fitzgerald*, 457 U.S. at 757.

The district court also emphasized the President's lack of operative "statutory authority to reorganize the executive branch." App., *infra*, 36a; see *id.* at 36a-40a (discussing historical reorganization statutes). But a RIF is not a reorganization, which generally refers to an agency restructuring rather than the elimination of positions within an existing agency structure. *Id.* at 2a (order separately addressing RIFs and reorganizations in Sections 3(c) and (e)); *id.* at 7a (memo separately addressing RIFs and proposals to "eliminate[] or consolidate[]" agency components). (Thus, while a RIF can be conducted *because* of a "reorganization," it can also be conducted for other reasons, such as "lack of work" or "shortage of funds," 5 C.F.R. 351.201(a)(2); see, *e.g.*, 5 U.S.C. 5361(7), which proves that they are distinct forms of action.) Setting semantics aside, the key point is that neither the Executive Order nor the Memo directs any reorganizations or other actions that would conflict with agencies' statutory mandates. App., *infra*, 2a (order requiring reorganization plans to "identif[y] any statutes that establish the agency, or subcomponents of the agency, as statutorily required entities"); *id.* at 5a-6a. Unsurprisingly, neither respondents nor the district court identified any ongoing or impending reorganizations that actually exceed statutory strictures. There is nothing unlawful about agency RIFs that facilitate the restructuring of agencies within the organizational bounds imposed by statute.[2]

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[2] The district court suggested the Executive Order raises statutory concerns because it contemplates "large-scale" RIFs. App., *infra*, 41a; see *id.* at 2a. But RIFs, like analogous layoffs in the private sector, are often large-scale by their nature, see pp. 8-9, *supra* (discussing RIFs after World War II and President Clinton's 1993 order

The district court faulted OPM and OMB for exceeding their authority by unilaterally ordering agencies to carry out RIFs. App., *infra*, 43a. Yet even a cursory read of the Memo shows it does no such thing; instead, it provides guidance to agencies as they, pursuant to the Executive Order, develop their own plans for RIFs and consider changes to their own organizational structures. See *id.* at 4a-10a. That the Memo directs agencies to submit their RIF Plans for review and approval does not mean that OPM and OMB have usurped the agencies' lawful role, any more than OPM's longstanding RIF regulations exceed that office's proper role. Agencies are directed to prepare large-scale RIFs by the President's Executive Order, and the Memo permissibly provides the agencies with guidance on implementing that directive.

With little analysis, the district court also concluded that OPM and OMB likely "engaged in rule-making without notice and comment required by the APA, in issuing the [Memo] and in approving the [Plans]." App., *infra*, 47a. But in addition to respondents' failure to identify final agency action subject to APA review, see pp. 19-20, *supra*, neither the Memo nor Plan approvals constitute rules under the APA—or, more precisely, under 5 U.S.C. 1103(b), which requires notice for certain OPM rules. See *Fund for Animals, Inc.* v. *United States Bureau of Land Mgmt.*, 460 F.3d 13, 20 (D.C. Cir. 2006) (agency's "planning document * * * is not a 'rule'" under 5 U.S.C. 551(4)); cf. 5 U.S.C. 553(a)(2) (exempting from APA rulemaking procedures "a matter relating to agency management or personnel").

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of a 4-percent reduction in the federal workforce), and federal law explicitly recognizes that they will sometimes involve "the separation of a significant number of employees," 5 U.S.C. 3502(d)(1)(B); see 5 C.F.R. 351.803(b). A large RIF that comports with the agency's statutory structure and function is just as lawful as a small one.

3. At a minimum, the injunction is overbroad

This Court should independently stay the order due to its indefensible scope: it sweeps far more broadly than is necessary or permissible. This Court has repeatedly enunciated the constitutional and equitable principle that relief must be limited to redressing the specific plaintiff's injury. See *Gill* v. *Whitford*, 585 U.S. 48, 66 (2018); *Califano* v. *Yamasaki*, 442 U.S. 682, 702 (1979). Providing relief to nonparties exceeds "the power of Article III courts," conflicts with "longstanding limits on equitable relief," and imposes a severe "toll on the federal court system." *Trump* v. *Hawaii*, 585 U.S. 667, 713 (2018) (Thomas, J., concurring); see *DHS* v. *New York*, 140 S. Ct. 599, 599-601 (2020) (Gorsuch, J., concurring in the grant of stay); Appl. at 15-28, *Trump* v. *CASA, Inc.*, No. 24A884 (Mar. 13, 2023). By the same token, "a court must tailor equitable relief to redress the [plaintiffs'] alleged injuries without burdening the defendant more than necessary." *Department of Educ.* v. *Louisiana*, 603 U.S. 866, 873 (2024) (Sotomayor, J., dissenting in part from denial of applications for stays) (citing *Madsen* v. *Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994), and *Yamasaki*, 442 U.S. at 702).

The district court's order contravenes those bedrock principles. The court openly acknowledged that its order would "provide relief beyond the named parties," but it claimed that "to do otherwise is impracticable and unworkable, particularly where the agencies' RIF plans largely remain secret." App., *infra*, 49a. But that approach gets things entirely backwards: It is respondents' burden, not the government's, to justify the scope of the injunctive relief sought and identify those parties

that actually face imminent harm absent such relief; and it is up to the government, not the district court, to determine whether complying with a properly limited injunction is sufficiently unworkable that it should choose to extend broader relief to make it easier to comply. See *Arizona* v. *Biden*, 40 F.4th 375, 398 (6th Cir. 2022) (Sutton, C.J., concurring) ("that is initially the National Government's problem, not ours").

B. The Remaining Stay Factors Strongly Favor The Government

This Court's other stay factors also point decisively in favor of staying the district court's order enjoining the implementation of the Executive Order and Memo.

1. This Court would likely grant certiorari

The issues presented in this case are worthy of this Court's review under its traditional certiorari criteria. See *John Does 1-3* v. *Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring in denial of application for injunctive relief); Sup. Ct. R. 10. This Court has repeatedly intervened—both recently and historically—in cases in which lower courts, like the district court here, have attempted to direct the functioning of the Executive Branch—let alone on the global scale at issue here. See, *e.g.*, *Office of Personnel Mgmt.* v. *American Fed'n of Gov't Emps.*, No. 24A904 (Apr. 8, 2025) (granting stay of district-court order requiring reinstatement of probationary employees); *Department of Educ.* v. *California*, 145 S. Ct. 966, 968-969 (2025) (per curiam) (granting stay of district-court order requiring payment of education grants); *Heckler* v. *Lopez*, 463 U.S. 1328, 1329-1330 (1983) (Rehnquist, J., in chambers) (granting stay of district-court order requiring Secretary of Health and Human Services "immediately to reinstate benefits to the applicants" and mandating that the Secretary then make certain showings "before terminating benefits"); cf. *Trump* v. *Sierra Club*, 140 S. Ct. 1 (2019) (granting stay of district-court order enjoining the Department of De-

fense from undertaking any border-wall construction using funding the Acting Secretary transferred pursuant to statutory authority); *INS* v. *Legalization Assistance Project*, 510 U.S. 1301, 1305-1306 (1993) (O'Connor, J., in chambers) (granting stay of district-court order requiring INS to engage in certain immigration procedures, as "an improper intrusion by a federal court into the workings of a coordinate branch of the Government").

The district court's novel imposition of limits on the President's ability to control executive agencies in exercising their power over personnel is the same type of important question of federal law that warrants this Court's review. See pp. 5, 21-22, *supra*. Furthermore, the court's analysis of the question of CSRA and FSLMRS preclusion conflicts with the views of several other courts, including the D.C. Circuit. See p. 17, *supra*. That underscores the likelihood that this Court would grant certiorari in this case.

2. The district court's order inflicts irreparable harm on the government and the public interest

The government is also being significantly and irreparably harmed by the district court's order, and those harms outweigh those asserted by respondents.

a. The district court's order strikes at critical governmental interests by barring the implementation of agency RIFs pursuant to the Executive Order and Memo and seriously hampering agencies' control over their own administration. As this Court has observed, "the Government has traditionally been granted the widest latitude" in personnel matters and "the 'dispatch of its own internal affairs.'" *Sampson* v. *Murray*, 415 U.S. 61, 83 (1974) (citation omitted); see *id.* at 83-84 (discussing "the traditional unwillingness of courts of equity to enforce contracts for personal service either at the behest of the employer or of the employee" and other "fac-

tors cutting against the general availability of preliminary injunctions in Government personnel cases"); *National Aeronautics & Space Admin.* v. *Nelson*, 562 U.S. 134, 151 (2011) (noting "the Government's interests in managing its internal operations"). Applicants likewise have a strong interest in safeguarding the public fisc. See *Mathews* v. *Eldridge*, 424 U.S. 319, 348 (1976). A district-court order broadly barring almost the entire Executive Branch from acting to manage the size of its workforce gravely hinders governmental interests of a high order.

More concretely, the immediate consequences of the district court's order are stark, even focusing just on the two- to four-week period while the order is nominally framed as a TRO rather than a preliminary injunction. The order has disrupted and brought to a halt a complex, government-wide effort—which began with the President's Executive Order more than three months ago—to plan, prepare for, and execute agency RIFs. The order enjoins more than 20 executive-branch entities, and "any other individuals acting under their authority or the authority of the President," from further implementing the Executive Order and Memo, including by carrying out any existing RIF notices or approving and issuing any new RIF notices. App., *infra*, 50a.

Dozens of RIF actions affecting thousands of federal employees thus will be delayed and disrupted if the court's order remains in effect. D. Ct. Doc. 1, at 53-67 (Apr. 28, 2025) (complaint describing in-progress RIFs). In fact, this Office has been informed by OPM that about 40 RIFs in 17 agencies were in progress and are currently enjoined by the TRO. The inevitable consequence is to compel federal agencies to keep large numbers of employees on the payroll without necessity, at unrecoverable taxpayer expense, thereby frustrating the government's efforts to impose budgetary discipline and build a more efficient workforce. See App., *infra*, 4a ("The federal

government is costly, inefficient, and deeply in debt."). This Court has expressed concern about the intrusion inflicted by a court order directing the reinstatement of a *single* government employee, see *Sampson*, 415 U.S. at 91-92; it follows that an order freezing much larger layoffs unquestionably inflicts substantial and irreparable injury on the government as an employer and steward of public funds. Furthermore, because the order broadly enjoins implementation of the Executive Order's directive to prepare for RIFs, it has sown confusion throughout the Executive Branch over what internal administrative and planning actions agencies are permitted to undertake consistent with the order's terms.

The fiscal and administrative harms inflicted by the district court's order amply justify a stay. See, *e.g.*, *Department of Educ.*, 145 S. Ct. 966 (stay granted where TRO permitted potentially unrecoverable drawdowns of $65 million in grant funds); *Heckler* v. *Turner*, 468 U.S. 1305, 1307-1308 (1984) (Rehnquist, J., in chambers) (prospect of the government being forced to make $1.3 million in improper payments per month supported a stay). This Court's immediate intervention is necessary, moreover, because there is little prospect of sufficiently prompt relief from the courts below. The district court declined to impose any injunction bond, see App., *infra*, 51a, and it has already opened the door to an extension of its order beyond the default two weeks for TROs, *id.* at 50a, which would keep the order in effect into June. And the Ninth Circuit has entered a briefing schedule on applicants' stay motion that will not finish until May 22—a day before the TRO is set to expire unless extended. Absent an immediate stay, applicants' RIF plans and actions will likely remain on hold and in disarray for weeks to come.

b. Respondents' assertions of irreparable injury do not outweigh applicants'. The district court primarily rested its contrary finding on the prospect of

members of respondent unions being subjected to RIFs and laid off. App., *infra*, 23a, 48a. That form of injury is by no means irreparable, however, because employees can seek reinstatement and backpay through the proper channels. See pp. 15-16, *supra*; *Sampson*, 415 U.S. at 91-92 (such injury "falls far short of the type of irreparable injury which is a necessary predicate to the issuance of a temporary injunction in this type of case"); see also *Smith* v. *Department of the Army*, 89 M.S.P.R. 82, 83 (2001) (noting remedial actions for life and health insurance for federal employee reinstated after RIF). That this case implicates more than "one individual employee," as the district court emphasized, App., *infra*, 48a, does not render the exact same type of injury, multiplied across the population of potentially affected employees, irreparable.

The district court also cross-referenced its findings with respect to other respondents' Article III standing, in which the court highlighted the possibilities that certain federal contract facilities may close as a result of RIFs, services by federal agencies may be delayed, local-government tax bases may be reduced, and the like. App., *infra*, 23a-27a, 47a-48a. Even assuming that those asserted speculative, indirect, downstream harms sufficed for standing, which they do not, irreparable injury for purposes of injunctive relief requires more. See *Monsanto Co.* v. *Geertson Seed Farms*, 561 U.S. 139, 162 (2010). And if the employees who face RIFs are not themselves entitled to injunctive relief as an equitable matter, it would turn equity on its head to grant injunctive relief based on more remote harms to third parties claiming that they are indirectly affected by the employees' treatment.

For the foregoing reasons, this Court should stay the district court's order enjoining the implementation of the Executive Order and the Memo.

II. THIS COURT SHOULD STAY THE DISTRICT COURT'S DISCOVERY ORDER

Along with allowing the implementation of the Executive Order and Memo to proceed, this Court should also stay the provision of the district court's order compelling disclosure of various highly sensitive RIF-related documents submitted between agencies and OPM and OMB. As noted, p. 13, *supra*, applicants have filed a mandamus petition in the court of appeals seeking to vacate the discovery order on the ground that the materials at issue are protected by the deliberative-process component of executive privilege. "To obtain a stay pending the * * * disposition of a petition for a writ of mandamus, an applicant must show a fair prospect that a majority of the Court will vote to grant mandamus and a likelihood that irreparable harm will result from the denial of a stay." *Hollingsworth*, *supra*, 558 U.S. at 190. "Before a writ of mandamus may issue, a party must establish that (1) 'no other adequate means exist to attain the relief he desires,' (2) the party's 'right to issuance of the writ is "clear and indisputable,"' and (3) 'the writ is appropriate under the circumstances.'" *Ibid.* (quoting *Cheney* v. *United States Dist. Ct.*, 542 U.S. 367, 380-381 (2004)) (brackets omitted). Applicants satisfy those standards.

A. Applicants' entitlement to mandamus is clear and indisputable. The deliberative-process component of executive privilege shields from disclosure government documents that are "predecisional," meaning "they were generated before the agency's final decision on the matter," and "deliberative," meaning "they were prepared to help the agency formulate its position." *United States Fish & Wildlife Serv.* v. *Sierra Club, Inc.*, 592 U.S. 261, 268 (2021). That test is clearly met for all of the materials the district court's order requires to be produced: "(1) the versions of all defendant agency [RIF Plans] submitted to OMB and OPM, (2) the versions of all

defendant agency [RIF Plans] approved by OMB and OPM, (3) any agency applications for waivers of statutorily-mandated RIF notice periods, and (4) any responses by OMB or OPM to such waiver requests." App., *infra*, 50a. After all, whether before or after they are "approved" by OPM and OMB, the RIF Plans are still just *plans* setting forth potential future agency decisions and policies regarding RIFs and restructuring. See D. Ct. Doc. 88-1, at 1 (May 11, 2025) (Declaration of Stephen M. Billy, Senior Advisor for OMB) (explaining that the RIF Plans are "living documents that are always subject to change" and "lack any immediate force and effect"). Likewise, any waiver requests and responses, by definition, constitute part of an internal governmental decision-making process. So all of those materials simply "reflect[]" "opinions" and "recommendations" that "compris[e] part of a process by which governmental decisions and policies are formulated." *NLRB* v. *Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975) (citation and internal quotation marks omitted).

To be sure, "[t]he deliberative process privilege is a qualified privilege and can be overcome by a sufficient showing of need." *In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997). The relevant factors in that analysis include "the relevance of the evidence, the availability of other evidence, the seriousness of the litigation, the role of the government, and the possibility of future timidity by government employees." *Id.* at 737-738 (internal quotation marks omitted). But in ordering production, the district court did not even acknowledge that the documents in question were deliberative materials, let alone conduct the necessary analysis. See App., *infra*, 49a-50a. Indeed, the court ordered production in the absence of any formal discovery request and briefing, based solely on respondents' requests in connection with the TRO briefing and hearing, Gov't C.A. Mandamus Pet. 11, notwithstanding that applicants made clear that the RIF Plans were "deliberative agency planning documents," D. Ct.

Doc. 60, at 21 (May 7, 2025).

Relatedly, even if the court had performed the required analysis, the presumption of deliberative-process privilege would not have been overcome. Respondents did not even request some of the relevant materials (such as the agency requests for RIF notice exemptions), and the contents of individual agency RIF Plans (let alone all versions of the Plans) have little relevance to respondents' challenge to the Executive Order and Memo. See Gov't C.A. Mandamus Pet. 11. To be sure, the district court has since tried to cure its grossly deficient process, by staying the discovery order pending briefing on applicants' motion for reconsideration or a protective order, D. Ct. Doc. 92 (May 12, 2025), and then ordering a limited disclosure to just the court and respondents' counsel pending further proceedings, D. Ct. Doc. 109 (May 15, 2025). But the court reserved the option of reinstating its prior discovery order or allowing wider disclosure at any time "the Court orders." See *id.* at 5. And for the reasons discussed, if the court ultimately orders disclosure of these materials, that would be the type of clear and indisputable error that warrants mandamus relief.

B. In these circumstances, the remaining requirements for a stay are also satisfied. Given the irreversibility of disclosure, appeal after judgment obviously does not provide applicants with an adequate substitute to mandamus for obtaining relief from the district court's order. See *In re von Bulow*, 828 F.2d 94, 98 (2d Cir. 1987). For much the same reason, appellate courts commonly view mandamus as an appropriate vehicle for seeking interlocutory review of district-court discovery orders—particularly in cases involving orders compelling government disclosures and discovery, which necessarily raise separation-of-powers concerns as well. See *Cheney*, 542 U.S. at 382; see also, *e.g.*, *In re United States*, 583 U.S. 29 (2017) (per curiam).

Furthermore, applicants have demonstrated more than a likelihood of irrepa-

rable harm if the pertinent documents are disclosed. Agencies' RIF Plans contain "highly sensitive information that would seriously undermine agency operations if they were released." D. Ct. Doc. 88-1, at 1. "Such information includes strategies for agency negotiations with unions; plans and strategies for personnel reorganization that may or may not materialize, but might seriously hurt agency recruitment and retention if released; plans and strategies regarding present and future regulatory changes; plans and strategies for present and future appropriations requests; plans and strategies for congressional engagement; and plans and strategies for agency IT management." *Ibid.* For example, the irreparable injury from disclosing "strategies for agency negotiations with unions," *ibid.*, to those very unions, speaks for itself.

To the extent that the likelihood of certiorari bears on applicants' entitlement to a stay pending mandamus, that factor supports relief as well. This Court has previously granted certiorari to consider the government's entitlement to mandamus relief from discovery orders infringing on executive-branch confidentiality interests. See *Cheney*, 542 U.S. at 378; *In re United States*, 583 U.S. at 31. The Court would likely do the same here.

III. AN ADMINISTRATIVE STAY IS WARRANTED

Finally, the Solicitor General respectfully requests that this Court grant an administrative stay of the district court's May 9 order while the Court considers this application. Every day that the district court's order remains in effect, a government-wide program to implement agency RIFs is being halted and delayed, maintaining a bloated and inefficient workforce while wasting countless taxpayer dollars. In addition, the district court could at any moment reinstate its order for the government to disclose internal executive-branch documents that are protected by the deliberative-process privilege, potentially without sufficient time for the government to seek relief

from this Court. In these circumstances, an administrative stay is warranted while this Court assesses the government's entitlement to a stay.

CONCLUSION

This Court should stay the district court's order of May 9, 2025, granting respondents' motion for a TRO against the Executive Order and Memo and requiring disclosure of privileged RIF-related documents. In addition, the Solicitor General respectfully requests an immediate administrative stay of the district court's order pending the Court's consideration of this application.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

MAY 2025

APPENDIX

Federal Register
Vol. 90, No. 30
Friday, February 14, 2025

Presidential Documents

Title 3—

The President

Executive Order 14210 of February 11, 2025

Implementing the President's ''Department of Government Efficiency'' Workforce Optimization Initiative

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1. *Purpose.* To restore accountability to the American public, this order commences a critical transformation of the Federal bureaucracy. By eliminating waste, bloat, and insularity, my Administration will empower American families, workers, taxpayers, and our system of Government itself.

Sec. 2. *Definitions.* (a) ''Agency'' has the meaning given to it in section 3502 of title 44, United States Code, except that such term does not include the Executive Office of the President or any components thereof.

(b) ''Agency Head'' means the highest-ranking official of an agency, such as the Secretary, Administrator, Chairman, or Director, unless otherwise specified in this order.

(c) ''DOGE Team Lead'' means the leader of the Department of Government Efficiency (DOGE) Team at each agency, as defined in Executive Order 14158 of January 20, 2025 (Establishing and Implementing the President's ''Department of Government Efficiency'').

(d) ''Employee'' has the meaning given to it by section 2105 of title 5, United States Code, and includes individuals who serve in the executive branch and who qualify as employees under that section for any purpose.

(e) ''Immigration enforcement'' means the investigation, enforcement, or assisting in the investigation or enforcement of Federal immigration law, including with respect to Federal immigration law that penalizes a person's presence in, entry, or reentry to, or employment in, the United States, but does not include assisting individuals in applying for immigration benefits or efforts to prevent enforcement of immigration law or to prevent deportation or removal from the United States.

(f) ''Law enforcement'' means:

(i) engagement in or supervision of the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law; or

(ii) the protection of Federal, State, local, or foreign government officials against threats to personal safety.

(g) ''Temporary employee'' has the meaning given to it in 5 C.F.R. part 316.

(h) ''Reemployed annuitant'' has the meaning given to it in 5 C.F.R. part 837.

Sec. 3. *Reforming the Federal Workforce to Maximize Efficiency and Productivity.* (a) *Hiring Ratio.* Pursuant to the Presidential Memorandum of January 20, 2025 (Hiring Freeze), the Director of the Office of Management and Budget shall submit a plan to reduce the size of the Federal Government's workforce through efficiency improvements and attrition (Plan). The Plan shall require that each agency hire no more than one employee for every four employees that depart, consistent with the plan and any applicable exemptions and details provided for in the Plan. This order does not affect the standing freeze on hiring as applied to the Internal Revenue Service. This ratio shall not apply to functions related to public safety, immigration

enforcement, or law enforcement. Agency Heads shall also adhere to the Federal Hiring Plan that will be promulgated pursuant to Executive Order 14170 of January 20, 2025 (Reforming the Federal Hiring Process and Restoring Merit to Government Service).

(b) *Hiring Approval.* Each Agency Head shall develop a data-driven plan, in consultation with its DOGE Team Lead, to ensure new career appointment hires are in highest-need areas.

(i) This hiring plan shall include that new career appointment hiring decisions shall be made in consultation with the agency's DOGE Team Lead, consistent with applicable law.

(ii) The agency shall not fill any vacancies for career appointments that the DOGE Team Lead assesses should not be filled, unless the Agency Head determines the positions should be filled.

(iii) Each DOGE Team Lead shall provide the United States DOGE Service (USDS) Administrator with a monthly hiring report for the agency.

(c) *Reductions in Force.* Agency Heads shall promptly undertake preparations to initiate large-scale reductions in force (RIFs), consistent with applicable law, and to separate from Federal service temporary employees and reemployed annuitants working in areas that will likely be subject to the RIFs. All offices that perform functions not mandated by statute or other law shall be prioritized in the RIFs, including all agency diversity, equity, and inclusion initiatives; all agency initiatives, components, or operations that my Administration suspends or closes; and all components and employees performing functions not mandated by statute or other law who are not typically designated as essential during a lapse in appropriations as provided in the Agency Contingency Plans on the Office of Management and Budget website. This subsection shall not apply to functions related to public safety, immigration enforcement, or law enforcement.

(d) *Rulemaking.* Within 30 days of the date of this order, the Director of the Office of Personnel Management (OPM) shall initiate a rulemaking that proposes to revise 5 C.F.R. 731.202(b) to include additional suitability criteria, including:

(i) failure to comply with generally applicable legal obligations, including timely filing of tax returns;

(ii) failure to comply with any provision that would preclude regular Federal service, including citizenship requirements;

(iii) refusal to certify compliance with any applicable nondisclosure obligations, consistent with 5 U.S.C. 2302(b)(13), and failure to adhere to those compliance obligations in the course of Federal employment; and

(iv) theft or misuse of Government resources and equipment, or negligent loss of material Government resources and equipment.

(e) *Developing Agency Reorganization Plans.* Within 30 days of the date of this order, Agency Heads shall submit to the Director of the Office of Management and Budget a report that identifies any statutes that establish the agency, or subcomponents of the agency, as statutorily required entities. The report shall discuss whether the agency or any of its subcomponents should be eliminated or consolidated.

(f) Within 240 days of the date of this order, the USDS Administrator shall submit a report to the President regarding implementation of this order, including a recommendation as to whether any of its provisions should be extended, modified, or terminated.

Sec. 4. *Exclusions.* (a) This order does not apply to military personnel.

(b) Agency Heads may exempt from this order any position they deem necessary to meet national security, homeland security, or public safety responsibilities.

(c) The Director of OPM may grant exemptions from this order where those exemptions are otherwise necessary and shall assist in promoting workforce reduction.

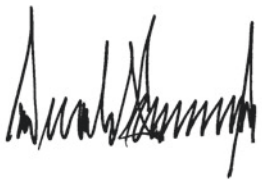
Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
February 11, 2025.

[FR Doc. 2025–02762
Filed 2–13–25; 11:15 am]
Billing code 3395–F4–P

U.S. Office of Management and Budget

U.S. Office of Personnel Management

MEMORANDUM

TO: Heads of Executive Departments and Agencies

FROM: Russell T. Vought, Director, Office of Management and Budget; Charles Ezell, Acting Director, Office of Personnel Management.

DATE: February 26, 2025

RE: Guidance on Agency RIF and Reorganization Plans Requested by *Implementing The President's "Department of Government Efficiency" Workforce Optimization Initiative*

I. Background

The federal government is costly, inefficient, and deeply in debt. At the same time, it is not producing results for the American public. Instead, tax dollars are being siphoned off to fund unproductive and unnecessary programs that benefit radical interest groups while hurting hard-working American citizens.

The American people registered their verdict on the bloated, corrupt federal bureaucracy on November 5, 2024 by voting for President Trump and his promises to sweepingly reform the federal government.

On February 11, 2025, President Trump's Executive Order *Implementing The President's "Department of Government Efficiency" Workforce Optimization Initiative* (*Workforce Optimization*) "commence[d] a critical transformation of the Federal bureaucracy." It directed agencies to "eliminat[e] waste, bloat, and insularity" in order to "empower American families, workers, taxpayers, and our system of Government itself."

President Trump required that "Agency Heads shall promptly undertake preparations to initiate large-scale reductions in force (RIFs), consistent with applicable law." President Trump also directed that, **no later than March 13, 2025**, agencies develop Agency Reorganization Plans.

The U.S. Office of Management and Budget ("OMB") and the U.S. Office of Personnel Management ("OPM") now submit guidance on these Agency RIF and Reorganization Plans ("ARRP"), along with the instruction that such plans be submitted to OMB and OPM.

II. Principles to Inform ARRPs

ARRPs should seek to achieve the following:

1. Better service for the American people;

2. Increased productivity;

3. A significant reduction in the number of full-time equivalent (FTE) positions by eliminating positions that are not required;

4. A reduced real property footprint; and

5. Reduced budget topline.

Pursuant to the President's direction, agencies should focus on the maximum elimination of functions that are not statutorily mandated while driving the highest-quality, most efficient delivery of their statutorily-required functions.

Agencies should also seek to consolidate areas of the agency organization chart that are duplicative; consolidate management layers where unnecessary layers exist; seek reductions in components and positions that are non-critical; implement technological solutions that automate routine tasks while enabling staff to focus on higher-value activities; close and/or consolidate regional field offices to the extent consistent with efficient service delivery; and maximally reduce the use of outside consultants and contractors. When taking these actions, agencies should align closures and/or relocation of bureaus and offices with agency return-to-office actions to avoid multiple relocation benefit costs for individual employees.

Agencies should review their statutory authority and ensure that their plans and actions are consistent with such authority.

Agency heads should collaborate with their Department of Government Efficiency ("DOGE") team leads within the agency in developing competitive areas for ARRPs. In addition, the agency should specifically identify competitive areas that include positions not typically designated as essential during a lapse in appropriations. When making this determination, agencies should refer to the functions that are excepted from the Antideficiency Act (ADA) in the Agency Contingency Plans submitted to OMB in 2019 as the starting point for making this determination.

III. Available Tools

In their ARRPs, agencies should employ all available tools to effectuate the President's directive for a more effective and efficient government and describe how they will use each. Such tools include:

1. Continuing to comply with the hiring freeze outlined in the January 20, 2025 Presidential Memorandum *Hiring Freeze* or (with approval of OPM and OMB) implementing the general principle that, subject to appropriate exemptions, no more than one employee should be hired for every four employees that depart;

2. Establishing internal processes that ensure agency leadership has visibility and/or direct sign-off on all potential job offers and candidates prior to extending offers;

3. Eliminating non-statutorily mandated functions through RIFs (Appendix 1 contains a sample timeline);

4. Removing underperforming employees or employees engaged in misconduct, and continuing to evaluate probationary employees;

5. Reducing headcount through attrition and allowing term or temporary positions to expire without renewal;

6. Separating reemployed annuitants in areas likely subject to RIFs; and

7. Renegotiating provisions of collective bargaining agreements (CBAs) that would inhibit enhanced government efficiency and employee accountability.

ARRPs should also list the competitive areas for large-scale reductions in force, the RIF effective dates (which may be a date prior to when the plan is submitted), the expected conclusion of the RIFs, the number of FTEs reduced, and additional impact of RIFs such as cancellation of related contracts, leases or overhead.

Agencies should also closely consider changes to regulations and agency policies, including changes that must be pursued through notice-and-comment rulemaking, that would lead to the reduction or elimination of agency subcomponents or speed up the implementation of ARRPs.

IV. Phase 1 ARRPs

Each agency will submit a Phase 1 ARRPs to OMB and OPM for review and approval **no later than March 13, 2025**. Phase 1 ARRPs shall focus on initial agency cuts and reductions. Each Phase 1 ARRP should identify:

1. A list of agency subcomponents or offices that provide direct services to citizens. Such subcomponents or offices should be included in ARRPs to improve services to citizens while eliminating costs and reducing the size of the federal government. But for service delivery subcomponents or offices, implementation shall not begin until certified by OMB and OPM as resulting in a positive effect on the delivery of such services.

2. Any statutes that establish the agency, or subcomponents of the agency, as statutorily required entities. Agency leadership must confirm statutes have not been interpreted in a way that expands requirements beyond what the statute actually requires. Instead, statutes should be interpreted to cover only what functions they explicitly require.

3. All agency components and employees performing functions not mandated by statute or regulation who are not typically designated as essential during a lapse in appropriations (because the functions performed by such employees do not fall under an exception to the ADA) using the Agency Contingency Plans submitted to OMB in 2019 referenced above.

4. Whether the agency or any of its subcomponents should be eliminated or consolidated; and which specific subcomponents or functions, if any, should be expanded to deliver on the President's priorities.

5. The specific tools the agency intends to use to achieve efficiencies, including, as to each, the number of FTEs reduced and any potential savings or costs associated with such actions in Fiscal Years 2025, 2026 and 2027:

    a. Continuation of the current hiring freeze;
    b. Regular attrition (e.g., retirement, movement between agencies and the private sector);
    c. Attrition through enhanced policies governing employee performance and conduct;
    d. Attrition through the termination or non-renewal of term or limited positions or reemployed annuitants;
    e. Attrition achieved by RIFs. Please refer to Appendix 1 for specific steps and timing. For purposes of the Phase 1 ARRP, the agency should include the following information:

        i. The competitive areas and organizational components that the agency has targeted or will target for initial RIFs, and
        ii. The agency's target for reductions in FTE positions via RIFs.

6. A list by job position of all positions categorized as essential for purposes of exclusion from large-scale RIFs, including the number per each job position and total by agency and subcomponent.

7. The agency's suggested plan for congressional engagement to gather input and agreement on major restructuring efforts and the movement of fundings between accounts, as applicable, including compliance with any congressional notification requirements.

8. The agency's timetable and plan for implementing each part of its Phase 1 ARRP.

V. Phase 2 ARRPs

Agencies should then submit a Phase 2 ARRP to OMB and OPM for review and approval **no later than April 14, 2025**. Phase 2 plans shall outline a positive vision for more productive, efficient agency operations going forward. Phase 2 plans should be planned for implementation by September 30, 2025. The Phase 2 plan should include the following additional information:

1. The agency's proposed future-state organizational chart with its functional areas, consolidated management hierarchy, and position titles and counts clearly depicted.

2. Confirmation that the agency has reviewed all personnel data, including each employee's official position description, four most recent performance ratings of record, retention service computation date, and veterans' preference status.

3. The agency's plan to ensure that employees are grouped, to the greatest extent possible, based on like duties and job functions to promote effective collaboration and management, and that the agency's real estate footprint is aligned with cross-agency efforts coordinated by GSA to establish regional federal office hubs.

4. Any proposed relocations of agency bureaus and offices from Washington, D.C. and the National Capital Region to less-costly parts of the country.

5. The competitive areas for subsequent large-scale RIFs.

6. All reductions, including FTE positions, term and temporary positions, reemployed annuitants, real estate footprint, and contracts that will occur in relation to the RIFs.

7. Any components absorbing functions, including how this will be achieved in terms of FTE positions, funding, and space.

8. The agency's internal processes that ensure agency leadership has visibility and/or direct sign-off on all potential job offers and candidates prior to extending offers.

9. The agency's data-driven plan to ensure new career appointment hires are in highest-need areas and adhere to the general principle that, subject to appropriate exemptions, no more than one employee should be hired for every four employees that depart. Until the agency has finalized its post-hiring-freeze plan, agencies should continue to adhere to the current hiring freeze.

10. Any provisions of collective bargaining agreements that would inhibit government efficiency and cost-savings, and agency plans to renegotiate such provisions.

11. An explanation of how the ARRPs will improve services for Americans and advance the President's policy priorities.

12. The framework and criteria the agency has used to define and determine efficient use of existing personnel and funds to improve services and the delivery of these services.

13. For agencies that provide direct services to citizens (such as Social Security, Medicare, and veterans' health care), the agency's certification that implementation of the ARRPs will have a positive effect on the delivery of such services. The certification should include a written explanation from the Agency Head and, where appropriate, the agency's CIO and any relevant program manager.

14. The programs and agency components not impacted by the ARRP, and the justification for any exclusion.

15. Plans to reduce costs and promote efficiencies through improved technology, including through the adoption of new software or systems, and elimination of duplicative systems.

16. Any changes to regulations and agency policies, including changes that must be pursued through notice-and-comment rulemaking, that would lead to the reduction or elimination of agency subcomponents, or speed up implementation of ARRPs.

17. The agency's timetable and plan for implementing each part of its Phase 2 ARRP, and its plan for monitoring and accountability in implementing its ARRPs.

Agencies should continue sending monthly progress reports each month on May 14, 2025, June 16, 2025, and July 16, 2025. All plans and reports requested by this memorandum should be submitted to OPM at tracking@opm.gov and OMB at workforce@omb.eop.gov; when submitting plans and reports, please ensure both OPM and OMB addresses are included on the message.

VI. Exclusions

Nothing in this memorandum shall have any application to:

1. Positions that are necessary to meet law enforcement, border security, national security, immigration enforcement, or public safety responsibilities;

2. Military personnel in the armed forces and all Federal uniformed personnel, including the U.S. Coast Guard, the Commissioned Corps of the U.S. Public Health Service, and the Commissioned Officer Corps of the National Oceanic and Atmospheric Administration;

3. Officials nominated and appointed to positions requiring Presidential appointment or Senate confirmation, non-career positions in the Senior Executive Service or Schedule C positions in the excepted service, officials appointed through temporary organization hiring authority pursuant to 5 U.S.C. § 3161, or the appointment of any other non-career employees or officials, if approved by agency leadership appointed by the President;

4. The Executive Office of the President; or

5. The U.S. Postal Service.

Finally, agencies or components that provide direct services to citizens (such as Social Security, Medicare, and veterans' health care) shall not implement any proposed ARRPs until OMB and OPM certify that the plans will have a positive effect on the delivery of such services.

cc: Chief Human Capital Officers ("***CHCOs***"), Deputy CHCOs, Human Resources Directors, Chiefs of Staff, and DOGE team leads.

Appendix 1- Sample RIF Timeline

This sample timeline is prepared in accordance with the U.S. Office of Personnel Management **Workforce Reshaping Operations Handbook.** RIF timing may vary based on agency-specific requirements, collective bargaining agreements, and workforce considerations. Agencies can accelerate these timelines through parallel processing, securing OPM waivers to policy, expediting process steps, and streamlining stakeholder coordination.

Step 1: Identification of Competitive Areas and Levels (by March 13, 2025 for Phase 1 ARRPs)

1. Identify competitive areas and levels and determine which positions may be affected. If applicable, seek OPM waiver approval to adjust competitive areas within 90 days of the RIF effective date.
2. For Phase 1 ARRPs, this step should be completed no later than March 13, 2025.

Step 2: Planning, Preparation & Analysis (up to 30 days)

1. Explore use of VSIP/VERA.
2. Conduct an impact assessment.
3. Review position descriptions for accuracy, validate competitive levels, and verify employee retention data (e.g., veteran preference, service computation dates).
4. Develop retention register.
5. Draft RIF notices and seek OPM waiver approval for a 30-day notification period.
6. Develop transition materials.
7. Notify unions (if required).
8. Prepare congressional notification (if required).

Step 3: Formal RIF Notice Period (60 days, shortened to 30 days with an OPM waiver)

1. Issue official RIF notices.
2. Provide employees with appeal rights, career transition assistance, and priority placement options.
3. Execute any required congressional notification and notice to the Department of Labor, state, and local officials, if applicable.

Step 4: RIF Implementation & Separation (Final Step)

1. Officially implement separations, reassignments, or downgrades.
2. Provide final benefits counseling, exit processing, and documentation.
3. Update HR systems and notify OPM of personnel actions.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

Case No. 25-cv-03698-SI

ORDER GRANTING TEMPORARY RESTRAINING ORDER AND COMPELLING CERTAIN DISCOVERY PRODUCTION

Re: Dkt. No. 37

The new presidential administration has made clear that it intends to change the way the federal government operates. An Executive Order issued on February 11, 2025 seeks to "commence[] a critical transformation of the Federal bureaucracy" by "eliminating waste, bloat, and insularity[.]" Exec. Order No. 14210, 90 Fed. Reg. 9,669 (Feb. 11, 2025). It is the prerogative of presidents to pursue new policy priorities and to imprint their stamp on the federal government. But to make large-scale overhauls of federal agencies, any president must enlist the help of his co-equal branch and partner, the Congress. Federal courts should not micromanage the vast federal workforce, but courts must sometimes act to preserve the proper checks and balances between the three branches of government. As a group of conservative former government officials and advisors have written to the Court, "Unchecked presidential power is not what the Framers had in mind." Dkt. No. 69-1 at 1.

The plaintiffs in this case—a collection of unions, non-profit organizations, and local governments—contend that the executive branch cannot lawfully implement large-scale reductions in the federal workforce without the participation of Congress. They bring this suit against President Trump, numerous federal agencies, and their respective agency heads. Specifically, plaintiffs

contest several layers of actions within the executive branch. First, they argue President Trump exceeded his authority when issuing Executive Order 14210, which directs agency heads "to initiate large-scale reductions in force (RIFs)," focusing on "all agency initiatives, components, or operations that my Administration suspends or closes." *See* Exec. Order No. 14210 § 3(c). Second, they argue that a subsequent memo from the Office of Management and Budget and the Office of Personnel Management implementing the executive order exceeded those agencies' authority and violated the Administrative Procedure Act (APA). And third, they argue that the "Agency RIF and Reorganization Plans" submitted by various agencies across the government likewise violate the Administrative Procedure Act. With layoffs pending across multiple federal agencies, plaintiffs seek a temporary restraining order to pause any reductions in force and preserve the status quo as this lawsuit moves forward.

The Court GRANTS a temporary restraining order as described below.[1] The Court finds that plaintiffs are likely to succeed on the merits of at least some of their claims. The irreparable harm that plaintiffs will suffer in the absence of injunctive relief outweighs any burden placed on the government by this two-week pause. In the context of a dynamic situation, the Court's temporary order seeks to preserve the status quo and protect the power of the legislative branch.

Plaintiffs have submitted sixty-two sworn declarations to the Court, constituting more than 1,000 pages of evidentiary material. Before proceeding through technical legal arguments, the Court finds it appropriate to highlight several of these declarations to illustrate what is at stake in this lawsuit and some of the ways in which executive and legislative powers intersect.

The National Institute for Occupational Safety and Health (NIOSH) is part of the Centers for Disease Control in the Department of Health and Human Services. Dkt. No. 41-1 ("Decl. Niemeier-Walsh AFGE") ¶ 5. There are (or were) 222 NIOSH employees in the agency's Pittsburgh office that research health hazards faced by mineworkers. *Id.* ¶ 28. According to the union that represents many of these employees, the department's reduction-in-force will terminate 221 of 222

[1] At the hearing, the Court denied defendants' request to convert plaintiffs' motion for a temporary restraining order into a motion for a preliminary injunction.

of these positions. *Id.* Congress established NIOSH in the Occupational Safety and Health Act of 1970. Pub. L. 91-596 § 22, 84 Stat. 1590, 1612 (1970).

The Department of Labor houses the Office of Federal Contract Compliance Programs, which ensures that federal contractors do not discriminate on the basis of race, color, religion, sex, national origin, veteran status, or disability. Dkt. No. 37-24 ("Decl. Levin AFGE") ¶ 7. In late January of this year, department leadership directed the employees in this office to stop their enforcement efforts. *Id.* ¶ 9. On April 16, 2025, after giving employees an opportunity to accept a deferred resignation, the department placed remaining employees in the office on administrative leave, effective almost immediately. *Id.* ¶ 14. On May 6, 2025, employee union representatives were informed that a RIF had been approved and that all positions in the Washington, D.C. Enforcement Division of the office were being abolished. Dkt. No. 70-2 ("Decl. Gamble AFGE ISO Reply") ¶ 4, Ex. A. Congress has directed by statute that the Department of Labor "shall promptly investigate" complaints of discrimination against disabled workers or veterans by federal contractors. 29 U.S.C. § 793(b); 38 U.S.C. § 4212.

The federal Office of Head Start resides in the Department of Health and Human Services. Plaintiff Santa Clara County, California runs a childcare and early learning program for 1,200 infants and preschoolers with funding from federal Head Start, but that funding expires June 30, 2025. Dkt. No. 37-26 ("Decl. Neuman SEIU") ¶ 21. County staff worked with Office of Head Start employees to apply for a grant renewal, but those federal employees have now all been laid off and their San Francisco office closed. *Id.* Facing uncertainty about whether its grant will be approved before funding expires, the county has notified more than one hundred early learning program workers that they might lose their jobs on July 1, 2025. *Id.* Congress reauthorized the national Head Start program and provided details for its administration through the Improving Head Start for School Readiness Act of 2007. Pub. L. 110-134, 121 Stat. 1363 (2007).

The Farm Service Agency in the U.S. Department of Agriculture provides specialized, low-interest loans to small farmers not available from the private sector. Dkt. No. 37-37 ("Decl. Davis NOFA") ¶¶ 20-21. After unprecedented flooding in 2024, one Vermont farmer asked the Farm Service Agency for disaster assistance to plant a new crop, but the agency first had to inspect the

fields. *Id.* ¶ 28. Due to low staffing levels, the farmer had to wait three to four weeks for an inspection and consequently missed the planting window that season. *Id.* The department now reportedly intends to further reduce staff at the agency. *Id.* ¶ 18. Other farmers have reported their contacts at the department have been laid off and the remaining staff are not familiar with their farms or their projects. *Id.* ¶¶ 40-41. Congress granted the Secretary of Agriculture the authority to establish the Farm Service Agency in 1994. Pub. L. 103-354 § 226, 108 Stat. 3178, 3214 (1994) (codified at 7 U.S.C. § 6932).

The Social Security Administration seeks to reduce its workforce by 7,000 employees. Dkt. No. 37-11 ("Decl. Couture AFGE") ¶ 9, Ex. C. Since staff reductions began, retirees have reported long wait times to reach an agency representative on the phone, problems with the agency's website, and difficulty making in-person appointments. Dkt. No. 37-39 ("Decl. Fiesta ARA") ¶ 7. One individual got through to a representative only after eleven attempts to call, each involving hours on hold. Dkt. No. 41-2 ("Decl. Nelson AFSCME") ¶ 12. Congress first established the Social Security Administration in the Social Security Act of 1935, known at that time as the Social Security Board. Pub. L. 74-271, § 701 et seq., 49 Stat. 620, 635 (1935) (now codified at 42 U.S.C. § 901 et seq.).

These examples illustrate there are various ways in which Congress is lawfully involved in the activity of administrative agencies. With this basic point in mind, the Court now turns to the facts of this case.

BACKGROUND

I. Executive Order 14210 and the Challenged Memorandum

On February 11, 2025, President Trump issued Executive Order 14210, "Implementing the President's 'Department of Government Efficiency' Workforce Optimization Initiative." 90 Fed. Reg. 9,669 (Feb. 11, 2025). The order "commences a critical transformation of the Federal bureaucracy[.]" *Id.* § 1. Section 3(c) of the order states,

> Agency Heads shall promptly undertake preparations to initiate large-scale reductions in force (RIFs), consistent with applicable law, and to separate from Federal service temporary employees and reemployed annuitants working in areas that will likely be subject to the RIFs. All offices that perform functions not mandated by statute

> or other law shall be prioritized in the RIFs, including all agency diversity, equity, and inclusion initiatives; all agency initiatives, components, or operations that my Administration suspends or closes; and all components and employees performing functions not mandated by statute or other law who are not typically designated as essential during a lapse in appropriations as provided in the Agency Contingency Plans on the Office of Management and Budget website. This subsection shall not apply to functions related to public safety, immigration enforcement, or law enforcement.

Id. § 3(c). The order also directs agencies to submit a report within thirty days to the Office of Management and Budget that "shall discuss whether the agency or any of its subcomponents should be eliminated or consolidated." *Id.* § 3(e).

In response to Executive Order 14210, the directors of the Office of Management and Budget (OMB) and the Office of Personnel Management (OPM) sent a memo to heads of executive departments and agencies on February 26, 2025. Dkt. No. 37-1, Ex. B ("OMB/OPM Memo"). The memo states that "tax dollars are being siphoned off to fund unproductive and unnecessary programs that benefit radical interest groups while hurting hard-working American citizens. [¶] The American people registered their verdict on the bloated, corrupt federal bureaucracy on November 5, 2024 by voting for President Trump and his promises to sweepingly reform the federal government." *Id.* at 1. The memo instructed agency heads to submit Agency RIF and Reorganization Plans (ARRPs) to OMB and OPM for review and approval. Agencies were directed to submit a "Phase 1" ARRP by March 13, 2025 that included, among other information, any Congressional statutes that established the agency, whether parts of the agency should be eliminated, a list of essential positions, how the agency intends to reduce positions, a "suggested plan for congressional engagement to gather input and agreement on major restructuring efforts," and the agency's timeline for implementation. *Id.* at 3-4. The memo directs agencies to submit "Phase 2" ARRPs by April 14, 2025 that include, among other information, all reductions that will occur through RIFs, proposed relocations of offices from the Washington, D.C. area to "less-costly parts of the country," "[a]n explanation of how the ARRPs will improve services for Americans and advance the President's policy priorities," a certification that the ARRPs will improve the delivery of direct services, and a timetable for implementation. *Id.* at 4-6. The memo also instructs agencies to send monthly progress reports to OMB and OPM on May 14, June 16, and July 16, 2025. *Id.* at

6. The memo excludes law enforcement, border security, national security, immigration enforcement, public safety, military personnel, the Executive Office of the President, and the U.S. Postal Service. *Id.*

II. The Agency Defendants and Their Locations within the Federal Bureaucracy

A. The Central Agencies: OMB, OPM, and DOGE

In 1970, Congress transferred OMB to the president's authority. Reorganization Plan No. 2 of 1970, 84 Stat. 2085 (1970) (located at 5 U.S.C. Appendix, page 213). In 1982, Congress codified OMB's current location in the Executive Office of the President[2] at 5 U.S.C §§ 501-507. Congress established OPM as an "independent establishment in the executive branch" and the agency resides outside of the Executive Office of the President. 5 U.S.C. § 1101. In 2025, President Trump refashioned the U.S. Digital Service—an office that President Obama created within OMB[3]—into the U.S. DOGE Service via Executive Order 14158. 90 Fed. Reg. 8,441 (Jan. 20, 2025). DOGE is known colloquially as the Department of Government Efficiency, but it derives no authority from statutes.

B. The Other Federal Agency Defendants

The defendants include twenty-one other federal departments or agencies that are arguably more public facing. For ease of reference, this order refers to these defendants collectively as the "federal agency defendants." That term does not include OMB, OPM, or DOGE. Fourteen of the federal agency defendants are considered "executive departments" under 5 U.S.C. § 101 and have been established by Congressional statute.[4] *See*, *e.g.*, 7 U.S.C. § 2201 (USDA); 22 U.S.C. § 2651

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[2] "Established in 1939, the Executive Office of the President (EOP) consists of a group of federal agencies immediately serving the President." Harold C. Relyea, Cong. Rsch. Serv., 98-606, *The Executive Office of the President: An Historical Overview* (2008).

[3] *See* Clinton T. Brass and Dominick A. Fiorentino, Cong. Rsch. Serv., IN12493, *Department of Government Efficiency (DOGE) Executive Order: Early Implementation* (2025).

[4] These include the departments of Agriculture (USDA), Commerce, Defense, Energy, Health and Human Services (HHS), Homeland Security (DHS), Housing and Urban Development (HUD), Justice (DOJ), Interior, Labor, State, Treasury, Transportation, and Veterans Affairs (VA). The only executive department not named in this suit is the Department of Education. Plaintiffs'

(State); 38 U.S.C. § 301 (VA); 42 U.S.C. § 3532 (HUD).

Six additional defendant agencies have a statutory basis elsewhere in the United States Code and one was created by President Nixon under reorganization authority granted by Congress, as follows:

Defendant AmeriCorps, known formally as the Corporation for National and Community Service, received its current statutory formulation through the National and Community Service Trust Act of 1993. Pub. L. 103-82, title II, §§ 202-03, 107 Stat. 785, 873 (1993) (codified at 42 U.S.C. § 12651 et seq.). AmeriCorps is a "government corporation." 42 U.S.C. § 12651 (referring to 5 U.S.C. § 103).

Defendant General Services Administration (GSA) was established by Congress in the Federal Property and Administrative Services Act of 1949. Pub. L. 81-152, 63 Stat. 277 (1949). The structure of the agency is now codified at 42 U.S.C. § 301 et seq.

Defendant National Labor Relations Board (NLRB) was created by the National Labor Relations Act of 1935. Pub. L. 74-198, ch. 372, 49 Stat. 449 (1935). The structure of the agency is codified at 29 U.S.C. § 153.

Defendant National Science Foundation (NSF) was established by the National Science Foundation Act of 1950. Pub. L. 81-507, ch. 171, 64 Stat. 149 (1950). The structure of the agency is codified at 42 U.S.C. § 1861 et seq.

Defendant Small Business Administration (SBA) was established by the Small Business Act of 1953 as amended in 1958. Pub. L. 85-536, 72 Stat. 384 (1958). The structure of the agency is now codified at 15 U.S.C. § 633 et seq.

Defendant Social Security Administration (SSA) was first established by Congress in the Social Security Act of 1935, known at that time as the Social Security Board. Pub. L. 74-271, § 701 et seq., 49 Stat. 620, 635 (1935) (now codified at 42 U.S.C. § 901 et seq.).

Defendant Environmental Protection Agency (EPA) was created by the Reorganization Plan

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TRO motion does not implicate the departments of Defense, Justice, or Homeland Security. *See* Dkt. No. 37 at 1.

No. 3 of 1970 under statutory reorganization authority granted to the president by Congress at that time. 35 Fed. Reg. 15,623, 84 Stat. 2086 (1970) (located at 5 U.S.C. Appendix, page 216).

III. Agency RIF and Reorganization Plans (ARRPs)

Pursuant to the terms of the OMB/OPM February 26, 2025 memo, federal agencies were directed to submit Phase 1 ARRPs by March 13, 2025 and Phase 2 ARRPs by April 14, 2025. OMB/OPM Memo at 3-4. Defendants have not publicly released these plans despite requests from the public, employees, and members of Congress. An agency's action steps would include the following: (1) submitting its ARRP to OMB and OPM; (2) receiving approval of the ARRP by OMB and OPM; (3) sending of RIF notices; (4) placing employees on administrative leave; and (5) terminating employees.

As described in sworn declarations submitted by plaintiffs, the defendant agencies appear to be at different points along this continuum of action. RIFs have started at multiple agencies, including HHS, HUD, Labor, State, AmeriCorps, GSA, and SBA. After sending RIF notices to employees, agencies have sometimes placed these employees on immediate administrative leave until the termination date set by the RIF, usually sixty days after the notice. *See*, *e.g.*, Dkt. No. 37-14 ("Decl. Fabris AFGE") ¶¶ 11-15. The earliest RIF termination date that the Court can discern from the declarations is May 18, 2025, at which point some HUD employees will be terminated. Dkt. No. 41-1 ("Decl. Bobbitt AFGE") ¶¶ 13, 14, Exs. C, D.

As directed by Executive Order 14210, the scale of the RIFs is large. Here are some examples. HHS is issuing RIF notices to 8,000-10,000 employees. Dkt. No. 37-17 ("Decl. Garthwaite AFGE") ¶ 7, Ex. A. Reports indicate the Department of Energy has identified 8,500 positions as eligible for cuts, nearly half of its workforce. Dkt. No. 37-8 ("Decl. Braden AFGE") ¶ 12, Ex. A. The National Oceanic and Atmospheric Administration is reportedly preparing a RIF to reduce its workforce by more than half. Dkt. No. 37-40 ("Decl. Molvar WWP") ¶ 23. Reports also suggest that HUD is preparing to cut half of its staff and close many field offices. Decl. Bobbitt AFGE ¶¶ 9, 11, Exs. A, B. Department of Labor management have said internally that they intend to cut the agency's headquarters staff by 70%. Dkt. No. 37-16 ("Decl. Gamble AFGE") ¶ 12.

Reports suggest the Internal Revenue Service in the Department of the Treasury plans to cut 40% of its staff. Dkt. No. 37-42 ("Decl. Olson CTR") ¶ 10. The VA is planning to cut 83,000 positions. Dkt. No. 37-5 ("Decl. Bailey SEIU") ¶ 12. AmeriCorps sent an email to employees announcing a reorganization that will cut more than half of its workers. Dkt. No. 37-12 ("Decl. Daly AFSCME") ¶ 14, Ex. A. NSF has been directed to cut about half of its 1,700 staff. Dkt. No. 37-32 ("Decl. Soriano AFGE") ¶¶ 9-10, Ex. A. The SBA announced it planned to cut its workforce by more than 40%. Dkt. No. 37-18 ("Decl. Gustafsson AFGE") ¶ 6, Ex. A.

IV. Plaintiffs

The union plaintiffs in this case consist of the American Federation of Government Employees (AFGE) and four of its locals (Local 1122, Local 1236, Local 2110, and Local 3172), the American Federation of State County and Municipal Employees (AFSCME), and the Service Employees International Union (SEIU) and one of its locals (Local 1000). Eleven membership-based non-profit organizations have joined the unions as co-plaintiffs: Alliance for Retired Americans, American Geophysical Union, American Public Health Association, Center for Taxpayer Rights, Coalition to Protect America's National Parks, Common Defense Civic Engagement, Main Street Alliance, Natural Resources Defense Council, Northeast Organic Farming Association, VoteVets Action Fund, and Western Watersheds Project. Six local governments have also joined the suit: Santa Clara County, CA; King County, WA; Baltimore, MD; Harris County, TX; Chicago, IL; and San Francisco, CA.

The plaintiffs in this action are discussed more fully in the Court's consideration of standing below.

V. Procedural History

Plaintiffs filed their complaint on Monday, April 28, 2025. Dkt. No. 1. The complaint alleges that President Trump's Executive Order 14210 is *ultra vires* and usurps Congressional authority, in violation of the Constitution's separation of powers (Claim One); that OMB, OPM, and DOGE also acted *ultra vires* or beyond their authority in directing agencies to submit ARRPs and

engage in RIFs (Claim Two); that the February 26, 2025 memo violated the Administrative Procedure Act in several ways (Claims Three through Five); and that the federal agency defendants' ARRPs also violate the Administrative Procedure Act (Claims Six and Seven).

On Thursday, May 1, 2025, plaintiffs filed a motion for a temporary restraining order. Dkt. No. 37 ("Mot."). Per the Court's schedule, defendants filed an opposition on Wednesday, May 7, 2025, and plaintiffs filed a reply the following day. Dkt. Nos. 60 ("Opp'n"), 70 ("Reply"). The Court has received several briefs from *amici curiae*. Dkt. Nos. 51, 69, 71, 75. The Court heard oral arguments on the motion on Friday, May 9, 2025.

LEGAL STANDARD

A party may seek a temporary restraining order (TRO) to preserve the status quo and prevent irreparable harm until a preliminary injunction hearing may be held. *Reno Air Racing Ass'n, Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006) (citing *Granny Goose Foods, Inc. v. Teamsters*, 415 U.S. 423, 438-39 (1974)); Fed. R. Civ. P. 65(b). The standard for evaluating a TRO is "substantially identical" to the standard for evaluating injunctive relief. *Babaria v. Blinken,* 87 F.4th 963, 976 (9th Cir. 2023), *cert. denied sub nom. Babaria v. Jaddou*, 145 S. Ct. 160 (2024) (internal quotation marks and citations omitted).

"[I]njunctive relief [is] an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008). In order to obtain a preliminary injunction, the plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Id.* at 20 (citations omitted). When the nonmoving party is the government, the final two factors merge. *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

Alternatively, under the "serious questions" test, the plaintiff may demonstrate "that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor," so long as the other two *Winter* factors are also met. *All. for the Wild Rockies v. Cottrell*,

632 F.3d 1127, 1134-35 (9th Cir. 2011) (internal quotation marks and citation omitted). This formulation recognizes a sliding scale approach, where "a stronger showing of one element may offset a weaker showing of another." *Id.* at 1131, 1134-35.

DISCUSSION

I. Timing

To start, the Court addresses defendants' argument that plaintiffs' motion for a temporary restraining order should be denied because it was brought too late after the Executive Order was filed and the OMB/OPM Memorandum issued. Opp'n at 19-22. Defendants' argument is not well-taken. The details of the ARRPs have only trickled into public view due to defendants' ongoing decision not to release the plans publicly. Moreover, in a case where other plaintiffs challenged Executive Order 14210 shortly after it was issued, as defendants suggests plaintiffs here should have done, the government's attorneys argued that plaintiffs' harm was too "speculative" to establish injury. *See Nat'l Treasury Emps. Union v. Trump*, No. 25-CV-420 (CRC), Dkt. No. 14 at 10-11 (D.D.C. filed Feb. 17, 2025). Defendants cannot have it both ways. The Court finds that plaintiffs reasonably waited to gather what information they could about the harm they may suffer from the Executive Order, the OMB/OPM Memorandum, and the ARRPs.

II. Standing

Federal courts may only hear a case if plaintiffs can show they have standing to sue. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016, revised May 24, 2016). "As a general rule, in an injunctive case this court need not address standing of each plaintiff if it concludes that one plaintiff has standing." *Nat'l Ass'n of Optometrists & Opticians LensCrafters, Inc. v. Brown*, 567 F.3d 521, 523 (9th Cir. 2009).

To establish standing to sue, plaintiffs must show an injury, trace that injury to the defendants' conduct, and prove that courts can provide adequate redress for the injury. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). The injury "must be concrete, particularized, and actual or imminent." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (internal quotation

marks and citation omitted). To be imminent, a threatened injury must be "*certainly impending*"—"allegations of *possible* future injury are not sufficient." *Id.* (internal quotation marks, brackets, and citations omitted). Plaintiffs cannot base standing on a theory of harm that "relies on a highly attenuated chain of possibilities." *Id.* at 410. The standing inquiry must be "rigorous" where the court faces claims that Congress or the executive branch has acted unconstitutionally. *Id.* at 408.

Organizational plaintiffs such as trade unions or membership-based non-profit organizations have two paths to establishing standing. "[A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977). Organizations without formal members may achieve associational standing if they are "the functional equivalent of a membership organization." *Fund Democracy, LLC v. S.E.C.*, 278 F.3d 21, 25 (D.C. Cir. 2002) (citing *Hunt*, 432 U.S. at 342-45).

Injury may come in many forms. The threat of a pending job loss constitutes a concrete economic injury. *Am. Fed'n of Lab. v. Chertoff*, 552 F. Supp. 2d 999, 1014 (N.D. Cal. 2007). The possible loss of federal funding is also sufficient to establish injury. *Nat'l Urb. League v. Ross*, 508 F. Supp. 3d 663, 688 (N.D. Cal. 2020). A failure to provide relevant information can constitute injury where one might be entitled to such information. *Fed. Election Comm'n v. Akins*, 524 U.S. 11, 20 (1998). While the Ninth Circuit has held an organization can meet the injury requirement by showing it had to divert resources to fight a problem affecting the organization, *La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010), the Supreme Court recently rejected organizations seeking standing "simply by expending money to gather information and advocate against the defendant's action," *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 394 (2024).

With this framework in mind, the Court now turns to the question of standing as applied to plaintiffs in this case. Since the Court need not address the standing of each plaintiff to proceed as long as it finds standing for at least one plaintiff, it limits its discussion below.

A. Injury

The numerous plaintiffs in this case can be divided into three general groups, each with its own set of alleged injuries.

1. Union Plaintiffs

In the declarations filed in support of their motion for a temporary restraining order, the union plaintiffs assert the following categories of harm.

First, and perhaps most obviously, they assert injury on behalf of their federal employee members who have received RIF notices or suffer under the looming threat of such notices. Second, they contend that their federal employees who are not let go will be injured by significantly increased workloads. Third, they assert injury to the unions themselves, in the form of "thousands of hours" of diverted staff resources and the loss in dues revenue that will result from the loss of employee members. *See*, *e.g.*, Dkt. No. 37-23 ("Decl. Kelley AFGE") ¶¶ 12-13, 15, 20.

The unions also assert injury on behalf of their non-federal employee members who stand to lose their jobs as a result of federal workforce reductions. For example, SEIU represents 6,000 federal contract workers at facilities that may face closure in the wake of staff reductions. Dkt. No. 37-3 ("Decl. Adler SEIU") ¶¶ 4, 9. These workers have lost their jobs during government shutdowns, or in the recent contested closure of the U.S. Institute of Peace facility. *Id.* ¶¶ 5, 7. Similarly, if staff reductions lead to the delay in processing of Medicare enrollment or other federal fund sources like grant payments, union members that work in sectors that depend on these revenue streams face layoffs. As just two provided examples, AFSCME members work in local housing authorities and local transit agencies that rely on a steady stream of federal funding. Dkt. No. 41-5 ("Decl. O'Brien AFSCME") ¶¶ 39-40, 45-46.

In response, defendants first argue that the unions do not show that a specific federal employee has been harmed or will imminently be harmed. Opp'n at 32 (citing *Summers v. Earth Island Inst.*, 555 U.S. 488, 499 (2009)). Defendants are factually mistaken and overstate their legal case. Factually, multiple declarants have asserted personal harm. *See*, *e.g.*, Decl. Fabris AFGE ¶ 10

(declarant received RIF notice); Dkt. No. 37-24 ("Decl. Levin AFGE") ¶¶ 14-15 (declarant placed on same-day administrative leave); Decl. Bobbit AFGE, Ex. D (declarant received and provided redacted list of employees in RIF notice). As to the doctrine, the Court in *Summers* wanted to ensure that injury had been specifically established by sworn affidavits. The Ninth Circuit has later clarified that naming individuals is not necessary "when it is clear and not speculative that a member of a group will be adversely affected by a challenged action and a defendant does not need to know the identity of a particular member to defend against an organization's claims." *Mi Familia Vota v. Fontes*, 129 F.4th 691, 708 (9th Cir. 2025). It is not speculative here that the union's members are being harmed by defendants' challenged actions.

The unions also establish standing as organizations representing federal employees based on impending direct financial harm to their organizations in the form of lower membership numbers and lower dues.

SEIU has also established standing based on the federal contract workers that it represents. These workers have lost their jobs when federal facilities close. Decl. Adler SEIU ¶¶ 5, 7. The ARRPs are likely to result in the closure of more federal facilities,[5] and when that happens SEIU's contract workers will lose their jobs. This is not like the attenuated five-link chain of cascading events in *Clapper*—given the breadth of the RIFs that have been announced, these injuries are "certainly impending." *See Clapper*, 568 U.S. at 410. AFSCME also represents non-federal employee workers who rely on the federal workforce to process grants to support their work. In the Department of Energy's Weatherization Assistance Program, reports indicate the number of federal staff will decrease by 75%. Dkt. No. 37-15 ("Decl. Gabel AFSCME") ¶ 11. If or when these cuts are implemented, AFSCME workers at a non-profit supported by this program will find it "extremely challenging to get the necessary grant money to operate, and layoffs . . . are almost certain." *Id.* ¶ 12. While slightly more attenuated than the contract workers' basis for standing, the Court finds that these facts support an independent basis for standing as well.

[5] One of the principles to inform the ARRPs, per the OMB/OPM Memorandum, is "[a] reduced real property footprint." OMB/OPM Memo at 2.

Defendants also challenge whether the employees who will be saddled with more work will have experienced a concrete harm. Opp'n at 33. The Court need not decide at this stage whether this type of injury is sufficient for standing.

2. Non-Profit Plaintiffs

All of these non-profit organizations except for the Natural Resources Defense Council have submitted declarations that detail the harms that significant federal workforce reductions impose upon their members or the organizations themselves. Two consistent themes emerge from these declarations. First, the organizations' members benefit from services provided by federal employees, but significant staffing reductions across various agencies impact their ability to continue to benefit. Second, many of the organizations assert that they have had to divert resources away from their primary mission to respond to the impact of federal staffing cuts on their members.

As defendants note, the diversion of resources theory rests on shakier ground after *Food & Drug Administration v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 394 (2024).[6] But at least some of the organization plaintiffs establish injury on other bases. For example, the American Geophysical Union attests that implementation of ARRPs will cause the organization to lose membership, publication authors, and conference attendees, resulting in a loss of revenue to the organization. Dkt. No. 37-45 ("Decl. Shultz AGU") ¶¶ 9, 28-29. Based on its past experience, the Center for Taxpayer Rights suggests that its low-income members will see delays to the processing of refunds that they rely on for day-to-day expenses. Dkt. No. 37-42 ("Decl. Olson CTR") ¶¶ 35-37. The Executive Director of the Western Watersheds Project finds personal enjoyment from visiting the Arctic grayling in its natural habitat, an enjoyment threatened by further cuts to the agency currently working on Endangered Species Act findings for that species. Dkt. No. 37-40 ("Decl. Molvar WWP") ¶¶ 15-18. Harm that "affects the recreational or even the mere esthetic

[6] The Supreme Court there denied standing when plaintiff organizations incurred costs opposing the government's actions but explained that organizations have standing when a defendant's acts "directly affected and interfered with [plaintiff's] core business activities." *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. at 395.

interests of the plaintiff . . . will suffice" for standing. *Summers*, 555 U.S. at 494 (citing *Sierra Club v. Morton*, 405 U.S. 727, 734-736 (1972).

The Court finds these types of harm sufficient to establish injury. None are as attenuated as the causal chain of events leading to potential injury in *Clapper*. The Court reserves a full discussion of standing for each plaintiff for a later stage.

3. Local Government Plaintiffs

To establish standing, a local government must assert a harm to its own "proprietary interests," which "are as varied as a municipality's responsibilities, powers, and assets." *City of Sausalito v. O'Neill*, 386 F.3d 1186, 1197 (9th Cir. 2004). Proprietary interests include a local government's ability to enforce regulations, its ability to collect revenue, and its ability to protect its natural resources. *Id.* at 1198.

The local government plaintiffs assert that large-scale reductions in the federal workforce will jeopardize the timely delivery of many different federal funding streams that their budgets rely on. Baltimore also asserts a more direct financial injury in the form of lost municipal tax revenues, given that 12,400 city residents are (or were) federal employees. Dkt. No. 37-54 ("Decl. Leach—Baltimore") ¶¶ 5-8. The local governments also contend that they will be forced to expend more resources in the absence of federal support, in areas like fighting wildfires or the provision of shelter to the unhoused.

The Court finds the local governments have standing on the basis of impending financial harm. For example, King County has a budget that includes more than $200 million in federal revenue for its operating budgets, and $500 million in federal funds in its capital budget for 2025. Dkt. No. 41-6 ("Decl. Dively—King County") ¶¶ 6, 8. The county communicates with staff across multiple federal agencies to process grants and permits for capital projects; any delay in these communications delays projects and increases costs. *Id.* ¶¶ 22, 26, 31, 33, 38. With large-scale RIFs happening across agencies, such delay is likely.[7] As another example, Harris County Public

[7] As one example, the County believes the closure of HUD's regional office in Seattle will result in delays in disbursement of the County's $47 million in federal grant funds. Decl. Dively—

Health receives grants from the CDC, but has begun to experience a delay in communication after HHS initiated its RIF. Dkt. No. 37-46 ("Decl. Barton—Harris County") ¶¶ 23, 26.

Finding the above sufficient to establish standing for at least some of the local governments, the Court reserves a fuller analysis for another day.

4. Procedural Injury

Lastly, plaintiffs across all of the above categories assert a procedural injury for their notice-and-comment claims, because they contend they would have submitted comments had they been given a chance. *See*, *e.g.*, Dkt. No. 37-31 ("Decl. Soldner AFGE") ¶ 27. Some explained that they provided comments in response to notices about similar proposals during President Trump's first administration. *See*, *e.g.*, *id.*

A procedural injury must be related to a plaintiff's concrete interests. *Summers*, 555 U.S. at 496. As a collection of plaintiffs have established standing based on harm to their concrete interests, the plaintiffs also have standing to challenge a lack of notice and comment procedures.

B. Causation and Redressability[8]

The plaintiffs challenge three layers of action: the president's executive order, the OMB/OPM Memorandum issued pursuant to the executive order, and the agency ARRPs submitted pursuant to the memorandum. The harm experienced by plaintiffs or imminently threatening them comes from the reorganizations and RIFs established by the ARRPs. As many declarants have offered, the agencies had not talked about large-scale RIFs or reorganizations prior to President Trump's executive order. *See, e.g.*, Decl. Bailey SEIU ¶ 10; Decl. Garthwaite AFGE ¶ 6. These harms are fairly traceable to defendants' actions at all three levels; beyond the defendants, there are no intervening actors causing these harms. *See Lujan*, 504 U.S. at 560.

Finally, the Court can redress the harms by vacating the unlawful actions as allowed by the

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King County ¶¶ 37-38.

[8] Defendants do not specifically challenge causation or redressability in their opposition, but the Court must complete the standing inquiry regardless.

APA and Supreme Court precedent.

C. Conclusion as to Standing

At this stage, the Court finds at least some collection of the plaintiffs have sufficient standing to bring their claims.

III. Subject Matter Jurisdiction—*Thunder Basin* Preclusion

Courts generally have jurisdiction under 28 U.S.C. § 1331 to review federal government actions. *Califano v. Sanders*, 430 U.S. 99, 105 (1977). But Congress sometimes precludes district court review "by specifying a different method to resolve claims about agency action," *Axon Enter., Inc. v. Fed. Trade Comm'n*, 598 U.S. 175, 185 (2023), often through channeling review to an adjudicative body within an agency. In determining whether Congress has removed district court jurisdiction, courts ask two questions: whether "the 'statutory scheme' displays a 'fairly discernible' intent to limit jurisdiction" and whether "the claims at issue 'are of the type Congress intended to be reviewed within th[e] statutory structure.'" *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 489 (2010) (quoting *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 207, 212 (1994)).

When examining the second question—whether the particular claims should be channeled to agency review—courts consider three factors from *Thunder Basin*: "First, could precluding district court jurisdiction foreclose all meaningful judicial review of the claim? Next, is the claim wholly collateral to the statute's review provisions? And last, is the claim outside the agency's expertise?" *Axon*, 598 U.S. at 186 (internal quotation marks, brackets, and citations omitted). Affirmative answers to these questions suggest that Congress did not intend to limit jurisdiction, "[b]ut the same conclusion might follow if the factors point in different directions." *Id.* Together, these factors recognize that agency action should rarely evade effective judicial review, but channeling from a district court to an agency adjudication may be appropriate "in the matters [an agency] customarily handles, and can apply distinctive knowledge to." *Id.*

Defendants argue that the Federal Service Labor-Management Relations Statute and the Civil Service Reform Act of 1978 preclude district court jurisdiction over plaintiffs' claims. Opp'n

at 23-31. The Federal Service Labor-Management Relations Statute established a Federal Labor Relations Authority to resolve issues related to collective bargaining between federal employee unions and their employers, including "issues relating to the granting of national consultation rights," "issues relating to determining compelling need for agency rules or regulations," "issues relating to the duty to bargain in good faith," and "complaints of unfair labor practices." 5 U.S.C. § 7105(a)(2). In passing the statute, Congress specified that its provisions "should be interpreted in a manner consistent with the requirement of an effective and efficient Government." *Id.* § 7101(b). The Civil Service Reform Act provides a mechanism for employees who have suffered an adverse action to appeal to the Merit Systems Protection Board. 5 U.S.C. §§ 7512, 7513(d); *see also* 5 U.S.C. § 1204 (delineating functions of the Board). The Civil Service Reform Act of 1978 excluded reductions in force from the definition of "adverse action" appealable to the Board. 5 U.S.C. § 7512(B); 5 C.F.R. § 752.401(b)(3). However, per federal regulations issued by OPM, employees who have been furloughed, separated or demoted by a reduction in force can appeal to the Board. 5 C.F.R. § 351.901.[9] Judicial review of final orders of both the Authority and the Board is available at circuit courts. 5 U.S.C. §§ 7703, 7123(a).

Defendants' opposition cites to courts across the country that have begun to address this question in the context of similar claims. On February 12, 2025, a District of Massachusetts court declined to enjoin enforcement of the deadline for opting into a deferred resignation program. *Am. Fed'n of Gov't Emps., AFL-CIO v. Ezell*, No. CV 25-10276-GAO, 2025 WL 470459, at *1-3 (D. Mass. Feb. 12, 2025). The court determined the plaintiff unions lacked standing and that the claims were precluded by the Federal Service Labor-Management Relations Statute and the Civil Service Reform Act of 1978, which establish "exclusive procedures for disputes involving employees and their federal employers and disputes between unions representing federal employees and the federal government." *Id.*

In a February 20, 2025 ruling, a D.C. district court denied a temporary restraining order and

[9] As defendants' opposition notes, some employees may be precluded from appealing to the Board under the terms of their collective bargaining agreements. Opp'n at 9 n.4.

preliminary injunction because it found that the union plaintiffs were precluded by the Federal Service Labor-Management Relations Statute under *Thunder Basin*. *Nat'l Treasury Emps. Union v. Trump*, No. 25-CV-420 (CRC), 2025 WL 561080, at *8 (D.D.C. Feb. 20, 2025). There, the plaintiffs sought to prevent the termination of probationary employees, anticipated large-scale RIFs, and any renewal of deferred resignation programs. *Id.* at *1. The court determined that the unions' claimed injuries—financial harm and loss of bargaining power—could be meaningfully reviewed through the Federal Labor Relations Authority, even though that body could not resolve the unions' constitutional claims. *Id.* at *6-7. The constitutional question could be revived in an appeal of the FLRA's decision. *Id.* at * 7.

The next day, February 21, 2025, another D.C. district court rejected the injunctive relief requested by two employee unions that sought to pause the administration's attempt to dismantle the U.S. Agency for International Development. *Am. Foreign Serv. Ass'n v. Trump*, No. 1:25-CV-352 (CJN), 2025 WL 573762, at *1 (D.D.C. Feb. 21, 2025). The court held that while "at a high level of generality and in the long run, plaintiffs' assertions of harm could flow from their constitutional and APA claims regarding the alleged unlawful 'dismantl[ing]' of USAID," the court noted that "the agency is still standing, and so the alleged injuries on which plaintiffs rely in seeking injunctive relief flow essentially from their members' existing employment relationships with USAID." *Id.* at *7. The court held that the Federal Service Labor-Management Relations Statute, the Civil Service Reform Act, and the Foreign Service Act of 1980 indicated that Congress intended for these types of claims to be channeled first to the administrative review offered by those statutory schemes. *Id.* at *8-10. The court noted that the Foreign Service Act's scheme was "even broader" than the other two and reasoned that "plaintiffs have presented no irreparable harm they or their members are *imminently* likely to suffer from the hypothetical future dissolution of USAID" absent immediate judicial review. *Id.* The court concluded that it likely lacked jurisdiction, so plaintiffs were unlikely to succeed on the merits of their claims. *Id.* at *11.

All three of the above opinions relied on *American Federation of Government Employees, AFL-CIO v. Trump*, 929 F.3d 748 (D.C. Cir. 2019). In that case, federal employee unions challenged executive orders regarding federal labor-management relations from President Trump's first term.

Id. at 753. The orders directed federal agencies to remove certain subjects from labor negotiations, limit the time employees could spend on union affairs during their workday, and exclude disputes over for-cause terminations from grievance proceedings. *Id.* The appellate court determined that the unions' claims—some of which asserted that the Executive Orders violated the Federal Service Labor-Management Relations Statute itself—must be channeled first to the Federal Labor Relations Authority. *Id.* at 753-54, 761.

More recently, on April 22, 2025, in a case involving the administration's attempt to dismantle the U.S. Agency for Global Media, the district court held that a conclusion that the claims at issue "boiled down to a quotidian employment dispute . . . would ignore the facts on the record and on the ground." *Widakuswara v. Lake*, No. 1:25-CV-1015-RCL, 2025 WL 1166400, at *11 (D.D.C. Apr. 22, 2025). The district court determined that the administrative tribunals "have no jurisdiction to review the cancelation of congressional appropriations" and that the case involved administrative and constitutional law issues, separate from federal employment questions. *Id.* at *11 n.22. On appeal, however, a majority opinion from the D.C. Circuit determined that "[t]he 'dismantling' that plaintiffs allege is a collection of 'many individual actions' that cannot be packaged together and 'laid before the courts for wholesale correction under the APA.'" *Widakuswara v. Lake*, No. 25-5144, 2025 WL 1288817, at *3 (D.C. Cir. May 3, 2025) (citation omitted).

Finally, Judge Alsup of this district found that federal employee unions' challenge to the OPM directive to agencies to terminate probationary employees should not be precluded based on the *Thunder Basin* analysis. *Am. Fed'n of Gov't Emps., AFL-CIO v. OPM*, No. 3:25-cv-01780-WHA, 2025 WL 900057 (N.D. Cal. Mar. 24, 2025).[10] First, the court decided that the *ultra vires* and APA claims in that case would not benefit from the administrative expertise of the Federal Labor Relations Authority or the Merit Systems Protection Board. *Id.* at 3-4. It also found the claims collateral to the review authority of those agencies, because the claims challenged executive

[10] The district court reversed its earlier decision finding preclusion under *Thunder Basin*, upon further briefing.

power, not a specific personnel action. *Id.* at 5. Lastly, it determined that the district court offered the only opportunity for meaningful judicial review. *Id.* at 6. The court noted that probationary employees could not appeal a decision to the Merit Systems Protection Board and distinguished the claims in this case from the bargaining-related issues sent to the Federal Labor Relations Authority in *American Federation of Government Employees, AFL-CIO v. Trump*, 929 F.3d 748 (D.C. Cir. 2019). *Id.* at 7-8.[11]

A. Federal Employee Union Plaintiffs

The Court starts its analysis with the union plaintiffs. The Court agrees with Judge Alsup in this district that the D.C. Circuit's 2019 decision in *AFGE v. Trump* is not particularly helpful to resolving the claims channeling question here. In that case, the claims involved executive orders that touched directly on matters related to collective bargaining, which are central to the purpose of the Federal Labor Relations Authority. *See Am. Fed'n of Gov't Emps., AFL-CIO v. Trump*, 929 F.3d at 753-54, 761. To the extent that other recent orders rely on the 2019 opinion, the Court disagrees with their reasoning. Here, the claims are far afield from the central concerns of the Federal Labor Relations Authority, *see* 5 U.S.C. § 7105(a)(2), instead touching on fundamental questions of executive authority and separation of powers.

Defendants' opposition also cites two fresh opinions from the Fourth Circuit and the D.C. Circuit that found it likely that plaintiffs with similar claims to those here would ultimately be channeled to administrative review schemes. Opp'n at 24-25 (citing *Widakuswara v. Lake*, No. 25-5144, 2025 WL 1288817 (D.C. Cir. May 3, 2025); *Maryland v. U.S. Dep't of Agriculture*, No. 25-1248, 2025 WL 1073657 (4th Cir. Apr. 9, 2025)). When considering out-of-circuit authority, the Court looks to its persuasive value. *See Jones v. PGA TOUR, Inc.*, 668 F. Supp. 3d 907, 917 (N.D.

[11] The preliminary injunction in Judge Alsup's case is currently on appeal. On April 8, 2025, the Supreme Court granted the government's application for an emergency stay of the injunction pending appeal, stating that the non-profit organization plaintiffs on whose claims the original injunction was based had not sufficiently shown standing. *OPM v. AFGE*, --- S. Ct. ----, No. 24A904, 2025 WL 1035208, at *1 (S. Ct. Apr. 8, 2025) (citing *Clapper*). On return to the district court, the case proceeded and the court granted relief as to the claims of the plaintiff unions and the State of Washington.

Cal. 2023). Tthe Fourth Circuit offers no reasoning for its conclusion that the district court lacked jurisdiction, and this Court finds the dissenting opinion in that case more robust and more persuasive. The D.C. Circuit provides slightly more (two paragraphs) on the question of jurisdiction, but again the dissenting judge in that case centered the claims in the appropriate context—the comprehensive dismantling of an entire agency—far more concretely and persuasively than the panel majority.

The Court now moves to its own application of *Thunder Basin*. Recognizing, as other courts have, that the Federal Service Labor-Management Relations Statute and the Civil Service Reform Act indicate an intent to limit jurisdiction in some instances, the Court turns to the second inquiry: "whether the claims at issue are of the type Congress intended to be reviewed within the statutory structure." *Free Enter. Fund*, 561 U.S. at 489 (internal quotation marks, brackets, and citation omitted). The Court concludes the answer is no. To explain, the Court examines each of the three *Thunder Basin* factors in turn, all three of which favor a finding of subject matter jurisdiction in this Court.

First, precluding district court jurisdiction for the union plaintiffs at this time would foreclose meaningful judicial review. Plaintiffs seek an opportunity to challenge "large-scale reductions in force" happening rapidly across multiple agencies in the federal government. In some offices or agencies, nearly all employees are receiving RIF notices. Defendants contend that plaintiffs must take their concerns to what can be a prolonged administrative process and *then* appeal to present their constitutional claim in federal court. By that point, if they prevailed, they "would return to an empty agency with no infrastructure" to support a resumption of their work. *See Widakuswara*, 2025 WL 1166400, at *11 n.22.

Second, the claims at issue here are wholly collateral to the review authority of the Federal Labor Relations Authority and the Merit Systems Protection Board. As noted above, this lawsuit involves questions of constitutional and statutory authority and the separation of powers. Federal employees are simply the ones to suffer most immediately the collateral damage of allegedly unlawful actions. In other words, "[t]he plaintiffs in this lawsuit challenge the evisceration of their jobs only insofar as it is the means by which they challenge defendants' unlawfully halting the work

of [their offices or agencies] and shutting [them] down." *See Widakuswara*, 2025 WL 1288817, at *8 (Pillard, J., dissenting). Moreover, employees' rights to appeal a RIF to the Merit Systems Protection Board comes not directly from statute but from regulation. *See* 5 C.F.R. § 351.901;[12] *see also* 5 U.S.C. § 7512(B) (excluding reductions in force from the review provisions for "adverse actions").[13] When Congress did not directly specify Board review for reductions-in-force claims, it seems unlikely that Congress intended the Merit Systems Protection Board to be the *exclusive* avenue for such claims, let alone claims that involve broader questions about constitutional and administrative law. The same holds true for the Federal Labor Relations Authority—Congress desired that body's enabling statute to be interpreted "in a manner consistent with the requirement of an effective and efficient Government." 5 U.S.C. § 7101(b). There is nothing efficient about sending constitutional claims to a body that cannot decide them, only to wait for an opportunity to appeal.[14]

Third, the claims here involve issues related to the appropriate distribution of authority to and within the executive branch, not the individual employee or labor disputes these two administrative bodies customarily handle. As the Supreme Court has repeated, "agency adjudications are generally ill suited to address structural constitutional challenges." *Axon,* 598 U.S. at 195. Neither the Merit Systems Protection Board nor the Federal Labor Relations Authority have

[12] 5 U.S.C. § 7701 arguably provides *indirect* statutory authority with its rather circular proposition: "An employee, or applicant for employment, may submit an appeal to the Merit Systems Protection Board from any action which is appealable to the Board under any law, rule, or regulation."

[13] Defendants' opposition cites the adverse actions sections without noting that reductions in force are explicitly excluded from those provisions. Opp'n at 12.

[14] In *Elgin v. Department of Treasury*, the Supreme Court decided that there was no exception to Civil Service Reform Act exclusivity for constitutional challenges to federal statutes, in that case a statute that bars those who fail to register for the draft from federal employment. 567 U.S. 1, 12 (2012). The Court held that plaintiffs were obliged to wait to present their constitutional claim to the Federal Circuit after proceeding through the Merit Systems Protection Board. *Id.* at 21. However, the *Elgin* plaintiffs sought to vindicate their own personal rights to employment. Here, the plaintiffs confront an issue much larger in scope: how to interpret the constitutional structure of the federal government. And while the *Elgin* plaintiffs were likely to have a job and an agency to return to in the event they eventually won their case after winding through two layers of administrative and judicial review, the same cannot be said in this case. *See id.* at 25 (Alito, J., dissenting) ("I doubt that Congress intended to channel petitioners' constitutional claims into an administrative tribunal that is powerless to decide them[.]").

special expertise to bear on the questions in this suit.

B. Other Plaintiffs

The rest of the plaintiffs in this case, including the non-profit organizations, the local governments, and the unions in their capacity representing non-federal employees, do not have access to the Federal Labor Relations Authority or the Civil Service Reform Act. Even if the union plaintiffs should be channeled out of court—and this Court thinks they should not—the *Thunder Basin* factors weigh against claims channeling even more strongly when applied to these other plaintiffs. Defendants fail to show how the cases they cite—involving challenges by federal employees—support the channeling of constitutional and APA claims by non-federal employees, including federal contract workers, non-profit organizations on behalf of their members, or local governments. In *U.S. v. Fausto*, cited by both defendants and the *amici* states who filed a brief in support of defendants, the Supreme Court held that a type of employee that received lesser privileges in the Civil Service Reform Act was not entitled to district court review that was denied to employees who had more privileges under the Act, because holding otherwise would have flipped the structural logic of the Act. 484 U.S. 439, 448-49 (1988). But the Civil Service Reform Act says nothing at all about non-federal employee unions, non-profit organizations, or local governments. The Court is not persuaded that, when Congress created the Merit Systems Protection Board or the Federal Labor Relations Authority, it intended for constitutional and APA claims by these sorts of plaintiffs to be precluded from federal court. *See Am. Fed'n of Gov't Emps., AFL-CIO v. OPM*, No. 25-1677, 2025 WL 914823, at *1 (9th Cir. Mar. 26, 2025) (in denying an application for an emergency stay, finding the government had not shown they are likely to establish that Congress intended to channel claims by non-profit organizations to the same administrative agencies).

IV. Analysis of the *Winter* Factors

The Court now proceeds to the *Winter* factors, examining whether plaintiffs have established they are likely to succeed on the merits, whether they are likely to suffer irreparable harm in the absence of preliminary relief, if the balance of equities tips in their favor, and whether an injunction

is in the public interest. *See Winter*, 555 U.S. at 22.

A. Likelihood of Success on the Merits

1. *Ultra Vires*

Plaintiffs' first and second claims for relief allege that Executive Order 14210, and the actions and orders of OMB, OPM, and DOGE to implement the Executive Order, violate the separation of powers and are therefore *ultra vires*.

"When an executive acts *ultra vires*, courts are normally available to reestablish the limits on his authority." *Sierra Club v. Trump*, 963 F.3d 874, 891 (9th Cir. 2020), *vacated and remanded on other grounds, sub nom. Biden v. Sierra Club*, 142 S. Ct. 46 (2021) (quoting *Dart v. United States*, 848 F.2d 217, 223 (D.C. Cir. 1988)). The ability to enjoin unconstitutional action by government officials dates back to the courts of equity, "reflect[ing] a long history of judicial review of illegal executive action, tracing back to England." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015) (citing Jaffe & Henderson, *Judicial Review and the Rule of Law: Historical Origins*, 72 L.Q. Rev. 345 (1956)). Where the President exceeds his authority, the district court may declare the action unlawful and an injunction may issue. *Sierra Club*, 963 F.3d at 891 (explaining that, in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587 (1952), "The [Supreme] Court never questioned that it had the authority to provide the requested relief").

a. Actions by President Trump

Plaintiffs are likely to succeed on their claim that the President's Executive Order 14210 is *ultra vires*, as the President has neither constitutional nor, at this time, statutory authority to reorganize the executive branch.

"In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute." *Youngstown*, 343 U.S. at 587.

Article I of the U.S. Constitution vests in Congress the legislative power. U.S. Const. art. I, § 1. "To Congress under its legislative power is given the establishment of offices, [and] the determination of their functions and jurisdiction . . . ." *Myers v. United States*, 272 U.S. 52, 129 (1926). "Congress has plenary power over the salary, duties, *and even existence* of executive offices." *Free Enter. Fund*, 561 U.S. at 500 (emphasis added). While "[t]he President may create, reorganize, or abolish an office that *he* established," the Constitution does not authorize him "to enact, to amend, or to repeal statutes." *Clinton v. City of New York*, 524 U.S. 417, 438 (1998) (emphasis added); *see also Nat'l Fed'n of Indep. Bus. v. Dep't of Labor, Occupational Safety & Health Admin.*, 595 U.S. 109, 117 (2022) ("Administrative agencies are creatures of statute.").

In 1952, the Supreme Court considered the validity of an Executive Order by President Truman, who ordered the Secretary of Commerce to seize most of the nation's steel mills to prevent strikes from halting steel production during the Korean War. *Youngstown,* 343 U.S. at 582. Although various statutes authorized the President to seize property under certain circumstances, none of the statutory conditions had been met, and so the President claimed the seizures were lawful pursuant to his constitutional authority. In reviewing whether the district court's preliminary injunction to stop enforcement of the order was proper, the Supreme Court explained, "The President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself." *Id.* at 585. Where President Truman lacked both constitutional and statutory authority to seize the steel mills, the Supreme Court affirmed the district court injunction.

Youngstown applies here. Defendants do not claim that Executive Order 14210 issued under the President's constitutional powers. Rather, they attempt to fit the President's actions into existing statutory authority. Such statutory authority, however, is plainly lacking. The Ninth Circuit has explained,

Justice Jackson's *Youngstown* concurrence provides the operative test in this context:

> When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain exclusive presidential control in such a case only by disabling the Congress from acting upon the subject. Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution,

> for what is at stake is the equilibrium established by our constitutional system

City & Cnty. of San Francisco v. Trump, 897 F.3d 1225, 1233 (9th Cir. 2018) (quoting *Youngstown*, 343 U.S. at 637-38 (Jackson, J., concurring)).

As history demonstrates, the President may broadly restructure federal agencies only when authorized by Congress. "Although the U.S. Constitution vests in Congress the authority to organize the Executive Branch,[] former presidential administrations have asked Congress to grant expedited government reorganization authority to execute cross-agency government reorganizations more efficiently." S. Rep. No. 115-381, at 4 (2018). Since 1932, when President Hoover was the first President to request and receive such reorganization authority, Congress has granted this authority "16 times under both Republican and Democratic administrations[,]" to nine different Presidents. *Id.*; John W. York & Rachel Greszler, *A Model for Executive Reorganization*, Heritage Found. Legal Memorandum No. 4782, at 3 (Nov. 3, 2017), available at: https://www.heritage.org/sites/default/files/2017-11/IB4782.pdf [https://perma.cc/59KD-JVU5] (hereinafter, "Heritage Found. Legal Memorandum No. 4782"). According to a Senate Report issued during President Trump's first term in office, "[b]etween 1932 and 1984, presidents submitted 126 reorganization proposals to Congress, of which 93 were implemented and 33 were affirmatively rejected by Congress." S. Rep. No. 115-381, at 4 (2018). The most recent statutory authorization for a president to conduct a governmental reorganization expired December 31, 1984. Henry B. Hogue, Cong. Rsch. Serv., R44909, *Executive Branch Reorganization* 6-7 & n.23 (2017) (hereinafter, "CRS R44909").

The brief of *amicus curiae* Constitutional Accountability Center recounts the long history of Congress exercising its "power to restructure and abolish federal agencies as it finds necessary . . . ." Dkt. No. 51-1 at 6-9. Defendants' opposition brief also recounts this long history, which supports the proposition that large-scale reorganization of the federal agencies stems from a long-standing partnership between the executive and legislative branches. *See* Opp'n at 5-6 (citing, *inter alia*, 19 Stat. 169; 37 Stat. 413; the Veterans' Preference Act of 1944; the Federal Employee Pay Act of 1945; the 1966 recodification and amendment of the Veterans' Preference Act of 1944).

In recent history, this congressional check on executive reach has stopped Democratic and Republican presidents alike from restructuring federal agencies. Presidents George W. Bush, Barack Obama, and Donald Trump (in his first term) all sought but did not receive Congressional approval to reorganize the executive branch. CRS R44909 at 7; H.R. 6787, 115th Congress (2017-2018); S. 3137, 115th Congress (2018). Indeed, during the first months of his first term in office, President Trump attempted a large-scale reorganization of federal agencies when he issued Executive Order 13781, entitled, "Comprehensive Plan for Reorganizing the Executive Branch." *See* 82 Fed. Reg. 13,959 (Mar. 16, 2017). That order called for agency heads to submit plans within 180 days "to reorganize the agency, if appropriate, in order to improve the efficiency, effectiveness, and accountability of that agency." *Id.* The accompanying legislation, however, died in Congress. *See* H.R. 6787, 115th Congress (2017-2018); S. 3137, 115th Congress (2018).

The simple proposition that the President may not, *without Congress*, fundamentally reorganize the federal agencies is not controversial: constitutional commentators and politicians across party lines agree that "sweeping reorganization of the federal bureaucracy requires the active participation of Congress." *See* Heritage Found. Legal Memorandum No. 4782 at 1-2; *see also* Paul J. Larkin, Jr. & John-Michael Seibler, *The President's Reorganization Authority*, Heritage Found. Legal Memorandum No. 210, at 1 (July 12, 2017), available at: https://www.heritage.org/political-process/report/the-presidents-reorganization-authority [https://perma.cc/2T7K-H6EY] (". . . to accomplish major reorganization objectives, [the President] will need explicit statutory authority from Congress . . ."); Ronald C. Moe, Cong. Rsch. Serv., RL30876, *The President's Reorganization Authority: Review and Analysis* 2 (2001) ("It is Congress, through law, that determines the mission of agencies, personnel systems, confirmation of executive officials, and funding, *and ultimately evaluates whether the agency shall continue in existence*.") (emphasis added). As former government officials note in their *amicus* brief, House Representative James Comer (R-Kentucky) has introduced the Reorganizing Government Act of 2025. *See* H.R. 1295, 119th Cong. (2025). The bill would allow "Congress to fast-track President Trump's government reorganization plans by renewing a key tool to approve them swiftly in Congress." Press Release, House Committee on Oversight and Government Reform, Chairman Comer and Senator Lee Introduce Bill to Fast-Track

President Trump's Government Reorganization Plans (Feb. 13, 2025), https://oversight.house.gov/release/chairman-comer-and-senator-lee-introduce-bill-to-fast-track-president-trumps-government-reorganization-plans/ [https://perma.cc/3XSV-TKWL]. The bill contemplates that the President must partner with Congress on a government reorganization effort, acknowledging that presidential "reorganization authority . . . was last in effect in 1984[.]" *Id.*

In their brief, defendants assert that judicial review of the Executive Order is unavailable, citing *Dalton v. Specter*, 511 U.S. 462, 470 (1994).[15] Opp'n at 34. The facts of *Dalton* could not be more different from the scenario here. In *Dalton*, the Supreme Court held that judicial review of the President's decision is unavailable "[w]here a statute . . . commits decisionmaking to the discretion of the President." 511 U.S. at 476-77. At issue in *Dalton* was a decision by the President to close the Philadelphia Naval Shipyard, pursuant to the Defense Base Closure and Realignment Act of 1990. The Act provided for the Secretary of Defense, following notice and public comment, to prepare closure recommendations, which then went to Congress and to an independent commission, which then held public hearings and prepared a report, which then went to the President for approval, following which Congress then could enact a joint resolution of disapproval. *Id.* at 464-65. As discussed further below regarding the APA claims, nothing close to this level of procedure has occurred here, at least as far as the record shows. More importantly, *Dalton* challenged Presidential action taken pursuant to statutory authority that Congress delegated to the President. Thus, defendants misread plaintiffs' *ultra vires* theory against President Trump. Plaintiffs' claim is not that the President exceeded his statutory authority, as the *Dalton* plaintiffs claimed. Instead, Claim One is about the President acting without *any* authority, constitutional or statutory. As defendants themselves state in their brief, "[A]n officer may be said to act *ultra vires* 'only when he acts without any authority whatever.'" Opp'n at 44 (quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101-02 n.11 (1984) (internal quotation marks omitted)). This is precisely what plaintiffs

[15] Defendants appear to conflate the *ultra vires* and APA claims, arguing that President Trump is not subject to the APA and that his Executive Order is not reviewable under APA standards. *See* Opp'n at 34. However, plaintiffs do not sue President Trump under the APA, and their APA claims challenge the carrying out of the Executive Order by OPM, OMB, DOGE, and the federal agency defendants but do not challenge the Executive Order itself as violating the APA.

here have alleged.

Defendants also argue that "federal law expressly permits RIFs, the governing statute expressly directs OPM to promulgate regulations governing RIFs, and Congress has consistently recognized agencies' authority to engage in RIFs since the nineteenth century." Opp'n at 35. Maybe so. However, what plaintiffs allege—and what defendants fail to refute—is that Executive Order 14210 reaches so broadly as to exceed what the President can do without Congress. The Executive Order mandates that "Agency Heads *shall* promptly undertake preparations *to initiate large-scale reductions-in-force* (RIFs), consistent with applicable law," including submitting plans that "shall discuss whether the agency or any of its subcomponents should be eliminated . . . ."[16] Exec. Order 14210 § 3(c), (e) (emphasis added). This is not an instance of the President using his "inherent authority to exercise 'general administrative control of those executing the laws,'" *see* Opp'n at 4, because Congress has passed no agency reorganization law for the President to execute. Congress may choose to do so. But as of today, Congress has not.[17]

In defendants' interpretation, there is no unlawful action here because the President did not order the agencies to take any specific actions, and OMB and OPM were merely providing guidance about how agencies should conduct RIFs. The evidence plaintiffs have presented paints a very different picture: that the agencies are acting at the direction of the President and his team. Defendants submitted no evidence of their own in response. As noted above regarding causation for standing, agencies were not discussing a need for large-scale RIFs prior to the President's order. In their reply brief, plaintiffs present a declaration that a recently-issued RIF notice at the

[16] The most recent, now lapsed, Congressional authorization for the President to reorganize the federal agencies covered precisely these actions, including "the transfer of the whole or a part of an agency" and "the abolition of all or a part of the functions of an agency, except that no enforcement function or statutory program shall be abolished by the plan . . . ." *See* 9 U.S.C. § 903(a)(1), (2).

[17] *Amici* the State of Montana et al. filed a brief in support of defendants. Dkt. No. 71-1. They argue, among other things, that "Article II provides the President with broad authority to manage the federal workforce. . . , and the courts have recognized it for more than two centuries except in limited circumstances not relevant here." *Id.* at 3 (citing *Trump v. United States*, 603 U.S. 593, 609 (2024)). However, a closer read of the cited decision shows that the removal power defendants cite applies "with respect to executive officers of the United States *whom he has appointed*." *See Trump*, 603 U.S. at 609 (emphasis added). The removal of Presidentially-appointed officers is simply not at issue in this case.

Department of Labor attributes the RIF to Executive Order 14210, citing section 3(c) of that order specifically. Decl. Gamble AFGE ISO Reply ¶ 6, Ex. B. The Executive Order itself directs agencies to prioritize RIFs of "all agency initiatives, components, or operations that *my* Administration suspends or closes." Exec. Order 14210 § 3(c) (emphasis added). In other words, the President will suspend or close agency operations, and that agency must then be prioritized for a RIF, which is what appears on the present record to be happening. *See id.* ¶¶ 4-6, Ex. B. The Court reads the mandatory language in the Executive Order as providing specific direction to the agencies.

The government also says there are no problems here because the Executive Order and the OMB/OPM Memorandum direct agencies to comply with the law and not to reduce services to the public. Opp'n at 39-40; Exec. Order 14210 §§ 3(c) ("Agency Heads shall promptly undertake preparations to initiate large-scale reductions in force (RIFs), consistent with applicable law"), 5(a)(i). As defendants note in their papers, "[a] consistent-with-law provision does not categorically immunize an Executive Order or similar directive from review." Opp'n at 40. The Ninth Circuit, in considering "whether, in the absence of congressional authorization, the Executive Branch may withhold all federal grants from so-called 'sanctuary' cities and counties[,]" rejected the government's argument that the words "consistent with law" saved the otherwise unlawful Executive Order. *San Francisco*, 897 F.3d at 1231, 1239-40. As the court explained, "'It is a commonplace of statutory construction that the specific governs the general[,]' . . . [and t]he Executive Order's savings clause does not and cannot override its meaning." *Id.* at 1239 (quoting *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012)).

The Court finds plaintiffs have shown a likelihood of success on the merits of Claim One, which alleges that Executive Order 14210 usurps Congress's Article I powers and exceeds the President's lawful authority.

b. Actions by OPM, OMB, and DOGE

Plaintiffs also assert that the actions by OPM, OMB, and DOGE in implementing the executive order are *ultra vires* and therefore unlawful. They argue that none of these defendants "possesses authority to order agencies to reorganize, to engage in 'large-scale' RIFs, or to usurp the

decision-making authority delegated by Congress." Mot. at 35.

OPM: The question of whether the President, acting without Congress, may engage in *en masse* termination of rank-and-file employees was recently litigated in a case involving the termination of probationary employees at numerous federal agencies. In issuing a temporary restraining order, Judge Alsup of this district found plaintiffs likely to succeed on their *ultra vires* claim, explaining, "No statute — anywhere, ever — has granted OPM the authority to direct the termination of employees in other agencies." *Am. Fed'n of Gov't Emps., AFL-CIO v. OPM*, No. 25-cv-1780-WHA, 2025 WL 660053, at *4 (N.D. Cal. Feb. 28, 2025).[18] Rather, as laid out in statute, "Each Executive agency . . . may employ such number of employees of the various classes recognized by chapter 51 of this title [regarding classification] as Congress may appropriate for from year to year." 5 U.S.C. § 3101. With regard to OPM in particular, Congress vested the Director of OPM with a number of functions, none of which include the termination of employees from, or the restructuring of, other federal agencies outside of OPM. *See* 5 U.S.C. § 1103(a). In the probationary employee case, "OPM concede[d] that it lacks the authority to direct firings outside of its own walls . . . ." *Am. Fed'n of Gov't Emps.,* 2025 WL 660053, at *5.

OMB: Housed within the Executive Office of the President, OMB, like OPM, has its functions laid out in statute. *See* 31 U.S.C. §§ 501-507. None of the statutes authorize OMB to terminate employees outside of OMB or to order other agencies to downsize, nor do defendants point to any such authority in their brief. *See also Nat'l Council of Nonprofits v. Off. of Mgmt. & Budget*, --- F. Supp. 3d ----, No. CV 25-239 (LLA), 2025 WL 597959, at *15 (D.D.C. Feb. 25, 2025) ("the structure and provisions of Section 503 strongly suggest that OMB occupies an oversight role" and 31 U.S.C. § 503(a)(5) "further indicates that OMB's role is mainly supervisory, rather than directly active").

[18] As noted above, the preliminary injunction in Judge Alsup's case is currently on appeal.

DOGE: As plaintiffs rightly note, DOGE "has no statutory authority at all." Mot. at 37. DOGE was created by Executive Order out of the United States Digital Service, and is housed in the Executive Office of the President. *See* Exec. Order No. 14158. DOGE therefore could not have been acting pursuant to statutory authority in ordering large-scale RIFs of the workforces at the defendant federal agencies.

* * *

In sum, no statute gives OPM, OMB, or DOGE the authority to direct other federal agencies to engage in large-scale terminations, restructuring, or elimination of itself. Such action is far outside the bounds of any authority that Congress vested in OPM or OMB, and, as noted, DOGE has no statutory authority whatsoever. "[A]n agency literally has no power to act . . . unless and until Congress confers power upon it." *La. Pub. Serv. Comm'n v. F.C.C.*, 476 U.S. 355, 357 (1986).

Plaintiffs are likely to succeed on the merits of their *ultra vires* claims (Claim Two) against OPM, OMB, DOGE, and their Directors.

2. APA Claims

Plaintiffs also challenge, as violative of the APA: the OMB/OPM Memo; OPM and OMB's approvals of specific agencies' ARRPs; and "DOGE's directives to specific agencies requiring cuts to programs and staffing[.]" Mot. at 37-38. Plaintiffs' Third through Seventh Claims assert violations of the Administrative Procedure Act against OMB, OPM, DOGE, and their directors, under 5 U.S.C. § 706(2)(A), (C), and (D), and against the federal agency defendants, under 5 U.S.C. § 706(2)(A) and (C).

The APA provides, in relevant part, that

> The reviewing court shall--
> **. . . (2)** hold unlawful and set aside agency action, findings, and conclusions found to be--
> **(A)** arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
> **. . .**
> **(C)** in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
> **(D)** without observance of procedure required by law; . . . .

5 U.S.C. § 706(2).

a. Final Agency Action

The APA provides that "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review." 5 U.S.C. § 704. Because plaintiffs do not allege that any action here was made reviewable by statute, the threshold question is whether the challenged actions constitute "final agency action." If not, this Court is without subject matter jurisdiction to decide the APA claim. *See San Francisco Herring Ass'n v. U.S. Dep't of Interior*, 683 F. App'x 579, 580 (9th Cir. 2017).

The Supreme Court has explained that "two conditions must be satisfied for agency action to be 'final': First, the action must mark the 'consummation' of the agency's decisionmaking process . . . —it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow[.]'" *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (citations omitted). The Supreme Court has "long taken" a "pragmatic approach" to the question what constitutes final agency action. *San Francisco Herring Ass'n v. Dep't of Interior*, 946 F.3d 564, 577-78 (9th Cir. 2019) (quoting *U.S. Army Corps of Engineers v. Hawkes Co.*, 578 U.S. 590, 599 (2016)).

The record presently before the Court indicates that the challenged actions are final agency actions under the APA. While the ultimate impacts of the RIFs may yet be unknown (in part due to defendants' refusal to publicize the ARRPs), and while certain ARRPs are still awaiting OMB/OPM approval, nowhere do defendants assert that the OMB/OPM Memo itself is subject to change or is in draft form. Nor do any defendants claim that the ARRPs, once approved, may be modified or rescinded. These actions—the issuance of the OMB/OPM Memo and the approvals of the ARRPs—are done and final. *See San Francisco Herring Ass'n*, 946 F.3d at 578 ("The Park Service does not suggest it is still in the middle of trying to figure out its position on whether it has jurisdiction over the waters [at issue] . . ."). An agency engages in "final" action, for instance, when it "state[s] a definitive position in formal notices, confirm[s] that position orally, and then send[s] officers out into the field to execute on the directive." *Id.* at 579.

So have OMB, OPM, DOGE, and their directors done here. The OMB/OPM Memo required agencies to submit Phase 1 ARRPs by March 13 and Phase 2 ARRPs by April 14. As alleged, the ARRPs "are only effectuated by OMB and OPM (and DOGE) approval." Compl. ¶ 14. The little evidence presented on how the ARRP approval process has actually played out shows that at least one agency (the National Science Foundation) initially submitted an ARRP that "did not include plans for large-scale RIFs" and that OMB, OPM, and DOGE rejected this plan "and directed the agency to implement large-scale RIFs instead." Decl. Soriano AFGE ¶¶ 8-9. According to a Program Director at the National Science Foundation, "NSF is now following the orders of the DOGE team embedded within the agency and plans to cut its staff of approximately 1,700 employees by half." *Id.* ¶ 9.[19] "It is the imposition of an obligation or the fixing of a legal relationship that is the indicium of finality of the administrative process." *Getty Oil Co. v. Andrus*, 607 F.2d 253, 256 (9th Cir. 1979). Based on the record to date, the Court finds the OMB/OPM Memo and OMB/OPM approval of the ARRPs constitute final agency action under the APA.

At this time, the Court will refrain from opining on whether DOGE's actions are subject to review under the APA. The record is less developed as to DOGE's actions and would benefit from further factual development. Nevertheless, having found above that any actions by DOGE in directing other federal agencies to engage in large-scale RIFs is *ultra vires*, the Court need not reach the APA question specifically in order for injunctive relief to cover DOGE. *See League of Wilderness Defenders/Blue Mountains Biodiversity Project v. Connaughton*, 752 F.3d 755, 760 & n.3; *Cmty. Legal Servs. in East Palo Alto v. United States Dep't of Health & Human Servs.*, --- F. Supp. 3d ----, No. 25-cv-2847-AMO, 2025 WL 1233674, at *8 (N.D. Cal. Apr. 29, 2025) (plaintiffs "need only show a likelihood of success on one claim to demonstrate likelihood of success in support of a preliminary injunction").

[19] Of course, defendants may offer countervailing evidence at the preliminary injunction stage. At this stage, defendants submitted no evidence in support of their opposition brief. The Court emphasizes that releasing the ARRPs will be critical to a full understanding of the facts as this case proceeds.

b. Merits

The Court likewise reserves ruling on the merits of the APA claim asserting arbitrary and capricious action by OPM, OMB, and DOGE (Claim Four) and the APA claims asserted against the federal agency defendants (Claims Six and Seven). As discussed at the hearing, the release of the ARRPs will significantly aid the Court's review of the merits of these APA claims.

Plaintiffs' Third Claim—that OMB, OPM, DOGE, and their directors violated the APA by taking action not in accordance with law and exceeding statutory authority—overlaps with the analysis of the *ultra vires* claim. For the same reasons already stated above, plaintiffs have shown a likelihood of success on their claim that at least OPM and OMB are acting outside their statutory authority by directing large-scale layoffs at other federal agencies.

Plaintiffs' Fifth Claim alleges that OMB, OPM, DOGE, and their directors violated the APA by engaging in "rule-making" without publication and opportunity for notice and comment. In their brief, defendants assert, incorrectly, that OPM has simply promulgated regulations as they are statutorily authorized to do. *See* Opp'n at 44 ("Congress expressly empowered OMB [sic] to promulgate regulations governing RIFs, and OPM has done just that."); *see also id.* at 35 ("the governing statute expressly directs OPM to promulgate regulations governing RIFs . . ."); *id.* at 1, 7-8, 40-41 (citing 5 U.S.C. § 3502).[20] OPM did not promulgate regulations here. Promulgating a regulation would have required a public process, including notice and comment under the APA. *See* 5 U.S.C. § 553. This did not occur. Plaintiffs have shown a likelihood of succeeding on their claim that OPM and OMB engaged in rule-making without notice and comment required by the APA, in issuing the February memorandum and in approving the ARRPs.

B. Irreparable Harm

The Court discussed plaintiffs' injuries in the standing section above, but in the context of

[20] 5 U.S.C. § 3502 states, in part, that OPM "shall prescribe regulations for the release of competing employees in a reduction in force which give due effect to-- (1) tenure of employment; (2) military preference . . .; (3) length of service; and (4) efficiency or performance ratings." 5 U.S.C. § 3502(a).

the *Winter* analysis the Court must also consider whether this injury is irreparable. Plaintiffs assert that constitutional violations constitute irreparable injury, including violations of the separation of powers. Mot. at 48-49. Plaintiffs assert that union members will face irreparable harm when they lose their wages and health benefits and, in some cases, may need to relocate. *Id.* The Court agrees that these losses constitute irreparable harm and notes that RIF terminations are beginning in less than two weeks at some agencies. As the Ninth Circuit has noted, "[l]ack of timely access to health care poses serious health risks," especially for individuals with chronic health conditions. *Golden Gate Rest. Ass'n v. City & Cnty. of San Francisco*, 512 F.3d 1112, 1125 (9th Cir. 2008). Further, facing the potential loss of federal funding, the local government plaintiffs experience irreparable harm when they are forced to plan how to mitigate that loss. *See Cnty. of Santa Clara v. Trump*, 250 F.Supp.3d 497, 537-38 (N.D. Cal. 2017). These plaintiffs cannot recover damages via an APA claim, making their monetary loss irreparable. *See California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018).

Defendants and their supportive *amici* states argue from *Sampson v. Murray* that plaintiffs have not made a sufficient showing of irreparable harm. In *Sampson*, the Supreme Court considered whether to enjoin the dismissal of a single employee and determined the plaintiff had not made a sufficient showing of irreparable harm "in this type of case," even though the plaintiff would suffer at least a temporary loss of income. *Sampson v. Murray*, 415 U.S. 61, 63, 89-90, 92 (1974). But the Court also recognized "that cases may arise in which the circumstances surrounding an employee's discharge, together with the resultant effect on the employee, may so far depart from the normal situation that irreparable injury might be found." *Id.* at 92 n.68. The present case, simply put, is not the same "type of case" as *Sampson*. The Court here is not considering the potential loss of income of one individual employee, but the widespread termination of salaries and benefits for individuals, families, and communities.

C. Balance of Interests

The last two factors—assessing the harm to the opposing party and weighing the public interest—"merge when the Government is the opposing party." *Nken*, 556 U.S. at 435. In this

context, these factors require the Court to ask whether pausing the government's large-scale RIFs and reorganizations harms the government more than it benefits the plaintiffs. Defendants argue, primarily, that there is no public interest in injunctive relief because its actions are lawful. Opp'n at 48. This argument fails, as the Court has found it likely that defendants' actions are not lawful. Notably, defendants do not argue that the government would suffer by a temporary preservation of the status quo, although their *amici* states take up the banner. *Id.*; Dkt. No. 71-1 ("The President suffers harm when he is unable to exercise his Article II powers."). The Court notes again that its order does not prevent the President from exercising his Article II powers, it prevents him from exercising Congress' Article I powers.

The Court finds that temporary relief as ordered below would serve the public interest, because "[t]here is generally no public interest in the perpetuation of unlawful agency action. To the contrary, there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations." *See League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (internal quotation marks and citations omitted).

V. Scope of Remedy and Order

Providing relief beyond the named parties is appropriate where necessary to provide relief to the named parties. *Bresgal v. Brock*, 843 F.2d 1163, 1170-71 (9th Cir. 1987). The Court has found that plaintiffs are likely to succeed on the merits of their challenges to Executive Order 14210, the OMB/OPM Memorandum, and OMB/OPM's approval of the ARRPs. The Court acknowledges that its temporary restraining order as detailed below will provide relief beyond the named parties, but to do otherwise is impracticable and unworkable, particularly where the agencies' RIF plans largely remain secret. To be clear, the Court has not ruled on whether plaintiffs are likely to succeed on their APA claims regarding individual agency ARRPs, but finds it necessary to temporarily enjoin further implementation of those plans because they flow from likely illegal directives. Moreover, since the Court requires more information to evaluate the individual ARRPs and what roles OMB, OPM, and DOGE have played in shaping them, it will order their disclosure under the Court's inherent powers to manage discovery. The Court finds it appropriate to order this

production on an expedited discovery basis. The timelines required to be in the ARRPs will be particularly useful to the Court as it determines whether further prompt action is necessary.

Holding that the President, OMB, OPM, and DOGE have exceeded their authority naturally raises the question of precisely where the line should be drawn between executive and legislative authority over agency reorganization. But as Chief Justice Roberts once wrote, in certain cases "[w]e have no need to fix a line . . . . It is enough for today that wherever that line may be, this [action] is surely beyond it." *See Nat'l Fed'n of Indep. Bus.*, 567 U.S. at 585.

For the foregoing reasons and for good cause shown, the Court therefore ORDERS as follows:

> IT IS HEREBY ORDERED that, pending consideration of a preliminary injunction, the agency defendants (as delineated below) and their officers or employees or any other individuals acting under their authority or the authority of the President are hereby enjoined and/or stayed from taking any actions to implement or enforce sections 3(c) and 3(e) of Executive Order 14210 or the February 26, 2025 OMB/OPM Memorandum, including but not limited to:
>
> (1) any further approval of ARRPs or waivers of statutorily-mandated RIF notice periods by OMB and OPM;
>
> (2) any further orders by DOGE to agencies to cut programs or staff in conjunction with implementing the Executive Order, the OMB/OPM Memorandum, or the ARRPs;
>
> (3) any further implementation of the Executive Order, the OMB/OPM Memorandum, or ARRPs by Federal Agency Defendants, including but not limited to: execution of any existing RIF notices (including final separation of employees), issuance of any further RIF notices, placement of employees on administrative leave, and transfer of functions or programs between the agency defendants.
>
> This restraining order shall last fourteen days, through Friday, May 23, 2025, unless the Court finds good cause to extend it. *See* Fed. R. Civ. P. 65(b)(2). The restraining order shall apply to the following defendant agencies: OMB, OPM, DOGE, USDA, Commerce, Energy, HHS, HUD, Interior, Labor, State, Treasury, Transportation, VA, AmeriCorps, EPA, GSA, NLRB, NSF, SBA, and SSA.
>
> IT IS FURTHER ORDERED that, good cause having been shown pursuant to Federal Rule of Civil Procedure 26(d), OMB and OPM must provide to the Court and to Plaintiffs (1) the versions of all defendant agency ARRPs submitted to OMB and OPM, (2) the versions of all defendant agency ARRPs approved by OMB and OPM, (3) any agency applications for waivers of statutorily-mandated RIF notice periods, and (4) any responses by OMB or OPM to such waiver requests, **by 4:00 p.m. (PDT) on Tuesday, May 13, 2025.**
>
> IT IS FURTHER ORDERED that, **by 3:00 p.m. (PDT) on Tuesday, May 13, 2025,** defendants shall serve and file a declaration(s)

verifying that they have complied with this Order, including serving a copy of this order on every defendant agency head, and detailing what additional steps, if any, they have taken to comply.

VI. Rule 65(c) Security

Rule 65(c) of the Federal Rules of Civil Procedure provides that a district court "may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). The district court retains discretion "as to the amount of security required, if any." *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) (internal quotation marks and citations omitted).

The government has requested that the Court require plaintiffs give security in an amount "commensurate to the salaries and benefits the government must pay for any employees it would prefer to separate from federal service but is unable to for the duration of any preliminary relief." Opp'n at 50.[21] The Court notes, first, that defendants have not provided support for security in any fixed amount, and the Court cannot establish such an amount without the ARRPs or some other evidence showing the comprehensive RIF plans.[22] Second, the Court finds there is significant public interest underlying this action, particularly in light of the constitutional claims raised. *See Taylor-Failor v. Cnty. of Haw.*, 90 F. Supp. 3d 1095, 1102-03 (D. Haw. 2015) (citing *Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1126 (9th Cir. 2005)). Although defendants allege they will incur costs for retaining federal employees that they would prefer to separate, Opp'n at 50, so too will the government incur costs if the RIFs are implemented hastily and unlawfully. *See, e.g.*, Compl., Ex.

[21] On March 11, 2025, President Trump issued a memorandum for the heads of executive departments and agencies, stating that the policy of the United States is to demand the posting of a bond when a plaintiff seeks an injunction against the federal government. Donald J. Trump, *Ensuring the Enforcement of Federal Rule of Civil Procedure 65(c)*, The White House (Mar. 11, 2025), https://www.whitehouse.gov/presidential-actions/2025/03/ensuring-the-enforcement-of-federal-rule-of-civil-procedure-65c/ [https://perma.cc/GF6W-9MPE].

[22] On April 10, 2025, a group of United States Senators sent a letter to the heads of OPM and OMB requesting, among other things, copies of the Phase 1 and Phase 2 ARRPs submitted to OPM and OMB, the impact of the RIFs relating to costs or savings to agency budgets, and the number of people placed on administrative leave. *See* Dkt. No. 1-3, Compl., Ex. C. Although the Senators requested a response by April 21, at the hearing in this case government counsel could not confirm whether a response has issued.

C at 2 (defendant Kennedy stating, with regard to April terminations of HHS employees: "[p]ersonnel that should not have been cut were cut . . . that was always the plan . . . we're going to do 80% cuts, but 20% of those are going to have to be reinstated, because we'll make mistakes."). At this time, the Court waives the requirement that plaintiffs post a bond.

CONCLUSION

The Court concludes where it began. The President has the authority to seek changes to executive branch agencies, but he must do so in lawful ways and, in the case of large-scale reorganizations, with the cooperation of the legislative branch. Many presidents have sought this cooperation before; many iterations of Congress have provided it. Nothing prevents the President from requesting this cooperation—as he did in his prior term of office. Indeed, the Court holds the President likely *must* request Congressional cooperation to order the changes he seeks, and thus issues a temporary restraining order to pause large-scale reductions in force in the meantime.

A temporary restraining order is, by definition, temporary. The Court will not consider defendants' request for a stay of execution of the temporary restraining order, as doing so would render the exercise pointless. The Court must promptly proceed to consideration of a preliminary injunction.

Plaintiffs' motion for a preliminary injunction shall be filed no later than Wednesday, May 14, 2025 at 4:00 p.m. (PDT) and shall not exceed 25 pages; defendants' opposition is due by Monday, May 19, 2025 at 4:00 p.m. (PDT) and shall not exceed 25 pages. The Court shall hold a preliminary injunction hearing in person on Thursday, May 22, 2025 at 10:30 a.m.

IT IS SO ORDERED.

Dated: May 9, 2025

SUSAN ILLSTON
United States District Judge