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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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 Peace Corps; Allison Greene, Chief Executive Officer of the Peace Corps; the Small Business Administration; Kelly Loeffler, Administrator of the Small Business Administration; the Social Security Administration; and Frank Bisignano, 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 521; SEIU Local 1000; SEIU Local 1021; 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 22, 2025) (granting preliminary injunction)

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

American Federation of Government Employees, AFL-CIO v. *Donald J. Trump*, No. 25-3293 (May 30, 2025) (denying motion for stay pending appeal)

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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 22, 2025 order issued by the United States District Court for the Northern District of California (App., *infra*, 11a-61a). 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 bars nearly the entire Executive Branch—19 agencies, including 11 Cabinet departments—from implementing an Executive Order that directs agencies to prepare plans to execute lawful reductions in the size of the federal workforce. That injunction rests on the indefensible premise that the President needs explicit statutory authorization from Congress to exercise his core Article II authority to superintend the internal personnel decisions of the Executive Branch. But "[u]nder 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). Controlling the personnel of federal agencies lies at the heartland of this authority. The Constitution does not erect a presumption *against* presidential control of agency staffing, and the President does not need special permission from Congress to exercise core Article II powers. See *Trump* v. *United States*, 603 U.S. 593, 607-609 (2024).

The district court's injunction violates these bedrock principles and other well-established doctrines. As Judge Callahan explained below, dissenting from the Ninth Circuit's denial of a stay, applicants "have shown a likelihood of success and irreparable harm" with respect to this "sweeping preliminary injunction that strips the Executive of control over its own personnel." App., *infra*, 96a. Plaintiffs improperly "bypass[ed] the comprehensive administrative scheme that Congress has enacted to handle federal sector labor and employment disputes." *Ibid.* And the district court erroneously "concluded that the Executive's actions likely violate separation of powers—without making any finding that any agency's [reduction in force] is likely to violate any statute" and despite the President's constitutional "power over the Executive Branch." *Ibid.*

This Court recently intervened to stop a district court from undoing the effects of the lawful large-scale termination of probationary 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 injunction sweeps far more broadly—to cover most of the federal government—and even restricts the Executive in *planning* personnel actions 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 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—aiming for a government-wide reduction of 100,000 federal workers. 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 memoran-

dum (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, first as a putative temporary restraining order (TRO) and then as a preliminary injunction, enjoining applicants from proceeding with any existing or future RIFs pursuant to the Executive Order or Memo, even ones that have no effect on respondents or their members. App., *infra*, 11a-61a. The district court refused to stay its prospective injunctive relief against the Executive Order and Memo, *id.* at 59a, and a divided motions panel of the Ninth Circuit also declined to issue a stay, *id.* at 62a-106a.

This Court should stay the district court's injunction, which suffers from multiple fatal flaws. To start, respondents cannot directly challenge the RIFs for at least four reasons: (1) RIFs are indisputably permitted by federal law, see 5 U.S.C. 3502; (2) 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; (3) many of the RIFs have not yet been finalized; and (4) 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).

Facing these obstacles to any direct challenge to the RIFs, respondents have instead manufactured an objection to the Executive Order and Memo that provide direction and guidance about the RIFs. But 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 also 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 alleged "flaws in the entire 'program' * * * cannot be laid before the courts for wholesale correction").

Substantively, moreover, the general direction 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*, 591 U.S. at 213 (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, so long as it is done 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 supposed "evidence" of "unlawful action" the mere prospect that "agencies are acting at the *direction* of the President and his team." App., *infra*, 46a.

Equally meritless is the district court's objection that "the President may not, *without Congress*, fundamentally reorganize the federal agencies." App., *infra*, 41a. 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. The President does not need *additional* statutory authorization to direct agencies to conduct RIFs to further reorganizations within the statutory bounds set by Congress, especially when it is undisputed that the agencies could have done the exact same thing unilaterally. And here, respondents failed to show (and neither court below found) that a single agency's organic statute would be violated by any proposed RIF—much less that any such violation would be traceable to the Executive Order or Memo, rather than to the agency's hypothetical failure to follow the Order and Memo's clear instructions to pursue RIFs in compliance with law.

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 on respondents. App., *infra*, 57a-58a. 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); *Gill* v. *Whitford*, 585 U.S. 48, 66 (2018).

Turning to the equities, the district court's flawed injunction inflicts ongoing and severe harm on the government calling for this Court's intervention. It interferes with the Executive Branch's internal operations and unquestioned legal authority to plan and carry out RIFs, and does so on a government-wide scale. More concretely,

the injunction has brought to a halt numerous in-progress RIFs at more than a dozen federal agencies, sowing confusion about what RIF-related steps agencies may take and compelling the government to retain—at taxpayer expense—thousands of employees whose continuance in federal service the agencies deem not to be in the government and public interest. And although the injunction permits agencies to "engag[e] in their own *internal* planning activities," it hamstrings those efforts by barring the "involvement" of OPM and OMB. App., *infra*, 58a.

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 injunction.

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 recognition 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 OPM and OMB 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 OPM and OMB 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. a. 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; see App., *infra*, 20a (noting the subsequent addition of the Peace Corps as a defendant). 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 TRO. D. Ct. Doc. 37 (May 1, 2025).

b. The district court held a hearing on May 9, 2025, and issued a putative TRO the same day. D. Ct. Doc. 85. On May 22, after a hearing that day, the court followed the TRO with a preliminary injunction, which generally mirrored the TRO in its scope and reasoning. App., *infra*, 11a-61a. The court concluded that at least some respondents had standing, *id.* at 23a-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-37a. 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 39a, 51a. 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 46a. 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 44a-45a. 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 injunctive relief. *Id.* at 54a-56a.

Under the district court's order, OMB, OPM, the U.S. DOGE Service, and 19 agency defendants, as well as 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. App., *infra*, 57a-58a. The enjoined actions "includ[e] but [are] not limited to," among other things, any approval or disapproval of agency RIF Plans and "any further implementation" of those Plans, such as through the issuance or execution of RIF notices and termination of agency employees, "to the extent [such actions] are taken to implement" the Executive Order or Memo. *Id.* at 58a. The court added that the enjoined agencies could "engag[e] in their own *internal* planning activities," but only "without the involvement of OMB, OPM, or DOGE." *Ibid.* Although the court acknowledged that its order "provide[d]

relief beyond the named plaintiffs," it deemed limiting the relief "impracticable and unworkable." *Id.* at 57a.

The district court further ordered the agency defendants to "rescind any RIFs issued pursuant to Executive Order 14210" and related placements of employees on administrative leave. App., *infra*, 59a. The court stayed that retrospective relief pending appeal, but it otherwise denied applicants' request for a stay of the preliminary injunction. *Ibid.*[1]

2. Applicants appealed the district court's TRO and sought emergency stay relief from the Ninth Circuit. When the court of appeals failed to timely act, applicants filed an emergency application for a stay in this Court, see Appl., *Trump* v. *American Fed'n of Gov't Emps.*, No. 24A1106 (filed May 16, 2025), but withdrew it when the district court issued the preliminary injunction a week later. Applicants appealed the preliminary injunction to the Ninth Circuit and renewed their motion for a stay.

On May 30, 2025, the Ninth Circuit denied applicants' stay motion by a 2-1 vote. App., *infra*, 62a-106a. In an order by Judge Fletcher, joined by Judge Koh, the panel majority first found that applicants failed to show irreparable injury because the injunction is a "'temporary preservation of the status quo'" and "the money that is being spent" on employees that otherwise would be discharged "has already been

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[1] The district court included in its May 9 order a directive that OMB and OPM disclose "the versions of all defendant agency [Plans] submitted to" or "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 requests." D. Ct. Doc. 85, at 40. But the court stayed that order after applicants, invoking the deliberative-process privilege, moved for reconsideration or a protective order and petitioned the court of appeals for a writ of mandamus. D. Ct. Doc. 92 (May 12, 2025). Applicants subsequently withdrew the mandamus petition in light of the district court's actions taken while considering their motion, App., *infra*, 68a n.1, and the discovery dispute remains pending in the district court.

appropriated by Congress." *Id.* at 70a (quoting district court's TRO opinion). The majority further concluded that applicants are not likely to succeed on their jurisdictional objection or their merits defense of the Executive Order and Memo. *Id.* at 71a-93a. The majority emphasized that although it "may be true" that agencies have statutory authority to carry out RIFs, no "federal statute" "authorized the *President* to direct the agencies to do so." *Id.* at 83a. The majority finally found that respondents' asserted harms outweighed the government and public interest in relief from the injunction. *Id.* at 93a-95a.

Judge Callahan dissented. App., *infra*, 96a-106a. She explained, among other things, that respondents' claims "effectively challenge the prospective termination of federal employees in the aggregate," and are accordingly precluded by an exclusive statutory scheme for review of such claims. *Id.* at 97a; see *id.* at 101a n.2 (noting that respondents' APA claim also failed for lack of final agency action). On the merits, Judge Callahan concluded that the Executive Order and Memo "are far from ultra vires" because "the President has the right to direct agencies, and OMB and OPM to guide them, to exercise their statutory authority to lawfully conduct RIFs." *Id.* at 103a. And she emphasized that "the district court failed to analyze and to make findings whether the RIFs likely have resulted or will result in statutory violations." *Id.* at 105a. Finding that the remaining stay factors supported relief, Judge Callahan would have granted a stay of the district court's "expansive" injunction that "interferes in the lawful conduct of a coordinate branch." *Id.* at 105a-106a.

ARGUMENT

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

To obtain a stay of a preliminary injunction, an applicant must show (1) a like-

lihood 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 preliminary injunction against implementation of the President's Executive Order and the OPM-OMB Memo.

A. The Government Is Likely To Succeed On The Merits

The government is likely to succeed in reversing the injunction 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). 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); see 5 U.S.C. 1214(b) (authorizing the MSPB to issue emergency stay relief). 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 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. See App., *infra*, 97a (Callahan, J., dissenting) ("Plaintiffs' claims * * * effectively challenge the prospective termination of federal employees in the aggregate"). 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*, 30a-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 *New York* v. *McMahon*, No. 25-cv-10601, 2025 WL 1463009, at *19-*20 (D. Mass. May 22, 2025) (asserting jurisdiction

over challenge to Department of Education RIF); *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 reasoned 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-34a. 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 prospect that respondents will be unable to "continue business as usual" during the pendency of administrative proceedings, App., *infra*, 34a, does not render meaningful judicial review unavailable, just as it did not do so in *Thunder Basin*. See 510 U.S. at 216-218 (mining company had to give union representatives access to premises or incur civil penalties pending administrative proceedings). The direct harm caused by the challenged conduct—employee terminations in allegedly unlawful RIFs—is remediable, see p. 34, *infra*, and this is precisely the type of conduct that Congress intended to be remedied through the CSRA's processes. In any event, the district court disregarded the statutory authority of "any member" of the MSPB to grant stays pending further proceedings. 5 U.S.C. 1214(b).

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 come not directly from statute but from regulation," *viz.* 5 C.F.R. 351.901. App., *infra*, 35a; see *id.* at n.14. That reasoning is un-

tenable, 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). Under the statute's plain terms, the same channeling requirements apply to all such actions, regardless of the particular source of the right to appeal to the MSPB.

The district court and court of appeals 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*, 33a, 35a-36a; see *id.* at 73a-77a. 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. This case bears no resemblance to those invoked by the court of appeals, in which litigants brought "constitutional challenges" to the "structur[e]" of the relevant administrative tribunals themselves. App., *infra*, 75a (quoting *Carr* v. *Saul*, 593 U.S. 83, 92 (2021)); see *Axon Enter., Inc.* v. *FTC*, 598 U.S. 175, 185 (2023); *Free Enter. Fund*, 561 U.S. at 491.

Finally, the courts below 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*, 36a-37a, 77a. 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; accord-

ingly, 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 "tangentially affected by federal employment decisions to have the right to attack those decisions directly in federal district courts" outside the CSRA process. App., *infra*, 100a-101a (Callahan, J., dissenting) (citing *Filebark* v. *United States Dep't of Transp.*, 555 F.3d 1009, 1014 (D.C. Cir.), cert. denied, 558 U.S. 1007 (2009)).

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. See App., *infra*, 101a n.2 (Callahan, J., dissenting). The Memo merely marks 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. *Id.* at 6a-7a. The court of appeals' alternative conception

of final agency action would improperly render reviewable any plan or proposal that could be said to "definitive[ly]" initiate an intragovernmental deliberative process. *Id.* at 91a (citation omitted). 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 general 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. On the contrary, they contain express language doing the opposite, emphasizing the need to comply with applicable law. See App., *infra*, 2a-3a ("consistent with applicable law"); *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."); see also *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, con-

sistent 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*, 47a (citation omitted); see 5 U.S.C. 3502; pp. 7-9, *supra*. Even the district court and court of appeals appeared grudgingly to agree. See App., *infra*, 47a ("Maybe so."); *id.* at 83a ("to the extent that this may be true * * * "). 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. See *id.* at 103a (Callahan, J., dissenting) ("the President has the right to direct agencies, and OMB and OPM to guide them, to exercise their statutory authority to lawfully conduct RIFs").

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.

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); cf. 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). To be sure, the Memo also issues directives to agencies, principally by instructing them to submit Plans to OPM and OMB "for review and approval" by specified dates. *Id.* at 6a-7a. But those directives fall comfortably within OPM's and OMB's statutory authorities and the process established by the President in the Executive Order. See *id.* at 102a-103a (Callahan, J., dissenting).

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 has not been questioned. 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 do not withstand analysis.

Most egregiously, the district court 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. App., *infra*, 46a. Likewise, the court of appeals asserted that the critical question "is not whether Congress has directed the agencies to engage in large-scale reductions-in-force, but whether Congress has authorized the *President* to direct the agencies to do so." *Id.* at 83a; see *id.* at 79a-81a. The lower courts' view 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 courts 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. Contrary to the courts' suggestions, applicants have never denied that agencies are acting at the ultimate "*direction* of the President," App., *infra*, 46a; see *id.* at 79a-80a—that, of course, is the way the constitutional structure is meant to work. The courts' treatment of such presidential direction as smoking-gun evidence of illegality was deeply mistaken.[2]

The district court and court of appeals also emphasized the President's lack of operative "statutory authority to reorganize the executive branch." App., *infra*, 38a; see *id.* at 39a-42a (discussing historical reorganization statutes); *id.* at 84a-86a

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[2] The lower courts' attempt to distinguish *Fitzgerald* as speaking only to "the President's military authority," App., *infra*, 43a; see *id.* at 86a, is likewise unfounded. Nothing in that case turned on the President's constitutional authority over the Armed Forces distinct from the rest of the Executive Branch. In fact, the relevant employee—who was terminated in an allegedly retaliatory RIF—was a civilian. See *Fitzgerald*, 457 U.S. at 733-734, 756-757.

(same). 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. More fundamentally, 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. There is nothing unlawful about agency RIFs that facilitate the restructuring of agencies within the organizational bounds imposed by statute.

Unsurprisingly, neither respondents nor the lower courts showed that any ongoing or impending RIFs or reorganizations actually exceed statutory strictures. Respondents offered only conclusory, speculative, and unripe allegations to that effect. See, *e.g.*, D. Ct. Doc. 37-12, at 8 (May 1, 2025) ("There is no possible way that [remaining AmeriCorps employees] can perform the work needed to run this agency in compliance with its statutory duties."). Likewise, the district court said only that it was "not convinced," and had "significant questions," about agencies' "capacities to fulfill their statutory missions." App., *infra*, 50a; see *id.* at 81a (court of appeals similarly raising "questions" about RIFs' impacts on statutory functions) (citation omit-

ted).[3] Nor did the courts below explain how, even assuming that an agency's RIF might impair its ability to discharge its statutory functions, that would render the RIF itself unlawful, let alone support universally enjoining the implementation of an *Executive Order* that directs agencies to *comply with* their statutory obligations. That is why the courts were compelled to adopt the untenable position that the contemplated RIFs would be unlawful "even if" they fully comported with agencies' "organic statutory mandates." *Id.* at 50a; see *id.* at 81a-82a.

The courts below fared no better in emphasizing that the Executive Order contemplates "large-scale" RIFs. App., *infra*, 46a, 50a, 78a, 83a, 87a; see *id.* at 2a. Like analogous layoffs in the private sector, RIFs are often large-scale by their nature. For example, President Clinton's 1993 order of a 100,000-person reduction in the federal workforce was large-scale by any reasonable measure. See p. 9, *supra*. And federal law explicitly recognizes that RIFs 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.[4]

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[3] As an illustration of the misguided approach taken by the lower courts, the court of appeals highlighted cuts in the Department of Labor's Office of Federal Contract Compliance Programs, App., *infra*, 82a, without recognizing that a principal provision the office was charged with enforcing (a 1965 executive order) was recently revoked. See Exec. Order No. 14,173, § 3(b)(i), 90 Fed. Reg. 8633, 8634 (Jan. 31, 2025) (revoking Executive Order No. 11,246); *United Steelworkers of Am., AFL-CIO-CLC* v. *Weber*, 443 U.S. 193, 223 n.2 (1979) (Rehnquist, J., dissenting). This example demonstrates the baselessness of the lower courts' speculation that the RIFs may prevent agencies from complying with their statutory functions. It also underscores the error of litigating the issue through a government-wide pre-enforcement action.

[4] The lower courts asserted that President Clinton's order is distinguishable because it contemplated reductions in force through "attrition or early out programs" rather than involuntary separation. App., *infra*, 43a n.18 (quoting 58 Fed. Reg. at 8515); accord *id.* at 80a. That distinction makes no difference. There is no principled basis for limiting presidential authority in this context based on the particular administrative method by which agencies reduce their workforces—consistent with the

The lower courts additionally faulted OPM and OMB for exceeding their authority by unilaterally ordering agencies to carry out RIFs. App., *infra*, 44a-45a, 87a-89a. Yet 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. The lower courts made much of respondents' claims that, in the course of reviewing and approving RIF plans, OPM and OMB rejected some plans as inadequate. *Id.* at 46a-47a, 88a. But that would in no way mean OPM and OMB are "directing other federal agencies to engage in restructuring and large-scale RIFs." *Id.* at 87a. *The President himself* has "direct[ed] agencies" to do so, and OPM and OMB have "the authorit[y] * * * to guide them" in complying with the President's directive. See *id.* at 103a (Callahan, J., dissenting). If agencies choose not to pursue plans that OPM and OMB have rejected, that is simply because they concur in the assessment that those plans fail to satisfy the President's objectives.

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*, 54a. But in addition to respondents' failure to identify final agency action subject to APA review, see pp. 20-21, *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

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Memo's holistic approach to agency workforce reductions. *Id.* at 7a (contemplating reductions through "[c]ontinuation of the current hiring freeze," "[r]egular attrition," etc.).

relating to agency management or personnel").

3. At a minimum, the injunction is overbroad

This Court should independently stay the injunction 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 non-parties 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 preliminary injunction contravenes those bedrock principles. The district court openly acknowledged that its order would "provide relief beyond the named plaintiffs," but it claimed that "[t]o do otherwise [is] impracticable and unworkable, in particular considering the diversity of plaintiffs in this case." App., *infra*, 57a. 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 injunc-

tion 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"). A district court is not relieved of its obligation to tailor injunctive relief merely because plaintiffs choose to bring suit as an unwieldy motley crew with varying indirect interests.

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 injunction against the implementation of the Executive Order and Memo.

1. This Court would likely grant certiorari

The issues presented in this application 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. See, *e.g.*, *Trump* v. *Wilcox*, No. 24A966, 2025 WL 1464804 (May 22, 2025) (per curiam) (granting stay of district-court orders reinstating removed members of executive agencies); *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 Defense 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"). And here, the scale of relief granted—encompassing almost the entire federal government—renders this case all the more certworthy.

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. 22-23, *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 pp. 17-18, *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 preliminary injunction, and those harms outweigh those asserted by respondents.

a. The injunction strikes at critical governmental interests by barring the implementation of agency RIFs pursuant to the Executive Order and Memo and hampering agencies' control over their own administration. See App., *infra*, 105a-106a (Callahan, J., dissenting). 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 "factors 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"). For example, this Court recently recognized the significant "risk of harm" to and "disruptive effect" upon the government presented by orders allowing removed officers to continue "exercising the executive power" pending litigation. *Wilcox*, 2025 WL 1464804, at *1. 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 fundamental governmental interests.

More concretely, the injunction's immediate consequences are stark. The injunction 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 prepare for and execute agency RIFs. It 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*, 57a-58a. Dozens of RIF actions affecting thousands of federal employees thus will be delayed and disrupted if the injunction 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.

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."); see also, *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). That Congress appropriated "the money that is being spent as a result of the preliminary injunction," as the court of appeals noted, App., *infra*, 70a, does not mitigate the obvious injury from *unnecessarily wasting* appropriated funds, any more than it did in the cases just cited. And the district court imposed only a token bond of $10 total, based on its far-fetched and question-begging conclusion that "hast[y] and unlawful[]" RIFs will inflict costs comparable to those inflicted by the injunction. *Id.* at 60a.

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 a universal injunction freezing much broader layoffs unquestionably inflicts substantial and irreparable injury on the government as an employer and steward of public funds. Furthermore, the injunction has sown confusion throughout the Executive Branch over what RIF-related actions agencies are permitted to undertake consistent with the order's terms. The caveat that agencies may "engag[e] in their own *internal* planning activities" does not adequately mitigate the problem when paired with a bar against any "involvement" in such activity by OPM

or OMB, App., *infra*, 58a—the executive-branch entities with the experience and expertise, reflected in the statutory and regulatory authorities discussed above, that agencies need to plan RIFs effectively. And the injunction's invitation for applicants to seek "clarification" from the court "about whether certain activities are prohibited or allowed," *ibid.*, merely reinforces the court's improper superintendence of fundamental executive-branch prerogatives. The fiscal and administrative harms inflicted by the injunction amply justify a stay.

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-24a, 54a-55a. That form of injury is by no means irreparable, however, because employees can seek reinstatement and backpay through the proper channels. See p. 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*, 55a, does not render the exact same type of injury, replicated across a greater population, 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*, 24a-27a, 55a; see *id.* at 94a (similar analysis by the court of appeals). Even assuming that those asserted speculative, indirect, downstream harms sufficed

for standing (though 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 uncertain and remote harms to third parties claiming that they will be indirectly affected by the employees' treatment.

For the foregoing reasons, this Court should stay the district court's May 22 order enjoining the implementation of the Executive Order and the Memo.

II. AN ADMINISTRATIVE STAY IS WARRANTED

The Solicitor General also respectfully requests that this Court grant an administrative stay of the district court's May 22 order granting a preliminary injunction while the Court considers this application. Every day that the preliminary injunction 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 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 May 22 order enjoining the Executive Order and Memo. 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

JUNE 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.

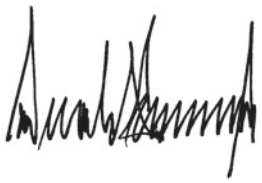
Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(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 PRELIMINARY INJUNCTION

Re: Dkt. No. 101

Presidents may set policy priorities for the executive branch, and agency heads may implement them. This much is undisputed. But Congress creates federal agencies, funds them, and gives them duties that—by statute—they must carry out. Agencies may not conduct large-scale reorganizations and reductions in force in blatant disregard of Congress's mandates, and a President may not initiate large-scale executive branch reorganization without partnering with Congress. For this reason, nine Presidents over the last one hundred years have sought and obtained authority from Congress to reorganize the executive branch. Other Presidents—including President George W. Bush, President Obama, and President Trump in his first term—asked Congress for agency reorganization authority but did not receive it.

The defendants in this case are President Trump, numerous federal agencies, and the heads of those agencies. Defendants insist that the new administration does not need Congress's support to lay off and restructure large swathes of the federal workforce, essentially telling the Court, "Nothing to see here." In their view, federal agencies are not reorganizing. Rather, they have simply initiated reductions in force according to established regulations and "consistent with applicable law." The Court and the bystanding public should just move along.

Yet the role of a district court is to examine the evidence, and at this stage of the case the evidence discredits the executive's position and persuades the Court that plaintiffs are likely to succeed on the merits of their suit. On February 11, 2025, the President ordered agencies to plan for "large-scale reductions in force" (RIFs) and reorganizations. The agencies began submitting "Agency RIF and Reorganization Plans" for review and approval by the President's centralized decisionmakers. Agencies then rapidly began to implement these reorganizations and large-scale reductions in force (RIFs) without Congressional approval. In some cases, as plaintiffs' evidence shows, agency changes intentionally or negligently flout the tasks Congress has assigned them. After dramatic staff reductions, these agencies will not be able to do what Congress has directed them to do.[1]

Defendants try to refute this conclusion by insisting there are no relevant facts to review. In

[1] To illustrate what is at stake in this litigation, the Court highlights a few examples from the evidence submitted by plaintiffs.

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 of these positions. *Id.*

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.* Unsure whether its funding will continue, the county has notified more than one hundred early learning program workers that they might lose their jobs on July 1, 2025. *Id.*

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.

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.

the face of dozens of declarations in support of plaintiffs, defendants have submitted only one sworn declaration by an agency official. Defendants fought the Court's order for them to disclose the most relevant documents—the agencies' RIF and reorganization plans themselves.

Defendants maintain that the federal agencies are acting of their own accord and not at the President's direction, asking this Court to review the relevant executive actions using tunnel vision and ignore whatever may be happening on the ground. Numerous courts have rejected similar arguments in recent months. *See New York v. Trump*, 133 F.4th 51, 69 (1st Cir. 2025) (approving district court's finding that the "suggest[ion] that the challenged federal funding freezes were purely the result of independent agency decisions rather than the OMB Directive or the Unleashing Guidance . . . [was] disingenuous"); *Am. Fed'n of Gov't Employees, AFL-CIO v. OPM*, No. 25-cv-1780-WHA, --- F. Supp. 3d ----, 2025 WL 820782, at *5-6 (N.D. Cal. Mar. 14, 2025) (rejecting the government's contention that OPM did not issue a "directive" to terminate probationary employees and stating, "even the fig leaf of agency discretion allowed for in the [OPM memo] was illusory"); *Nat'l Council of Nonprofits v. Off. of Mgmt. & Budget*, --- F. Supp. 3d ----, Civil Action No. 25-239 (LA), 2025 WL 597959, at *6-7 (D.D.C. Feb. 25, 2025) ("Defendants would have the court believe that countless federal agencies . . . suddenly began exercising their own discretion to suspend funding across the board at the exact same time. That would be a remarkable—and unfathomable—coincidence.").

Put simply, in this case, defendants want the Court to either declare that nine Presidents and twenty-one Congresses[2] did not properly understand the separation of powers, or ignore how the executive branch is implementing large-scale reductions in force and reorganizations. The Court can do neither. On May 9, 2025, the Court ordered defendants to pause their activities for two weeks while it received further arguments from the parties. Dkt. No. 85. Plaintiffs—a collection of unions, non-profit organizations, and local governments—now ask the Court to approve a preliminary injunction that pauses further RIFs and reorganization of the executive branch for the duration of

[2] Cong. Rsch. Serv., R42852, *Presidential Reorganization Authority: History, Recent Initiatives, and Options for Congress* (2012).

this lawsuit. To preserve the status quo and protect the power of the legislative branch, the Court GRANTS the motion.

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. 9669 (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—i.e., in two weeks—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[3] at 5 U.S.C §§ 501-507. In 1978, 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; Pub. L. No. 95-454, Title II, § 201(a), 92 Stat. 1111, 1118 (1978). In 2025, President Trump refashioned the U.S.

[3] "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).

Digital Service—an office that President Obama created within OMB[4]—into the U.S. DOGE Service via Executive Order 14158. 90 Fed. Reg. 8441 (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-two 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.[5] *See*, *e.g.*, 7 U.S.C. § 2201 (USDA); 22 U.S.C. § 2651 (State); 38 U.S.C. § 301 (VA); 42 U.S.C. § 3532 (HUD).

Seven 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. No. 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 Peace Corps was created by Congressional adoption of the Peace Corps Act in 1961. Pub. L. No. 87-293, 75 Stat. 612 (1961) (now codified at 22 U.S.C. § 2501 et seq.).

Defendant General Services Administration (GSA) was established by Congress in the

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

[5] 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' preliminary injunction request does not implicate the departments of Defense, Justice, or Homeland Security. *See* Dkt. No. 101 at 1.

Federal Property and Administrative Services Act of 1949. Pub. L. No. 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. No. 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. No. 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. No. 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. No. 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 No. 3 of 1970 under statutory reorganization authority granted to the President by Congress at that time. 35 Fed. Reg. 15623, 84 Stat. 2086 (1970) (located at 5 U.S.C. Appendix, page 216). Congress later ratified the agency's creation by statute. Pub. L. No. 98-532, 98 Stat. 2705 (1984).

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. The Court has reviewed *in camera* the ARRPs of four defendant agencies. *See* Dkt. No. 109.

From the Court's understanding of the evidence filed in this case, an agency's action steps in response to the OMB/OPM Memo would include the following: (1) submitting its ARRP to OMB and OPM; (2) receiving approval of the ARRP by OMB and OPM, either formally or informally;

(3) sending RIF notices; (4) placing employees on administrative leave; and (5) terminating employees.

As described in sworn declarations submitted by plaintiffs, the federal agency defendants are at different points along this continuum. In a May 16 filing, the Solicitor General told the Supreme Court that his office "has been informed by OPM that about 40 RIFs in 17 agencies were in progress and are currently enjoined by [this Court's May 9] TRO." Application for Stay, No. 24A1106 (U.S.), 29. From plaintiffs' evidence, these agencies include defendants 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 would have been May 18, 2025, at which point some HUD employees would have been terminated but for the Court's temporary restraining order. 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. National Science Foundation has been directed to cut about half of its 1,700 staff. Dkt.

No. 37-32 ("Decl. Soriano AFGE") ¶¶ 9-10, Ex. A. The Small Business Administration 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 three of its locals (Local 521, Local 1000, and Local 1021). 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 suit on 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 implementing Executive Order 14210, including by issuing the OMB/OPM Memo (Claim Two); that the OMB/OPM Memo violated the Administrative Procedure Act (APA) 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 May 1, 2025, plaintiffs filed a motion for a temporary restraining order. Dkt. No. 37-1

("TRO Mot."). Per the Court's schedule, defendants filed an opposition on May 7, 2025, and plaintiffs filed a reply the following day. Dkt. Nos. 60 ("TRO Opp'n"), 70 ("TRO Reply"). The Court 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 and issued a two-week temporary restraining order (TRO) later that day. Dkt. No. 85.

Defendants then asked the Court to reconsider a portion of that order that compelled production of the ARRPs. Dkt. No. 88. The Court stayed that part of its order to receive further briefing from the parties. Dkt. No. 92. After reviewing the parties' arguments, the Court ordered defendants to produce a sampling of the ARRPs to the Court for *in camera* review and to plaintiffs' counsel for their eyes only. Dkt. No. 109.[6]

On May 14, 2025, plaintiffs filed an amended complaint, adding two local union plaintiffs (SEIU Locals 521 and 1021) and one additional federal agency defendant (the Peace Corps). Dkt. No. 100. Plaintiffs filed a motion for a preliminary injunction that same day. Dkt. No. 101-1 ("PI Mot."). On May 19, 2025, defendants filed an opposition to the motion for a preliminary injunction. Dkt. No. 117 ("PI Opp'n"). Plaintiffs replied on May 20, 2025. Dkt. No. 120 ("PI Reply"). The Court heard oral argument on the preliminary injunction motion on May 22, 2025.

LEGAL STANDARD

"[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,

[6] Though defendants provided the documents, the parties continue to dispute whether the ARRPs defendants provided are the versions "approved" by OMB and OPM. *See* Dkt. No. 119.

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

As at the TRO stage, defendants first argue that plaintiffs' motion for a preliminary injunction should be denied because it was brought too late after the Executive Order and the OMB/OPM Memo issued. TRO Opp'n at 19-22; PI Opp'n at 4-6. Defendants' argument is not well-taken. Due to defendants' ongoing decision not to release the ARRPs publicly, the details of the federal agency defendants' RIF and reorganization plans have come into public view only slowly and at random. Moreover, in a case where other plaintiffs challenged Executive Order 14210 shortly after it was issued, as defendants suggest should have been done here, the government's attorneys argued that plaintiffs' harm was still 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. If defendants' position is that people will find out about the RIFs when the RIF notices begin to go out, then 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 before moving for emergency relief. When the harm became readily apparent, they filed suit.

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 establish 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, so 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 motions for a temporary restraining order and preliminary injunction, 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 who suffer under the looming threat of such notices. *See*, *e.g.*, Dkt. No. 37-23 ("Decl. Kelley AFGE") ¶ 16. Second, they contend that their federal employees who are not let go will be injured by significantly increased workloads. *See*, *e.g.*, Dkt. No. 37-9 ("Decl. Burke AFGE") ¶ 21; Decl. Daly AFSCME ¶ 30. 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.*, 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. SEIU

Local 521 represents Head Start workers who have been informed they may lose their jobs on July 1, 2025, because staffing reductions at the Office of Head Start has created uncertainty about the renewal of funding. Dkt. No. 101-4 ("Decl. Woodard SEIU") ¶ 9. Similarly, if staff reductions lead to the delay in processing of Medicare enrollment or other federal funding 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; Decl. Woodard SEIU ¶¶ 10-11.

At the TRO stage, defendants first argued that the unions do not show that a specific federal employee has been harmed or will imminently be harmed. TRO 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 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 unions' 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. *See*, *e.g.*, Decl. Kelley AFGE ¶¶ 12-13, 15, 20.

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,[7] 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.

Defendants have also challenged whether the employees who will be saddled with more work will have experienced a concrete harm. TRO 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 the non-profit organization plaintiffs 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 &*

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

Drug Administration v. Alliance for Hippocratic Medicine, 602 U.S. 367, 394 (2024).[8] But at least some of the non-profit 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 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 non-profit 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, collect revenue, and 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 providing shelter. Dkt.

[8] 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." *All. for Hippocratic Med.*, 602 U.S. at 395.

No. 37-58 ("Decl. Williams—SCC") ¶¶ 24, 43.

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.[9] As another example, Harris County Public Health receives grants from the Centers for Disease Control and Prevention, an agency within defendant HHS, 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.

[9] As one example, King 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—King County ¶¶ 37-38.

B. Causation and Redressability[10]

Plaintiffs challenge three layers of action: the President's Executive Order, the OMB/OPM Memo 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 February 11, 2025 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 APA and Supreme Court precedent.

C. Conclusion as to Standing

At this preliminary injunction 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.*,

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

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. TRO Opp'n at 23-31; PI Opp'n at 6-11. 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.[11] 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 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 Federal Labor Relations Authority'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

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

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. 25-cv-1780-WHA, 2025 WL 900057 (N.D. Cal. Mar. 24, 2025).[12] 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 *2. It also found the claims collateral to the review authority of those agencies, because the claims challenged executive power, not a specific personnel action. *Id.* at *3. Lastly, it determined that the district court offered the only opportunity for meaningful judicial review. *Id.* at *4-5. 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.*[13]

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

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

[13] 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.

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 also cite two 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. TRO 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)); PI Opp'n at 7-8. 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. Cal. 2023). The 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—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 of which favor a finding of subject matter jurisdiction.

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 in order 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.

Defendants contend that *Thunder Basin* forecloses this line of argument but they overstate the holding in that case. *See* PI Opp'n at 8. There, a mining company sought "pre-enforcement injunctive relief" against a regulation that required the company to post union material or face a penalty, arguing that the regulation conflicted with the National Labor Relations Act. *Thunder Basin*, 510 U.S. at 204-05. The company also argued that it should not be channeled to the federal Mine Act's comprehensive administrative review scheme because doing so would violate the company's due process rights by forcing it to choose noncompliance and penalties or compliance with an unlawful regulation. *Id.* at 205. In reviewing the statute, the Supreme Court found the Mine Act "facially silent with respect to pre-enforcement claims" but ultimately held the company's "statutory and constitutional claims here can be meaningfully addressed in the Court of Appeals" after administrative review. *Id.* at 208-09, 215. Importantly, however, the Court determined that "neither compliance with, nor continued violation of, the statute will subject petitioner to a serious prehearing deprivation." *Id.* at 216. In other words, the company would not suffer any serious harm from having to go first through the administrative tribunal, because any penalty was only due after exhausting appellate review. *Id.* at 218. Plaintiffs here face a very different situation. They cannot continue business as usual as they wind their way through the administrative scheme with the goal of reaching an appellate court. Rather, they face immediate and life-altering consequences in the absence of prompt judicial review.

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 the 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 come not directly from statute but from regulation. *See* 5 C.F.R. § 351.901;[14] *see also* 5 U.S.C. § 7512(B) (excluding reductions in force from the review provisions for "adverse actions"). 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.[15] *See Elgin*, 567 U.S. 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[.]").

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

[14] 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." Defendants argue that it does not matter whether the authority for Board review was direct or indirect. PI Opp'n at 8-9. The Court disagrees: when the question is about what Congress intended, it matters that Congress chose not to provide an administrative path to RIF challenges themselves.

[15] 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, 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.

administrative bodies customarily handle. The heart of this case does not concern whether agencies followed established RIF regulations and procedures—subject matters within the administrative tribunals' expertise—but whether agencies were unlawfully instructed to initiate large-scale RIFs and reorganizations in the first place. 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 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 with greater 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 emergency stay, finding the government had not shown it was 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 President Trump, OMB, OPM, and DOGE have violated the separation of powers and therefore acted *ultra vires* by ordering agencies to engage in large-scale RIFs and reorganizations. They challenge Executive Order 14210, the OMB/OPM Memo, as well as any other actions and orders of OMB, OPM, and DOGE to implement the President's Executive Order.

"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. Presidential Authority

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 struck down an Executive Order by President Truman, who had 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. *See* PI Opp'n at 14-18. 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 to nine different Presidents, both Republican and Democrat. *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. *See* 5 U.S.C. § 905(b); 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' TRO 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* TRO 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).

The last time Congress gave the President reorganization authority demonstrates what Congress considered to be a "reorganization." In 5 U.S.C. § 902, Congress defined a "reorganization" as "a transfer, consolidation, coordination, authorization, or abolition, referred to in section 903 of this title." Section 903 then specified what a reorganization plan might entail, including:

> (1) the transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, to the jurisdiction and control of another agency;
>
> (2) 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;
>
> (3) the consolidation or coordination of the whole or a part of an agency, or of the whole or a part of the functions thereof, with the whole or a part of another agency or the functions thereof;
>
> (4) the consolidation or coordination of part of an agency or the functions thereof with another part of the same agency or the functions thereof;
>
> (5) the authorization of an officer to delegate any of his functions; or
>
> (6) the abolition of the whole or a part of an agency which agency or part does not have, or on the taking effect of the reorganization plan will not have, any functions.

5 U.S.C. § 903. As noted above, the President's authority to submit a reorganization plan to Congress under this chapter expired in 1984. *See id.* § 905(b). Since Congress first enacted this statute in 1966, Congress extended the deadline for presidential reorganization plans several times but has not done so again since 1984. *See* Pub. L. No. 89-554, 80 Stat. 378, 396 (1966); Pub. L. No.

91-5, 83 Stat. 6 (1969); Pub. L. No. 92-179, § 4, 85 Stat. 576 (1971); Pub. L. No. 95-17, § 2, 91 Stat. 29, 32 (1977); Pub. L. No. 96-230, 94 Stat. 329 (1980); Pub. L. No. 98-614, 98 Stat. 3192 (1984).

In recent history, the 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. 13959 (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 conservative former government officials and advisors note in their *amicus* brief, House Representative James Comer (R-Kentucky) has introduced the Reorganizing Government Act of 2025. *See* Dkt. No. 69-

1 at 3 n.3 (citing 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).[16] PI Opp'n at 12; TRO 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

[16] 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* TRO Opp'n at 34. However, plaintiffs do not sue President Trump under the APA, and the 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.

claimed. Instead, Claim One is about the President acting without *any* authority, constitutional or statutory.

Nor is the Court persuaded that the President's authority derives from a right articulated in *Nixon v. Fitzgerald*, 457 U.S. 731 (1982), as defendants claim. *See* PI Opp'n at 13. That case examined the scope of presidential immunity from a lawsuit for damages brought by a former Air Force analyst who lost his job during a departmental reorganization. In deciding whether the President should be immune from such suits, the Supreme Court explained, "It clearly is within the President's constitutional and statutory authority to prescribe the manner in which the Secretary will conduct the business *of the Air Force*. See 10 U.S.C. § 8012(b).[17] Because this mandate of office must include the authority to prescribe reorganizations and reductions in force, we conclude that petitioner's alleged wrongful acts lay well within the outer perimeter of his authority." *Fitzgerald*, 457 U.S. at 757 (emphasis added). The reorganization and RIF authority referenced in the case, therefore, was derivative of the President's military authority. No President in the 40-plus years since *Fitzgerald* has used that case to justify reorganizing federal agencies more broadly.[18]

As a group of conservative former government officials and advisors have written to the

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[17] This statute is now codified at 10 U.S.C. § 9013(g). *See* Pub. L. No. 99-433, Title V, § 521(a)(3), 100 Stat. 1055, § 8013 (1986); Pub. L. No. 115-232, Div. A, Title VIII, § 806(c), 132 Stat. 1833 (2018).

[18] Defendants further argue that in the 1990s the Clinton Administration engaged in "large-scale Presidentially-directed RIFs[.]" PI Opp'n at 14 (citing 5 U.S.C. § 3502; TRO Opp'n at 5-11). This misstates history. Defendants rely on President Clinton's *Executive Order 12839—Reduction of 100,000 Federal Positions*, which issued the month after he took office. But that Executive Order says nothing about RIFs. Rather, it states that "positions shall be vacated through attrition or early out programs established at the discretion of the department and agency heads." Exec. Order 12839, § 1, 58 Fed. Reg. 8515 (Feb. 12, 1993); *see also* House Rep. 103-386, *available at* 1994 U.S.C.C.A.N. 49, 52 (Nov. 19, 1993) (stating that the OMB bulletin on implementing Executive Order 12839 "specified that neither it [the bulletin] nor the Executive Order authorized special early out programs or required agencies to undergo reductions-in-force.").

Moreover, this Court cannot ignore the issues of scale and timing. Executive Order 12839 directed that agencies "shall eliminate not less than 4 percent of its civilian personnel positions . . . over the next 3 fiscal years." Exec. Order 12839 § 1. One of the questions to be litigated in this case, and which will require further development of the factual record, is whether the RIFs here are so extensive that they essentially "eliminate" Congressionally-created agencies or prevent those agencies from fulfilling their statutory mandates. A related but separate question will be whether defendants' actions were taken so hastily as to constitute arbitrary and capricious action under the APA.

Court, "Unchecked presidential power is not what the Framers had in mind. . . . By proclaiming and implementing Executive Order 14210, the President has usurped for himself the power to restructure entire federal agencies, which can only be accomplished through the constitutionally mandated collaboration between the President and Congress." Dkt. No. 69-1 at 1. Defendants themselves state in their brief: "[A]n officer may be said to act *ultra vires* 'only when he acts without any authority whatever.'" TRO 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 here have alleged.

b. Authority of 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. Plaintiffs 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." TRO 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).[19] 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

[19] The preliminary injunction in Judge Alsup's case is currently on appeal.

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.

Defendants cite a host of statutes and regulations that they assert provides OPM with the authority to issue the OMB/OPM Memo. *See* PI Opp'n at 19. Upon review of the laws cited, the Court finds that none support the authority that OPM now claims. By contrast, 5 C.F.R. § 351.201 specifies that "*[e]ach agency* is responsible for determining the categories within which positions are required, where they are to be located, and when they are to be filled, abolished, or vacated." 5 C.F.R. § 351.201(a)(1) (emphasis added).

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*, 2025 WL 597959, at *15 ("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"). Defendants cite only to 31 U.S.C. § 503(b), which empowers the Deputy Director to "establish general management policies for executive agencies and perform . . . general management functions[.]" *See* PI Opp'n at 19. Nothing in that subsection remotely authorizes the level of direction over other agencies that plaintiffs challenge here.

DOGE: As plaintiffs rightly note, DOGE "has no statutory authority at all." TRO 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 and reorganizations of the workforces at the defendant federal agencies.

* * *

In sum, no law gives OPM, OMB, or DOGE the authority to direct other federal agencies to

engage in large-scale terminations, restructuring, or elimination of that agency itself. Such action far exceeds 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).

c. The Challenged Executive Actions

Having examined whether the President and OPM, OMB, and DOGE have authority to direct other federal agencies to conduct large-scale RIFs and reorganizations, the Court now turns to the executive actions challenged in this case: Executive Order 14210, the OMB/OPM Memo, and other implementation steps by OMB, OPM, and DOGE.

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. Defendants would have the Court look only to the Executive Order and the OMB/OPM memo, arguing that "no factual development is necessary to resolve Plaintiffs' preliminary injunction motion." PI Opp'n at 3; *see also id.* at 15 n.7 ("But there is no factual dispute the Court needs to resolve.").

The evidence plaintiffs have presented tells a very different story: that the agencies are acting at the *direction* of the President and his team. At this stage, the Court has now reviewed *in camera* the ARRPs from four of the federal agency defendants.[20] Those plans support plaintiffs' contention that the agencies' understanding is that OMB/OPM "approval," whether formal or otherwise, is a necessary triggering step in the agencies' current RIF and reorganization processes. Other evidence in the record supports this. For instance, an official at the Department of Labor attributes the RIF to Executive Order 14210, citing section 3(c) of that order specifically. Dkt. No. 70-2 ("Decl. Gamble AFGE ISO Reply") ¶ 6, Ex. B. Plaintiffs have come forward with evidence that some of the federal agency defendants have been pressured to institute RIFs on a larger scale than what the

[20] The Court will not disclose the specific contents of the ARRPs while defendants' motion for a protective order remains pending. *See* Dkt. No. 88.

agencies themselves initially sought to do in their plans. *See* Dkt. No. 36, Ex. 1 (April 29 news article that OMB deemed NLRB's proposed cuts to be inadequate); Decl. Soriano NSF ¶¶ 8-14 (reports that OMB, OPM, and DOGE rejected NSF's phase 1 ARRP that lacked large-scale RIFs and directed large-scale RIFs instead); Decl. Daly AFSCME ¶ 24 (OMB rejected AmeriCorps' mid-March ARRP that did not recommend RIFs). In interpreting the Executive Order and the OMB/OPM Memo, the Court cannot ignore the evidence showing that agencies have received extrinsic instructions on how to interpret and respond to these documents.

Moreover, while defendants go to lengths to focus on the "RIF" side of what is happening, the factual record indicates the RIFs are not easily separated from the reorganization. Defendants 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." TRO Opp'n at 35. Maybe so. But the RIFs at issue here appear inextricably intertwined with broad agency reorganization, which the President undoubtedly cannot undertake without Congress. Indeed, when arguing that agencies are making their final ARRPs public, defendants point to a press release where Secretary of State Marco Rubio announces "a comprehensive reorganization plan." *See* PI Opp'n at 5 n.3; Marco Rubio, *Building an America First State Department*, U.S. Department of State, Apr. 22, 2025, https://www.state.gov/building-an-america-first-state-department [https://perma.cc/MV3Z-6GX5]; *see also* Dkt. No. 37-20 ("Decl. Hunter AFGE") Ex. I (department fact sheet linking reorganization and RIFs). Defendants' proposition that RIFs can be conducted for reasons such as a "lack of work" or "shortage of funds" is irrelevant when they provide no evidence to suggest those were the reasons for the RIFs at issue here. *See* PI Opp'n at 16-17. The OMB/OPM Memo, as plaintiffs note, "confirmed the RIFs were for the purpose of reorganization: they required agencies to combine these in the same document." PI Mot. at 13 (citing OMB/OPM Memo). The memo requires ARRPs be submitted in two "phases": Phase 1 for "initial agency cuts and reductions" and Phase 2 for "more productive, efficient agency operations going forward." OMB/OPM Memo at 3-4. Or, as plaintiffs observe: "OMB and OPM ordered federal agencies to conduct RIFS *first*, and then arrange the pieces of what remains of these agencies." PI Mot. at 4.

Even looking to the text of the Executive Order and the OMB/OPM Memo, as defendants encourage this Court to do, these documents are not so permissive as defendants claim. 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 . . . ." Exec. Order 14210 § 3(c), (e) (emphasis added). The Executive Order directs agencies to prioritize RIFs of "[a]ll offices that perform functions not mandated by statute or other law[,]" regardless of any impact on the agency's overall ability to perform its required functions. And the order directs prioritization of RIFs of "all agency initiatives, components, or operations that *my* Administration suspends or closes." *Id.* § 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.[21] The Executive Order also gives OPM the authority to "grant exemptions from this order," undercutting defendants' argument that OPM's role is merely advisory. *See* Exec. Order 14210 § 4(c).

The OMB/OPM Memo interprets Executive Order 14210 as a directive. It states that the Executive Order "*directed* agencies to 'eliminat[e] waste, bloat, and insularity[;]'" that "President Trump *required* that 'Agency Heads shall promptly undertake preparations to initiate large-scale reductions in force (RIFs) . . .[;]'" and that "President Trump also *directed* that, **no later than March 13, 2025,** agencies develop Agency Reorganization Plans." OMB/OPM Memo at 1 (italics added). The memo states, "Pursuant to the President's direction, agencies should focus on the maximum elimination of functions that are not statutorily mandated . . . ." *Id.* at 2. The memo specifies, "Each agency *will submit* a Phase 1 ARRPs [sic] to OMB and OPM *for review and approval* **no later than March 13, 2025**." *Id.* at 3 (italics added); *see also id.* at 4 (agencies shall submit Phase 2 ARRP "to OMB and OPM for review and approval" by April 14). "Phase 1 ARRPs *shall* focus on initial agency cuts and reductions." *Id.* at 3 (emphasis added). "Phase 2 plans *shall* outline a positive vision for more productive, efficient agency operations going forward[,]" with Phase 2 to "be planned for implementation by September 30, 2025." *Id.* at 4 (emphasis added). The Memo further

[21] On the present record, this appears to be what is happening. *See* Decl. Gamble AFGE ISO Reply ¶¶ 4-6, Ex. B.

instructs that "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." *Id.* at 3, 6. Thus, for some of the federal agency defendants, such as the Social Security Administration, the memo explicitly instructs that the agencies cannot implement proposed plans without OMB and OPM approval. Defendants' position that the memo simply "provides high-level guidance, setting forth principles" for what the ARRPs should seek to do, *see* PI Opp'n at 18, is belied by the mandatory nature of what the memo actually instructs. Like other directives from the current administration, the Court finds the memo "amounted to a command, not a suggestion." *See New York v. Trump*, No. 25-CV-39-JJM-PAS, 2025 WL 715621, at *8 (D.R.I. Mar. 6, 2025).

Defendants also argue that the Executive Order and OMB/OPM Memo are lawful because they tell agencies to comply with the law. This argument falls short on three grounds. First, the Court need not give the savings clauses in the Executive Order and OMB/OPM Memo the weight defendants attribute to them. As defendants note in their papers, "[a] consistent-with-law provision does not categorically immunize an Executive Order or similar directive from review." TRO 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 an otherwise unlawful Executive Order. *San Francisco*, 897 F.3d at 1231, 1239-40. 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)). Like the Ninth Circuit in the "sanctuary cities" case, this Court is not persuaded by the government's reliance on *Building & Construction Trades Department, AFL-CIO v. Allbaugh*, 295 F.3d 28, 32 (D.C. Cir. 2002). *See* PI Opp'n at 17. "*Allbaugh* is distinguishable. Because the Executive Order unambiguously commands action, here there is more than a 'mere possibility that some agency might make a legally suspect decision.'" *See San Francisco*, 897 F.3d at 1239-40 (citing *Allbaugh*, 295 F.3d at 33). Likewise here, the mandatory language of the Executive Order, and of the

OMB/OPM Memo interpreting it, create more than a mere possibility of unlawful action if the federal agencies do the large-scale RIFs and reorganizations that are commanded.

Second, the Court is not convinced that a directive to respect statutory mandates is a message the agencies have actually received, as the scale of workforce terminations raise significant questions about some agencies' or sub-agencies' capacities to fulfill their statutory missions. For example, it appears the Department of Health and Human Services is planning to practically wipe out the National Institute for Occupational Safety and Health, an office established by Congress. Decl. Niemeier-Walsh AFGE ¶ 28 ("my understanding is that approximately 93% of NIOSH employees have received RIF notices"); Pub. L. No. 91-596 § 22, 84 Stat. 1590, 1612 (1970). The cuts to AmeriCorps have reduced agency staff from more than 700 to around 150, a number so small that those remaining cannot fulfill the agency's statutory duties. Decl. Daly AFSCME ¶¶ 25, 30-31. Other agencies have plans to reduce staff by 50% or more, a level that raises serious questions about their ability to fulfill the responsibilities Congress has bestowed upon them. And it is understandable that agencies have interpreted the directives from the President and OMB, OPM, and DOGE to require these cuts when President Trump has made public statements about the federal workforce such as: "obviously, they're paying millions of people that shouldn't be paid" and "It is the policy of my Administration . . . to commence the deconstruction of the overbearing and burdensome administrative state." *See* TRO Mot. at 1 n.1 (citing Remarks by President after Executive Order Signing, The White House (Feb. 18, 2025); Exec. Order No. 14219, 90 Fed. Reg. 10583 (Feb. 19, 2025)); *cf. San Francisco*, 897 F.3d at 1238 ("consideration of those statements suggests that the Administration's current litigation position is grounded not in the text of the Executive Order but in a desire to avoid legal consequences").

Third, even if agencies consider all their organic statutory mandates, the executive branch still cannot reorganize at this scale without authority from Congress. What plaintiffs allege—and what defendants have so far failed to refute—is that Executive Order 14210 and the OMB/OPM/DOGE actions to implement it reach so broadly as to exceed what the President can do without Congress. In the last presidential reorganization law, Congress defined executive branch reorganizations as including transfers of functions between agencies, abolition of some functions of

an agency, and consolidations of different components within or between agencies. *See* 5 U.S.C. § 903. Based on the Court's review of plaintiffs' evidence and the submitted ARRPs, these acts are taking place now, following direction from the Executive Order and the OMB/OPM Memo. This is not an instance of the President using his "inherent authority to exercise 'general administrative control of those executing the laws,'" *see* TRO 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.[22]

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. Plaintiffs are also 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[.]" TRO 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--

[22] *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 at issue involved "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.

> **(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 may still be awaiting OMB/OPM approval, nowhere do defendants assert that the OMB/OPM Memo itself is subject to change or is in draft form. 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.” Amended Compl. ¶ 14. Defendants argue that the ARRPs are living documents, always subject to change. But they have neither released those plans nor submitted any evidence, save one scant declaration, to shed light on how the ARRP process works. The evidence plaintiffs presented on how the ARRP approval process has actually played out shows that at least three defendant agencies 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 (NSF); *see also* Decl. Daly AFSCME ¶ 24 (AmeriCorps); Dkt. No. 36, Ex. 1 (NLRB). “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”).

b. Merits

The Court likewise reserves ruling on the merits of the APA claim asserting arbitrary and capricious action by OMB, OPM, and DOGE (Claim Four) and the APA claims asserted against the federal agency defendants (Claims Six and Seven). As previously discussed, a full review 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 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 and reorganizations 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 TRO brief, defendants asserted, incorrectly, that OPM has simply promulgated regulations as they are statutorily authorized to do. *See* TRO 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).[23] 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 OMB/OPM Memo and in approving the ARRPs.

B. Irreparable Harm

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

[23] 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. TRO 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.* 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). The Court agrees that these losses constitute irreparable harm and notes, from its review of plaintiffs' declarations and the ARRPs submitted *in camera*, that some RIF terminations were scheduled to begin mid-May or soon thereafter. On May 16, 2025, the government told the Supreme Court "that about 40 RIFs in 17 agencies were in progress and are currently enjoined by the TRO." Application for Stay, No. 24A1106 (U.S.), 29.

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 Cal. 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. Moreover, given the scale and speed of defendants' actions, if the reorganization continues, the agencies will not easily return to their prior level of operations.

This is irreparable harm.

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 have argued that there is no public interest in injunctive relief because its actions are lawful. TRO Opp'n at 48. This argument fails, as the Court has found it likely that defendants' actions are not lawful. The Court notes again that its order does not prevent the President from exercising his Article II powers; it prevents him from exercising Congress's Article I powers.

Defendants further argue that a continued injunction would "frustrat[e] the government's efforts to impose budgetary discipline and build a more efficient workforce." PI Opp'n at 21. As plaintiffs note in their reply, the Constitution gives Congress the power—and responsibility—of the purse. PI Reply at 8 (citing U.S. Const. art. 1, § 9). Further, the fact that defendants have placed many employees on paid administrative leave for the duration of the RIF notice period—rather than have them to continue working for their pay—undercuts their ostensible concern for efficient and effective government.[24] So too do admissions from agency heads that cuts have been or might be made too fast. *See, e.g.*, TRO Mot. at 4-5 (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."). Some of the ARRPs reviewed by the Court indicate that cuts may be too deep or that cost savings will not be realized in the short term. In sum, the Court does not find that pausing hastily constructed and likely unconstitutional RIF and reorganization plans

[24] As *amicus curiae* Public Employees for Environmental Responsibility note in their brief, such widespread use of paid leave may also violate the Administrative Leave Act, 5 U.S.C. § 6329a. Dkt. No. 116-1. Violation of this statute is not charged in the complaint and is not directly at issue in this case.

constitutes irreparable harm to the government.

Furthermore, the Court finds that injunctive 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 Memo, and OMB/OPM's approval of the ARRPs. The Court limits its injunction to the named agency defendants, but acknowledges that its order as detailed below will provide relief beyond the named plaintiffs. To do otherwise remains impracticable and unworkable, in particular considering the diversity of plaintiffs in this case. *See City & Cnty. of San Francisco v. Barr*, 965 F.3d 753, 766 (9th Cir. 2020) (noting that where "a case involve[es] plaintiffs that operate and suffer harm in a number of jurisdictions . . . the process of tailoring an injunction may be more complex"). To be sure, relief must be narrowly tailored, but narrowly tailored does not necessarily mean small. The Court's relief must be sized to fit the problems presented by the case, no more and no less.

A. Prospective Relief

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

> IT IS HEREBY ORDERED that 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, disapproval, or certification of ARRPs by OMB and OPM, whether formal or informal, express or implied;
>
> (2) any further waivers of statutorily-mandated RIF notice periods by OMB and OPM, whether formal or informal, express or implied;
>
> (3) any further orders by DOGE, whether formal or informal, express or implied, to agencies to cut programs or staff in conjunction with implementing the Executive Order, the OMB/OPM Memorandum, or the ARRPs;
>
> (4) any further implementation of ARRPs, including but not limited to the following actions, to the extent they are taken to implement Executive Order 14210 and/or the OMB/OPM Memorandum:
>
> > (a) execution of any existing RIF notices (including final separation of employees),
> >
> > (b) issuance of any further RIF notices,
> >
> > (c) placement of employees on administrative leave, and
> >
> > (d) transfer of functions or programs between the agency defendants.
>
> However, this injunction shall not limit federal agency defendants from presenting reorganization proposals for legislative approval or engaging in their own *internal* planning activities without the involvement of OMB, OPM, or DOGE, provided that they do not implement any of the prohibited actions above.

This injunction shall apply to the following defendant agencies: OMB, OPM, DOGE (USDS), USDA, Commerce, Energy, HHS, HUD, Interior, Labor, State, Treasury, Transportation, VA, AmeriCorps, Peace Corps, EPA, GSA, NLRB, NSF, SBA, and SSA. Plaintiffs have presented evidence that these agencies are implementing, or preparing to soon implement, large-scale RIFs and reorganizations pursuant to the Executive Order and OMB/OPM Memo. *See* PI Mot. App'x C (identifying plaintiffs' submitted evidence for each agency). To the extent that defendants need clarification about whether certain activities are prohibited or allowed by the order, they may seek such clarification from the Court. By 3:00 p.m. (PDT) on Friday, May 30, defendants shall file a declaration verifying that all defendants have been given notice of this order and have taken steps to comply. The Court defers decisions about further compliance reporting to a later day.

B. Retrospective Relief

Plaintiffs further request that defendant DOGE and the federal agency defendants be ordered

to rescind earlier actions taken to implement the ARRPs, to restore the status quo prior to the likely unlawful action. Dkt. No. 101 ¶¶ 2-3. As the Ninth Circuit has stated, "the 'status quo' refers to the legally relevant relationship between the parties before the controversy arose." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1061 (9th Cir. 2014). If the government issues a new policy that is challenged, the status quo is the situation before the issuance of the policy. *Id.*; *see also Doe #1 v. Trump*, 957 F.3d 1050, 1068 (9th Cir. 2020) (holding a challenged presidential proclamation changed the status quo); *Doe v. Samuel Merritt Univ.*, 921 F. Supp. 2d 958, 963 (N.D. Cal. 2013) (holding, where a student challenged her disenrollment from a university, the status quo would be the "last uncontested status," which was the student's status as enrolled). Defendants contend that the "status quo" should not be set to before the Executive Order and, even if it was, argue "that it would be an abuse of discretion to issue an injunction requiring a virtual Executive Branch wide effort to restore the world as it existed" before February 11, 2025. PI Opp'n at 24.

The Court holds that Ninth Circuit authority squarely supports the conclusion that the status quo in this case, for purposes of an injunction, is the situation prior to the February 11, 2025 issuance of the challenged Executive Order 14210. However, the Court's ability to impose retrospective relief is limited by practical considerations.

> The Court therefore ORDERS that federal agency defendants (1) rescind any RIFs issued pursuant to Executive Order 14210 and (2) transfer any federal employees who were moved into administrative leave status to effectuate Executive Order 14210 back to the status they held prior to being placed on such leave; but the Court STAYS these two components of retrospective relief for the duration of any appeal of this injunctive order.

Plaintiffs may later ask for reconsideration of the stay with a specific showing of harm.

At the preliminary injunction hearing, defendants requested a stay of all injunctive relief, but the Court denies that request.

* * *

In summary, the Court largely continues the prospective relief issued in its temporary restraining order, with some refinement. The Court also imposes limited retrospective relief, but stays the retrospective relief pending appeal.

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.

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." TRO Opp'n at 50; *see also* PI Opp'n at 25 (incorporating by reference defendants' arguments from its TRO opposition). 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 anticipated financial impact. 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, TRO Opp'n at 50, so too will the government incur costs if the RIFs are implemented hastily and unlawfully. There is also indication in the record before the Court that agencies may not realize immediate cost-savings for separating employees. This consideration further weighs against the government's request that plaintiffs be required to give security. At this time, the Court will require that plaintiffs post a nominal bond of $10 in total (not per plaintiff) by no later than Friday, May 30, 2025.

CONCLUSION

The Court reiterates the conclusion from its temporary restraining order. 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 preliminary injunction to pause large-scale reductions in force and reorganizations in the meantime.

IT IS SO ORDERED.

Dated: May 22, 2025

SUSAN ILLSTON
United States District Judge

FOR PUBLICATION

FILED

MAY 30 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO; AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES, AFL-CIO; SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO; AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES - LOCAL 1122; AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES - LOCAL 1236; AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES - LOCAL 2110; AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES - LOCAL 3172; SERVICE EMPLOYEES INTERNATIONAL UNION - 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; NATURAL RESOURCES DEFENSE COUNCIL, INC.; NORTHEAST ORGANIC FARMING ASSOCIATION, INC.; VOTEVETS ACTION FUND, INC.; WESTERN WATERSHEDS PROJECT; COUNTY OF SANTA CLARA; CITY OF CHICAGO; COUNTY OF MARTIN LUTHER KING, JR.,; COUNTY OF HARRIS; CITY OF

No. 25-3293

D.C. No.
3:25-cv-03698-SI

ORDER

BALTIMORE; CITY AND COUNTY OF SAN FRANCISCO,

Plaintiffs - Appellees,

v.

DONALD J. TRUMP, in his official capacity as President of the United States; OFFICE OF MANAGEMENT AND BUDGET; RUSSELL VOUGHT, in his official capacity as Director of U.S. Office of Management and Budget; UNITED STATES OFFICE OF PERSONNEL MANAGEMENT; CHARLES EZELL, in his official capacity as Acting Director of the U.S. Office of Personnel Management; UNITED STATES DEPARTMENT OF GOVERNMENT EFFICIENCY; ELON MUSK, in his official capacity as the actual head of the Department of Government Efficiency; AMY GLEASON, in her official capacity as the titular Acting Administrator of the Department of Government Efficiency; UNITED STATES DEPARTMENT OF AGRICULTURE; BROOKE ROLLINS, in her official capacity as Secretary of the U.S. Department of Agriculture; UNITED STATES DEPARTMENT OF COMMERCE; HOWARD LUTNICK, in his official capacity as Secretary of the U.S. Department of Commerce; UNITED STATES DEPARTMENT OF DEFENSE; PETER HEGSETH, in his official capacity as Secretary of the U.S. Department of Defense; UNITED STATES DEPARTMENT OF ENERGY; CHRIS WRIGHT, in his official capacity as Secretary of the U.S. Department of Energy;

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; ROBERT F. KENNEDY, Jr., in his official capacity as Secretary of the U.S. Department of Health and Human Services; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security; UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; SCOTT TURNER, in his official capacity as Secretary of the U.S. Department of Housing and Urban Development; DOJ - UNITED STATES DEPARTMENT OF JUSTICE; PAMELA BONDI, Attorney General, in her official capacity as Attorney General of the U.S. Department of Justice; UNITED STATES DEPARTMENT OF THE INTERIOR; DOUG BURGUM, in his official capacity as Secretary of the U.S. Department of the Interior; UNITED STATES DEPARTMENT OF LABOR; LORI CHAVEZ-DEREMER, in her official capacity as Secretary of the U.S. Department of Labor; UNITED STATES DEPARTMENT OF STATE; MARCO RUBIO, in his official capacity as Secretary of the U.S. Department of State; UNITED STATES DEPARTMENT OF THE TREASURY; SCOTT BESSENT, in his official capacity as Secretary of U.S. Department of Treasury; UNITED STATES DEPARTMENT OF TRANSPORTATION; SEAN DUFFY, in his official capacity as Secretary for the U.S. Department of Transportation; UNITED STATES DEPARTMENT OF VETERANS AFFAIRS; DOUG COLLINS, in his official

capacity as Secretary of Veterans Affairs; AMERICORPS, (a.k.a the Corporation for National and Community Service); JENNIFER BASTRESS TAHMASEBI, in her official capacity as Interim Agency Head of AmeriCorps; UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; LEE ZELDIN, in his official capacity as Administrator of U.S. Environmental Protection Agency; UNITED STATES GENERAL SERVICES ADMINISTRATION; STEPHEN EHIKIAN, in his official capacity as Acting Administrator for U.S. General Services Administration; NATIONAL LABOR RELATIONS BOARD; MARVIN E. KAPLAN, in his official capacity as Chairman of the National Labor Relations Board; WILLIAM COWEN, in his official capacity as the Acting General Counsel of the National Labor Relations Board; NATIONAL SCIENCE FOUNDATION; BRIAN STONE, in his official capacity as Acting Director of the National Science Foundation; UNITED STATES SMALL BUSINESS ADMINISTRATION; KELLY LOEFFLER, in her official capacity as Administrator of the U.S. Small Business Administration; SOCIAL SECURITY ADMINISTRATION; FRANK BISIGNANO, Commissioner of Social Security,

Defendants - Appellants.

Appeal from the United States District Court
for the Northern District of California
Susan Illston, District Judge, Presiding

Before: William A. Fletcher, Consuelo M. Callahan, and Lucy H. Koh, Circuit Judges

Order by Judge W. Fletcher
Dissent by Judge Callahan

W. FLETCHER, Circuit Judge:

On February 13, 2025, President Trump issued Executive Order 14210 ("Executive Order" or "Order") announcing "a critical transformation of the Federal bureaucracy." The Order instructed federal agencies to "promptly undertake preparations to initiate large-scale reductions in force" ("RIFs") in a number of areas, including "all agency initiatives, components, or operations that [the Trump] Administration suspend[ed] or close[d]." About two weeks later, the directors of the Office of Management and Budget ("OMB") and the Office of Personnel Management ("OPM") issued a memorandum ("Memorandum") with instructions regarding the implementation of the Order. The Memorandum directed each agency head to submit for approval an Agency RIF and Reorganization Plan ("ARRP") that would "seek to achieve," among other things, "[a] significant reduction in the number of full-time equivalent (FTE) positions by eliminating positions that [we]re not required." The Memorandum laid out two "phases" of ARRP submissions, to be finalized for review and approval by April 14, 2025.

These actions have led to an unprecedented attempted restructuring of the

federal government and its operations. We cannot fully capture the breadth of the changes without unduly lengthening this order, but we highlight a few examples. At the Department of Energy, the Department of Government Efficiency ("DOGE") has proposed cuts of up to 50% to the agency's workforce, including cuts of 54% to science and innovation programs and 61% to energy infrastructure and deployment. Dist. Ct. Dkt. No. 37-8, Ex. A. AmeriCorps has given notices and placed on leave 85% of its staff. Dist. Ct. Dkt. No. 37-12. The General Services Administration has announced plans to terminate nearly half its staff. It has already made significant cuts, leaving no employees to maintain fire protection systems, manage indoor air quality, or supervise asbestos inspections in government buildings. Dist. Ct. Dkt. No. 37-14. The Department of Health and Human Services has cut 93% of its National Institute for Occupational Safety and Health staff. Dist. Ct. Dkt. No. 37-27. DOGE posted 47 Social Security Administration field offices for sale, with further consolidation contemplated for regional offices. Dist. Ct. Dkt. No. 37-11. The Veteran's Administration has indicated an "initial objective" of cutting 80,000 employees, a goal that the Administration's Secretary Doug Collins stated was prescribed by President Trump and OPM. Dist. Ct. Dkt. No. 37-9, Ex. A.

In the wake of these changes and proposed changes, Plaintiffs—a collection of unions, non-profit organizations, and local governments—filed suit against

President Trump and various federal agencies (collectively, "Defendants"), alleging that the Executive Order, the Memorandum, and the implementing ARRPs violated the constitutional separation of powers and the Administrative Procedure Act ("APA"). On May 9, the district court issued an order granting a temporary restraining order ("TRO") against Defendants and compelling discovery of the ARRPs and documents related to their implementation.[1] *AFGE v. Trump*, No. 25-CV-03698, 2025 WL 1358477 (N.D. Cal. May 9, 2025). The district court subsequently granted Plaintiffs' request for a preliminary injunction providing essentially the same relief. *AFGE v. Trump*, No. 25-CV-03698, 2025 WL 1482511 (N.D. Cal. May 22, 2025). Defendants filed in our court a request for an emergency stay of the district court's preliminary injunction.

Acting as the motions panel of our court, we deny Defendants' emergency motion for a stay of the district court's preliminary injunction.

"The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." *Nken v. Holder*, 556 U.S. 418, 433–34 (2009). The factors governing stay requests are much like those that govern requests for preliminary injunctions: whether irreparable injury will result,

[1] The parties have voluntarily dismissed Defendants' emergency motion for a stay of the district court's TRO. No. 25-3030, Dkt. No. 45. Defendants have withdrawn a mandamus petition seeking to stay the district court's discovery order. No. 25-3034, Dkt. No. 39.

whether the applicant has a strong likelihood of success on the merits, and whether the balance of interests favor a stay. *Id.* at 434. We conclude that all of the factors weigh in favor of Plaintiffs. We therefore deny the requested stay.

I. Irreparable Injury

"A stay is not a matter of right, even if irreparable injury might otherwise result." *Virginian Ry. Co. v. United States*, 272 U.S. 658, 672 (1926). We begin our analysis by asking whether Defendants have shown that they are likely to suffer irreparable injury, because absent "a certain threshold showing regarding irreparable harm . . . then a stay may not issue, regardless of the petitioner's proof regarding the other stay factors." *Leiva-Perez v. Holder*, 640 F.3d 962, 965 (9th Cir. 2011). We conclude that Defendants have not made such a showing.

Whether an applicant seeking a stay will suffer irreparable injury is an "individualized" inquiry. *Id.* at 969; *see Hilton v. Braunskill*, 481 U.S. 770, 777 (1987) (noting that "the traditional stay factors contemplate individualized judgments in each case"). Defendants cannot carry this burden "by submitting conclusory factual assertions and speculative arguments that are unsupported in the record." *Doe #1 v. Trump*, 957 F.3d 1050, 1059–60 (9th Cir. 2020). It has now been over a month since Plaintiffs first filed their complaint. Defendants have yet to show the district court—or us—a single piece of evidence in support of its allegation of irreparable injury resulting from the district court's TRO or

preliminary injunction. We therefore cannot understand their claims of irreparable injury as anything other than "conclusory" and "speculative."

In *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017), we held that the government had failed to make the requisite showing of irreparable injury where it relied on an ICE official's sworn declaration describing the administrative burdens of the preliminary injunction on ICE's functions. We concluded that "[t]he conclusory assertions in this declaration . . . are neither persuasive nor supported by any actual evidence." *Id.* Here, Defendants' claims of irreparable injury do not even come in the form of a sworn declaration. Nor are they persuasive, alleging only that the government will suffer injury from having to retain and pay federal employees who would have otherwise been terminated pursuant to the Executive Order and its implementation.

We agree with the district court that the government does not "suffer by a temporary preservation of the status quo." *AFGE v. Trump*, 2025 WL 1358477, at *22. "Mere injuries, however substantial, in terms of money, time and energy necessarily expanded . . . are not enough" to show irreparable injury. *Al Otro Lado v. Wolf*, 952 F.3d 999, 1008 (9th Cir. 2020) (quoting *Sampson v. Murray*, 415 U.S. 61, 90 (1974)). This is especially true where, as here, the money that is being spent as a result of the preliminary injunction has already been appropriated by Congress. We do not find that federal agencies suffer significant, let alone

irreparable, injury when they simply follow what has already been prescribed by the legislature.

II. Likelihood of Success on the Merits

Not only have Defendants failed to make a threshold showing of irreparable injury sufficient to deny their request for an emergency stay pending appeal, they have also not "made a strong showing that [they] [are] likely to succeed on the merits." *Hilton*, 481 U.S. at 776.

The district court below found that Plaintiffs' claims were justiciable in the federal courts. It then found that Plaintiffs were likely to succeed on the merits of their *ultra vires* claims, as well as some of their APA claims. We consider each of these issues in turn.

A. Administrative Channeling

The Civil Service Reform Act of 1978 ("CSRA") "established a comprehensive system for reviewing personnel action taken against federal employees." *United States v. Fausto*, 484 U.S. 439, 455 (1988). Defendants argue that Plaintiffs' claims must be channeled through the administrative system established by the CSRA, thereby stripping the district court of subject matter jurisdiction.

To determine if Plaintiffs' claims "are of the type Congress intended to be reviewed within this statutory structure," we consider (1) whether the claims are

"wholly collateral to a statute's review provisions," (2) whether the issues are "outside the agency's expertise," and (3) whether "a finding of preclusion could foreclose all meaningful judicial review." *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 212–13 (1994) (cleaned up). "When the answer to all three questions is yes, 'we presume that Congress does not intend to limit jurisdiction.' But the same conclusion might follow if the factors point in different directions." *Axon Enter., Inc. v. Fed. Trade Comm'n*, 598 U.S. 175, 186 (2023) (quoting *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 489 (2010)). All three factors favor the Plaintiffs.

1

Plaintiffs' *ultra vires* and APA claims plainly fall outside the scope of the CSRA's review provisions. Two administrative bodies established by the CSRA are at issue. First, the Merit Systems Protection Board ("MSPB") reviews claims by federal employees arising out of specific adverse actions taken against them by their employer. 5 U.S.C. §§ 7512 (defining "[a]ctions covered"), 7513(d) (providing for procedures to appeal such actions to the MSPB); *see Elgin v. Dep't of Treasury*, 567 U.S. 1, 13 (2012) (noting that the CSRA is applicable when "a covered employee challenges a covered action"). Second, the Federal Labor Relations Authority ("FLRA") reviews "issues relating to the duty to bargain in good faith" and unfair labor practices. 5 U.S.C. §§ 7105(a)(2), 7117, 7118.

Neither body has the authority to address the type of constitutional and statutory claims raised by Plaintiffs.

Defendants do not dispute this lack of supporting authority when individual actions are at issue. Instead, they claim that Plaintiffs' suit is an "agglomerat[ion] [of] many individual employment actions," which, in their view, must be heard by either the MSPB or FLRA. We are not persuaded. Whether or not the federal agencies' "transformation[s]" and "large-scale reductions in force" can be characterized as an "agglomeration" of "individual employment actions," Plaintiffs are not challenging those employment decisions with respect to individual employees. Rather, they are challenging Defendants' constitutional and statutory authority to direct the federal agencies to take such actions in the first place.

Even assuming that the MSPB or FLRA could adjudicate, for example, an *ultra vires* claim within an individual employment dispute, such a "constitutional challenge would be 'collateral' to the subject of that proceeding." *Axon*, 598 U.S. at 188. It is telling that in nearly every case cited by Defendants in which a court channeled a constitutional or statutory claim through the CSRA, the plaintiffs raised at least one claim properly within the unquestioned jurisdiction of the MSPB or FLRA. *See Elgin*, 567 U.S. 1 (challenging terminations based on failure to comply with Military Selective Service Act); *AFGE v. Sec'y of Air Force*, 716 F.3d 633 (D.C. Cir. 2013) (challenging Air Force's military uniform policy);

AFGE v. Trump, 929 F.3d 748 (D.C. Cir. 2019) (challenging executive orders that set specific regulations on agency conduct in collective bargaining); *Alder v. Tennessee Valley Auth.*, 43 F. App'x 952 (6th Cir. 2002) (challenging terminations and breach of contract of a bargaining agreement). That is not true in the case now before us. Plaintiffs' claims are, in other words, "*wholly* collateral to [the CSRA]'s review provisions." *Thunder Basin*, 510 U.S. at 212 (emphasis added) (internal quotation omitted).

The dissent notes that several courts have concluded that challenges to the termination of federal employees are properly channeled through the CSRA. Dissent at 2–3. However, multiple courts have rejected the government's channeling argument in other cases. *State of New York v. McMahon*, No. 25-cv-10677 (D. Mass. May 22, 2025) (ECF 45); *Widakuswara v. Lake*, No. 25-cv-1015, 2025 WL 1166400, at *11 (D.D.C. Apr. 22, 2025); *Am. Fed'n of Gov't Emps., AFL-CIO v. U.S. Off. of Pers. Mgmt.*, No. C 25-01780, 2025 WL 900057 (N.D. Cal. Mar. 24, 2025). These cases are very similar to the case before us. The cases cited by the dissent are different in material ways. Two of the cases cited by the dissent involved at least one claim that was properly within the jurisdiction of the MSPB or FLRA, as is true for many of the cases we cite in the preceding paragraph. *See Maryland v. U.S. Dep't of Agric.*, No. 25-1248, 2025 WL 1073657, at *1 (4th Cir. Apr. 9, 2025) (challenging the termination of employees without the

procedures required under 5 U.S.C. § 3502; 5 C.F.R. § 351.803(b)); *Nat'l Treasury Emps. Union v. Trump*, No. 25-CV-420, 2025 WL 561080, at *3 (D.D.C. Feb. 20, 2025) (considering claims of a violation of "the statute and regulations governing RIFs, including statutorily mandated notice requirements," *i.e.*, 5 U.S.C. § 3502; 5 C.F.R. § 351.501(a)). The other two other cases are factually distinct. *Am. Foreign Serv. Ass'n v. Trump*, No. 25-CV-352, 2025 WL 573762, at *7 (D.D.C. Feb. 21, 2025) (concluding that plaintiff's claims were "archetypal complaints about changed employment conditions and their follow-on effects"); *Am. Fed'n of Gov't Emps., AFL-CIO v. Ezell*, No. CV 25-10276, 2025 WL 470459, at *2 (D. Mass. Feb. 12, 2025) (bringing solely APA claims related to OPM's "Fork in the Road" directive and highlighting no constitutional separation of powers issues).

2

Further, we agree with the district court's conclusion that the MSPB and FLRA lack the relevant expertise, as well as the jurisdiction, to decide them. "[A]gency adjudications are generally ill suited to address structural constitutional challenges." *Carr v. Saul*, 593 U.S. 83, 92 (2021). The same is true for Plaintiffs' statutory APA challenges. *See Free Enter. Fund*, 561 U.S. at 491. And as in *Axon*, "the Government here does not pretend that [Plaintiffs'] constitutional [and statutory] claims are . . . intertwined with or embedded in matters on which the [MSPB or FLRA] are expert." 598 U.S. at 195.

Finally, channeling Plaintiffs' claims would preclude meaningful judicial review. As just discussed, the MSPB and FLRA lack the authority to address Plaintiffs' *ultra vires* and APA claims. Thus, although some federal employees might be able to challenge their terminations in individual proceedings before the MSPB, that "would not 'obviate the need' to address their constitutional [and statutory] claims—which, again, allege injury not from this or that [employment action] but from subjection to [unlawful executive] authority." *Id.*

Defendants suggest that Plaintiffs should file administrative grievances over individual employment disputes, await final decisions from the MSPB or FLRA, and then raise their statutory and constitutional claims for the first time in an appeal to the Court of Appeals for the Federal Circuit. We would first note that the APA's presumption of judicial review is not overcome merely because Defendants can point to a theoretical alternative path for an aggrieved party to seek review. *See U.S. Army Corps of Eng'rs v. Hawkes Co.*, 578 U.S. 590, 601 (2016) ("Nor is it an adequate alternative to APA review for a landowner to apply for a permit and then seek judicial review in the event of an unfavorable decision."). Moreover, we agree with the district court that such a path to the federal courts would be meaningless where, as here, entire offices and functions are being eliminated from federal agencies. Even successful Plaintiffs "would return to an empty agency

with no infrastructure to support a resumption of their work." *AFGE,* 2025 WL 1482511, at *14 (internal quotation omitted).

Finally, Defendants offer no option at all for the non-union Plaintiffs in this case, who are not covered by the CSRA and are thereby unable to present any claim to the MSPB or FLRA in the first place. Defendants contend that such preclusion of judicial review was intended by the CSRA, arguing that "[w]hen a comprehensive remedial scheme permits review at the behest of some types of plaintiffs but not others, the proper inference is that the excluded parties cannot bring claims at all." But the CSRA does not allow for review of Plaintiffs' constitutional and statutory claims at all, regardless of what party raises them. We find it unlikely that Congress intended for the CSRA to preclude review for parties not even covered by that statute who allege claims outside the MSPB's and FLRA's jurisdiction.

In short, the district court below correctly determined that Plaintiffs' claims were properly raised in that court.

B. *Ultra Vires*

In reviewing a district court's grant of a preliminary injunction, the burden of proof is on the party requesting a stay to show a likelihood of success on the merits. *Nat'l Wildlife Fd'n v. Nat'l Marine Fisheries Serv.*, 422 F.3d 782, 794 (9th Cir. 2005). Defendants fail to show that they are likely to win on the underlying

merits of Plaintiffs' claims. The first set of Plaintiffs' claims alleges that the actions of the President, OMB, OPM, and DOGE were *ultra vires* and thus violated the separation of powers. We consider first the claims as applied to the President and Executive Order 14210, and then as applied to the actions of OMB, OPM, and DOGE.

1

"The President's power, if any, to issue [an executive] order must stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). In the proceedings below, Defendants never argued that the Constitution was a proper source of authority for the Executive Order, relying solely on federal statutes governing agency authority. Having been rebuffed by the district court, they change tacks, now arguing that the Constitution does confer such authority. Both arguments are unavailing. Neither the Constitution nor any federal statute grants the President the authority to direct the kind of large-scale reorganization of the federal government at issue.

"Administrative agencies are creatures of statute." *Nat'l Fed'n of Indep. Bus. v. Dep't of Labor, Occupational Safety & Health Admin.*, 595 U.S. 109, 117 (2022) (per curiam). Article I of the Constitution confers the legislative power exclusively on Congress. U.S. Const. art. I, § 1; *see Myers v. United States*, 272 U.S. 52, 129 (1926) (finding that Congress "under its legislative power is given the

establishment of offices, [and] the determination of their functions and jurisdiction"). Accordingly, "Congress has plenary control over the salary, duties, and even existence of executive offices." *Free Enter. Fund*, 561 U.S. at 500.

"There is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes." *Clinton v. City of New York*, 524 U.S. 417, 438 (1998). Instead, the President is tasked with "tak[ing] Care that the Laws be faithfully executed." U.S. Const. art. II, § 3. Defendants claim that this is all the President is doing here, casting the Executive Order as simply "giv[ing] policy direction to executive agencies." But such a characterization is at best disingenuous, and at worst flatly contradictory to the record.

President Trump's Executive Order in no uncertain terms "commence[d] a critical transformation of the Federal bureaucracy," directing that "Agency Heads *shall* promptly undertake preparations to initiate large-scale reductions in force" and highlighting particular areas to be prioritized, including "all agency initiatives, components, or operations that [the Trump] Administration suspends or closes." The Order also instructed agency heads to submit within 30 days a report "discuss[ing] whether the agency or any of its subcomponents should be eliminated or consolidated." Agencies have followed suit, in some cases even specifically citing to the President's Executive Order in justifying their RIFs. *See, e.g.*, Dist. Ct. Dkt. No. 70-2 (notice at Department of Labor attributing RIF to § 3(c) of the

Executive Order). Defendants cannot now assert that this language merely constituted guidance when, as the district court found, "[t]he evidence plaintiffs have presented tells a very different story: that the agencies are acting at the direction of the President and his team." *AFGE*, 2025 WL 1482511, at *21 (emphasis removed).

President Trump's Executive Order is thus wholly dissimilar to Executive Order 12839, promulgated in 1993 by President Clinton, which Defendants cite as an example of a President wielding reorganizational authority. That order required only that 4% of agency positions be "vacated through attrition or early out programs established at the discretion of the department and agency heads" over the course of three years. 58 Fed. Reg. 8515, 8515 (Feb. 10, 1993). Even setting aside the difference in scale, Executive Order 12839 did not involve mandatory RIFs or plans for agency reorganization. Moreover, in March 1994—before any action was taken to reduce the federal workforce—Congress expressly authorized agencies to offer voluntary separation incentive payment programs to "avoid or minimize the need" for RIFs. *See* Federal Workforce Restructuring Act of 1994, Pub. L. 103-226, 108 Stat. 111, 113 (1994).

The Executive Order at issue here far exceeds the President's supervisory powers under the Constitution. The President enjoys significant removal power with respect to the appointed officers of federal agencies. *See, e.g.*, *Myers*, 272

U.S. 52; *Seila Law LLC v. CFPB*, 591 U.S. 197 (2020); *see also Trump v. Wilcox*, No. 24A966, 2025 WL 1464804 (U.S. May 22, 2025). But even that power is not unlimited. *See, e.g.*, *Humphrey's Ex'r v. United States*, 295 U.S. 602 (1935). Determinative of the case before us, the President has never exercised such control over *inferior* officers, much less over the thousands of rank-and-file employees affected by the Executive Order.

The dissent argues that the district court "applied the wrong legal standard" in granting the preliminary injunction, and that "the question that should guide the separation of powers analysis" is whether the RIFs will essentially eliminate Congressionally created agencies or prevent those agencies from fulfilling their statutory duties. Dissent at 9–10. We do not agree with the dissent that this is the proper standard. But even applying the dissent's preferred standard, it is unlikely that Defendants can satisfy it. Defendants have not produced any evidence showing that the forty planned RIFs across seventeen agencies would not essentially eliminate Congressionally created agencies or prevent them from fulfilling their statutory duties. This lack of evidence is notable, given that Plaintiffs have produced evidence that some of the RIFs contemplate dramatic and debilitating cuts to Congressional agencies, some of which we described above. At a minimum, these cuts raise "serious questions going to the merits" of the question whether those agencies will be essentially eliminated or, if not eliminated,

prevented from fulfilling their statutory duties. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011).

Further, even assuming *arguendo* that the President, acting alone, could direct agencies to engage in some specific, narrowly targeted RIFs, the RIFs at issue here are anything but that. Instead, as the district court notes, they "appear inextricably intertwined with broad agency reorganization, which the president undoubtedly cannot undertake without Congress." *AFGE*, 2025 WL 1482511, at *22. The staff of at least one agency, AmeriCorps, has been cut almost entirely, with 85% of staff having been given notices and placed on leave. Dist. Ct. Dkt. No. 37-12. Other agencies have been required to functionally eliminate entire functions or offices. *See*, *e.g.*, Department of Labor, Dist. Ct. Dkt. No. 37-26 (cutting 90% of AFSCME-represented Office of Federal Contract Compliance Programs staff); Environmental Protection Agency, EPA, Dist. Ct. Dkt. No. 37-13, 37-19 (eliminating the Office of Environmental Justice and External Civil Rights); Health and Human Services, Dist. Ct. Dkt. No. 37-27 (cutting 93% of National Institute for Occupational Safety and Health staff): and Housing and Urban Development, Dist. Ct. Dkt. No. 37-7 (cutting nearly all positions in Office of Facilities and Property Management).

Defendants have yet to offer any evidence pointing to any explanation or justification for these sweeping RIFs beyond a general and undifferentiated desire

for a reduction in the number of people on the government's payroll. This is not surprising, as it is difficult to imagine how the sheer volume of RIFs could be explained by any individualized need or purpose of a given agency. Defendants repeatedly emphasize that "[f]ederal law . . . expressly authorizes agencies to undertake [reductions in force]." But even to the extent that this may be true, it shows only that *Congress* has authorized federal agencies to "undertake [reductions in force]." That has no bearing on the question here, which is not whether Congress has directed the agencies to engage in large-scale reductions-in-force, but whether Congress has authorized the *President* to direct the agencies to do so. Defendants have not identified a federal statute granting such authority. Indeed, in the supplemental motion now before us, they have abandoned any argument that the source of authority for the Executive Order may lie in statute.

Without any independent basis in the Constitution, the failure to identify statutory authority for the Executive Order is fatal to Defendants' claim. Separation of powers and checks and balances are fundamental to the structure of the government established by our Constitution. "To preserve those checks [on each Branch], and maintain the separation of powers, the carefully defined limits on the power of each Branch must not be eroded." *I.N.S. v. Chadha*, 462 U.S. 919, 957–58 (1983). That is manifestly true here, where the kind of reorganization contemplated by the Order has long been subject to Congressional approval. *See*

N.L.R.B. v. Noel Canning, 573 U.S. 513, 524 (2014) ("[L]ong settled and established practice is a consideration of great weight in a proper interpretation of constitutional provisions regulating the relationship between Congress and the President." (internal quotation removed)). We do not now recount that full history, which has been described at length by the district court, Plaintiffs, various *amici curiae*, and even Defendants. *See AFGE*, 2025 WL 1358477, at *16–17. But the most recent example of Congressional approval of reorganization authority warrants emphasis.

During the Reagan administration, Congress passed the Reorganization Act Amendments of 1984 ("Reorganization Act") "to promote . . . the more effective management of the executive branch," "to reduce expenditures and promote economy," and "to increase the efficiency of the operations of the Government." Pub. L. No. 98-614, 98 Stat. 3192; 5 U.S.C. § 901(a). The Act empowered the President to identify opportunities for organizational changes within agencies in accordance with the policy goals set forth by the statute. *See* 5 U.S.C. § 903(a) ("Whenever the President . . . finds that changes in the organization of agencies are necessary *to carry out any policy set forth in section 901(a) of this title* . . . ." (emphasis added)). That authority expired on December 31, 1984, and Congress has not renewed it. *Id.* § 905(b).

What is particularly notable about the 1984 Act is that even under its broad

grant of authority, the President's proposals for agency restructuring were subject to Congressional approval. *See id.* §§ 903(b), 906(a). Yet President Trump's Executive Order, not authorized under the 1984 Act or a comparable statute, implements precisely those types of changes. For example, the Order directs agencies to engage in "large-scale reductions in force" prioritizing "all components and employees performing functions not mandated by statute or other law." Under the Reorganization Act of 1984, the President's proposal regarding "the abolition of all or a part of the functions of an agency" would have needed Congressional approval, even if those functions were not part of an "enforcement function or statutory program." 5 U.S.C. § 903(a)(2). In other words, even if the President today were to have statutory reorganization authority such as that provided under the Reorganization Act—which he does not—his Executive Order would still violate the separation of powers.

None of this should be news to Defendants. During his first term in office, President Trump unsuccessfully sought this very reorganization authority he now seeks to exercise.[2] In 2018, two bills to this effect were introduced by Republican members in the House and Senate, but both failed. H.R. 6787, 115th Cong. (2017–

[2] *See Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations* (June 21, 2018), https://www.whitehouse.gov/wp-content/uploads/2018/06/Government-Reform-and-Reorg-Plan.pdf.

2018); S. 3137, 115th Cong. (2018). In February of this year, Representative James Comer introduced the Reorganizing Government Act of 2025, seeking to resurrect and reenact the 1984 Reorganization Act statute. H.R. 1295, 119th Cong. (2025). That bill never became law. And, as just pointed out, even if it had become law, any reorganization plan promulgated thereunder would still have required approval from Congress before taking effect.

Finally, Defendants' invocation of *Nixon v. Fitzgerald*, 457 U.S. 731 (1982), cannot save them. In *Fitzgerald*, the Supreme Court considered whether President Nixon was immune from a suit brought by a plaintiff who had lost his job in the Air Force during a departmental reorganization and reduction in force. The Court held that because the President's "mandate of office . . . include[d] the authority to prescribe reorganizations and reductions in force," plaintiff's termination fell within the broad blanket of executive immunity. *Id.* at 757. Defendants' reliance on that sole line from *Fitzgerald* is inapposite. There, the Court relied on the President's "mandate" as arising from 10 U.S.C. § 9013(g), the provision governing the powers of the Secretary of the Air Force. *See id.* at 757. In the military context, Article II of the Constitution confers unique powers to the President as the Commander in Chief of the armed forces. U.S. Const. art. II, § 2. Indeed, if *Fitzgerald* did straightforwardly confer such reorganizational authority to the President, it is difficult to understand why President Trump sought that

authority from Congress in 2018. It should thus come as no surprise that "[n]o President [other than President Trump] in the 40-plus years since *Fitzgerald* has used that case to justify reorganizing federal agencies more broadly." *AFGE*, 2025 WL 1482511, at *19.

As former Republican government officials note in their *amicus curiae* brief, the President cannot "reshape the entire federal bureaucracy because he does not like the tools that Congress has given him."

2

We turn next to the actions taken by OMB, OPM, and DOGE. "[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, 374 (1986). As Defendants concede, OMB and OPM have only supervisory authority over the other federal agencies. *See* 31 U.S.C. §§ 501–07; 5 U.S.C. §§ 1101–05. DOGE has no statutory authority whatsoever. We therefore agree with the district court that these organizations' actions directing other federal agencies to engage in restructuring and large-scale RIFs were *ultra vires*.

In asking us to hold otherwise, the Defendants' only argument is that OMB, OPM, and DOGE were merely "offer[ing] broad guidelines about the information to include in the [ARRPs]," not directing "what agencies should do." We disagree with that characterization.

Plaintiffs have submitted more than 1,400 pages of sworn declarations to the district court describing the actions of Defendants and their consequences. Dist. Ct. Dkt. No. 37, 101. They presented evidence of at least three instances in which agencies' proposed ARRPs were rejected by OMB, OPM, or DOGE as inadequate. Dist. Ct. Dkt. No. 36, Ex. 1 (NLRB); Dkt. No. 37-12 (AmeriCorps), 37-32 (NSF). By contrast, Defendants have actively sought to maintain secrecy over all of the ARRPs at issue in this case. The only piece of evidence they have publicly submitted is a single declaration in support of their motion for a protective order against the district court's order for those very ARRPs. Dist. Ct. Dkt. No. 88.

In considering the motion for a protective order, the district court has now conducted an *in camera* review of ARRPs from four different agencies and concluded that "OMB/OPM 'approval' . . . is a necessary triggering step in the agencies' current RIF and reorganization processes." *AFGE*, 2025 WL 1482511, at *21. At this time, our court does not have copies of, or access to, the materials that were considered *in camera* by the district court. "Our task in reviewing a district court's preliminary injunction decision is not to resolve [factual] controversies." *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 422 F.3d 782, 795 (9th Cir. 2005). We thus review the court's factual findings only for clear error. *Id.*

Whatever the merits of the deliberative privilege claim now being

considered below, it is remarkable that Defendants ask this court to reverse the district court's findings when that court is the only court that has viewed the record upon which the government relies. Under clear error review, so long as the "district court's account of the evidence is plausible in light of the record viewed in its entirety, [we] may not reverse it," even if "had [we] been sitting as the trier of fact, [we] would have weighed the evidence differently." *Anderson v. City of Bessemer City*, 470 U.S. 564, 574 (1985). Here, there is simply no evidence that would allow us to assess the district court's weighing of the evidence.

Finally, we find unpersuasive Defendants' invocation of savings clauses in the Executive Order and Memorandum. Any language in the Executive Order or Memorandum purporting to limit their directives to what is statutorily authorized is belied by other language in these documents. "Savings clauses are read in their context, and they cannot be given effect when the Court, by rescuing the constitutionality of a measure, would override clear and specific language." *City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1239 (9th Cir. 2018). Both the language and practical impact of the Executive Order and Memorandum are clear: the Trump administration is directing a "critical transformation" of the federal agencies. Defendants' actions are thus *ultra vires*.

C. APA

Because success on their *ultra vires* claims would entitle Plaintiffs to the

relief granted by the district court, we could again deny Defendants' motion for a stay on that ground alone. We nevertheless turn to the second set of Plaintiffs' claims, that the actions of the President, OPM, OMB, and DOGE violate the APA.

Because of the undeveloped record, the district court deferred ruling on the likelihood of success of several aspects of Plaintiffs' APA claims. *See AFGE*, 2025 WL 1482511, at *24–25. The court found, however, that both the OMB/OPM Memorandum and OMB/OPM's approval of the ARRPs were final agency actions. *See id*. It then held that OMB and OPM violated the APA because these final actions (1) were "in excess of statutory jurisdiction, authority, or limitations," 5 U.S.C. § 706(2)(C), and (2) constituted rule-making without notice and comment.

Defendants do not address the substance of Plaintiffs' APA claims, arguing that the OMB/OPM Memorandum is not a final agency action and is therefore unreviewable by the district court. We disagree.

1

For an agency action to be final, (1) "the action must mark the consummation of the agency's decisionmaking process," and (2) "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) (cleaned up). The finality of an agency action is "interpreted in a pragmatic and flexible

manner." *Or. Nat. Desert Ass'n v. U.S. Forest Serv.*, 465 F.3d 977, 982 (9th Cir. 2006) (quoting *Or. Nat. Res. Council v. Harrell*, 52 F.3d 1499, 1504 (9th Cir. 1995)); *see also Hawkes*, 578 U.S. at 599 ("This conclusion tracks the pragmatic approach we have long taken to finality." (internal quotation removed)). Both the Memorandum and OMB/OPM's approval of individual agencies' ARRPs satisfy this pragmatic and flexible finality standard.

As the district court found, nothing in the record indicates that OMB/OPM's actions are "of a merely tentative or interlocutory nature." *Bennett*, 520 U.S. at 178; *see AFGE*, 2025 WL 1482511, at *24–25. The Memorandum set out a schedule of deadlines by which agencies were to submit ARRPs for approval, with the first phase being due just two weeks after the Memorandum was issued. It was therefore "a definitive statement of [OMB/OPM]'s position" that "ha[d] a direct and immediate effect on the day-to-day operations" of the agencies, and with which "immediate compliance [wa]s expected." *Cal. Dep't of Water Res. v. FERC*, 341 F.3d 906, 909 (9th Cir. 2003).

Defendants now claim that the Memorandum merely "contemplates" the creation of the ARRPs and is thus "far afield" from the legal consequences that flow therefrom. But we have held that "a federal agency's assessment, plan, or decision qualifies as final agency action even if the ultimate impact of that action rests on some other occurrence—for instance, a future site-specific application, *a*

decision by another administrative agency, or conduct by a regulated party." *Prutehi Litekyan: Save Ritidian v. U.S. Dep't of Airforce*, 128 F.4th 1089, 1110 (9th Cir. 2025) (emphasis added); *see also San Francisco Herring Ass'n v. Dep't of Interior*, 946 F.3d 564, 577–78 (9th Cir. 2019). Moreover, Defendants make no argument against the district court's conclusion with respect to OMB/OPM's approvals of the ARRPs, which the district court found to be "a necessary triggering step in the agencies' current RIF and reorganization processes." *AFGE*, 2025 WL 1482511, at *21.

As the district court acknowledged, the record is still limited as to the process for approving and implementing the agencies' ARRPs. *See id.* at *25. But neither we nor the district court have received a declaration or been shown any documentation suggesting that the Memorandum or the approvals of the ARRPs did not represent OMB/OPM's "definitive position" on the matter. *Or. Nat. Desert Ass'n*, 465 F.3d at 985. Absent such evidence, we find unpersuasive Defendants' assertions to the contrary.

2

Once we conclude that OMB/OPM's actions are final and subject to judicial review, it straightforwardly follows that the actions violate the APA. For the reasons outlined in our analysis of Plaintiffs' *ultra vires* claims, both the Memorandum and approvals of ARRPs exceed OMB and OPM's statutory

authority, in violation of 5 U.S.C. § 706(2)(A). *See supra* Section II.B.2. Because these were final agency actions that "create[d] new rights and impose[d] new obligations," they were required to be preceded by a public notice-and-comment period. *Hemp Indus. Ass'n v. DEA*, 333 F.3d 1082, 1088 (9th Cir. 2003); *see Chrysler Corp. v. Brown*, 441 U.S. 281, 302 (1979); 5 U.S.C. § 553.

Defendants do not contest the merits of Plaintiffs' APA claims. Other than reiterating their disagreement with the finding of finality, they do not object to the district court's conclusions. Defendants therefore fail to show a likelihood of success on the merits with respect to Plaintiffs' APA claims.

III. Equitable Stay Factors

Having established that the first two factors, which "are the most critical," both weigh against granting a stay, we need say nothing more to justify a denial of Defendants' motion to stay the district court's decision pending appeal. *Nken*, 556 U.S. at 434. We nonetheless turn to the third and fourth factors governing a request for a stay—"assessing the harm to the opposing party and weighing the public interest"—which "merge when the Government is the opposing party." *Id.* at 435. Here, too, we have little trouble affirming the district court's conclusion that Plaintiffs would suffer irreparable injury in the absence of an injunction.

The declarations submitted by Plaintiffs in this case paint a startling picture of the "transformation" wrought by the Executive Order and its progeny. Most

directly affected are, of course, the federal agency employees facing job loss. These employees number in the hundreds of thousands. Aside from the obvious economic harm of loss of salary, many of those affected will be left without healthcare. Others will be forced to relocate from their homes. *See AFGE*, 2025 WL 1482511, at *26.

Plaintiffs' declarations also show the very substantial downstream impact of these large-scale reductions in force will have, reaching far beyond the walls of the executive agencies. Pulling a small handful of examples from the record, we point out that the current executive re-organization facilitates the proliferation of food-borne disease, Dist. Ct. Dkt. No. 37-46, 37-50, 37-58, contributes to hazardous environmental conditions, Dist. Ct. Dkt. No. 37-50, 37-52, 37-58, 37-59, hinders efforts to prevent and monitor infectious disease, Dist. Ct. Dkt. No. 37-21, 37-26, 37-46, 37-56, eviscerates disaster loan services for local businesses, Dist. Ct. Dkt. No. 37-18, 37-43, and drastically reduces the provision of healthcare and other services to our nation's veterans, Dist. Ct. Dkt. No. 37-9, 37-33, 37-38, 37-44, 37-58.

Defendants' only response is that "in the ordinary course, employment disputes brought by proper plaintiffs . . . rarely justify preliminary relief because there are procedures by which a terminated employee may obtain back pay." The record indicates that what the Defendants have sought to do is anything but "in the

ordinary course." Further, it is obvious that "back pay" is far from an adequate remedy. Back pay does not reinstate entire agency offices and functions. It cannot account for harms resulting from loss of income in the interim or for gaps in health- and childcare that accompany job loss. And it does nothing to address the breadth and severity of harm alleged by the dozens of non-federal-employee Plaintiffs in this case.

IV. Conclusion

For the foregoing reasons, we deny Defendants' emergency motion for a stay pending appeal.

American Federation of Government Employees, AFL-CIO, et al., v. Trump, et al., No. 25-3293

CALLAHAN, Circuit Judge, dissenting:

Exercising his power over the Executive Branch and in furtherance of his initiative to reign in the size of the federal government, President Trump directed federal agencies to prepare and carry out large-scale reductions in force (RIFs). Plaintiffs sued, bypassing the comprehensive administrative scheme that Congress has enacted to handle federal sector labor and employment disputes. The district court nevertheless entertained Plaintiffs' claims and concluded that the Executive's actions likely violate separation of powers—without making any finding that any agency's RIF is likely to violate any statute. The court then entered a sweeping preliminary injunction that strips the Executive of control over its own personnel.

Because Defendants have shown a likelihood of success and irreparable harm, we should have stayed the preliminary injunction. I respectfully dissent.

I.

As a threshold matter, Plaintiffs' claims are not justiciable.

"A special statutory review scheme . . . may preclude district courts from exercising jurisdiction over challenges to federal agency action." *Axon Enter., Inc. v. Fed. Trade Comm'n*, 598 U.S. 175, 185 (2023) (citing *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 207 (1994)). Jurisdiction is precluded when the scheme "displays a 'fairly discernible' intent to limit jurisdiction, and the claims at issue

'are of the type Congress intended to be reviewed within th[e] statutory structure.'" *Free Enter. Fund v. Public Co. Acct. Oversight Bd.*, 561 U.S. 477, 489 (2010) (quoting *Thunder Basin*, 510 U.S. at 207, 212)). That is the case here.

The Civil Service Reform Act of 1978 (CSRA) "established a comprehensive system for reviewing personnel action taken against federal employees." *Elgin v. Dep't of Treasury*, 567 U.S. 1, 5 (2012) (quoting *United States v. Fausto*, 484 U.S. 439, 455 (1988)). Federal employees subject to a RIF may appeal to the Merit Systems Protection Board (MSPB), *see* 5 U.S.C. § 7701(a); 5 C.F.R. § 351.901, and then obtain judicial review in the Federal Circuit, 5 U.S.C. § 7703(b)(1). Additionally, within the CSRA, the Federal Service Labor-Management Relations Statute (FSLMRS) "provides the exclusive procedures by which federal employees and their bargaining representatives may assert federal labor management relations claims." *Am. Fed'n of Gov't Emps., AFL-CIO v. Trump* (*Trump*), 929 F.3d 748, 755 (D.C. Cir. 2019) (citations and quotation marks omitted). Labor unions may bring their disputes before the Federal Labor Relations Authority (FLRA), 5 U.S.C. § 7105(a)(2), whose decisions may be reviewed by the courts of appeals, *id.* § 7123(a).

Plaintiffs' claims, which effectively challenge the prospective termination of federal employees in the aggregate, are precluded by the CSRA. Indeed, several courts have already reached this conclusion in cases challenging recent actions by

the Executive to reduce the size of the federal workforce. *See Maryland v. U.S. Dep't of Agric.*, Nos. 25-1248, 25-1338, 2025 WL 1073657, *1 (4th Cir. Apr. 9, 2025) (statutory scheme precluded challenge to terminations of thousands of federal probationary employees across federal agencies following Executive Order 14210); *Am. Foreign Serv. Ass'n v. Trump*, No. 1:25-cv-352, 2025 WL 573762, at *7 (D.D.C. Feb. 21, 2025) (statutory scheme precluded challenge to placement on administrative leave of thousands of employees of the United States Agency for International Development (USAID) because "the alleged injuries on which plaintiffs rel[ied] in seeking injunctive relief flow[ed] essentially from their members' existing employment relationships with USAID"); *Nat'l Treasury Emps. Union v. Trump*, No. 25-cv-420, 2025 WL 561080, at *5-8 (D.D.C. Feb. 20, 2025) (statutory scheme precluded challenge to terminations of thousands of probationary employees, anticipated RIFs, and deferred-resignation program across federal agencies following three executive orders, including Executive Order 14210); *Am. Fed'n of Gov't Emps., AFL-CIO v. Ezell*, No. 25-cv-10276, 2025 WL 470459, *2 (D. Mass. Feb. 12, 2025) (statutory scheme precluded challenge to deferred-resignation program across multiple agencies).

Although Plaintiffs raise constitutional arguments concerning separation of powers, that does not change the result. In *Elgin*, 567 U.S. 1, the plaintiffs' employment had been terminated for failure to comply with statutes requiring

federal employees to register for the draft. *Id.* at 7-8. Even though the MSPB could not resolve the plaintiffs' equal protection claim, the Supreme Court held that the CSRA's "statutory review scheme is exclusive, even for employees who bring constitutional challenges to federal statutes." *Id.* at 13. As the Court explained, the CSRA "replace[d] an 'outdated patchwork of statutes and rules' that [had] afforded employees the right to challenge employing agency actions in district courts across the country" and had "produced 'wide variations in the kinds of decisions . . . issued on the same or similar matters and a double layer of judicial review that was 'wasteful and irrational.'" *Id.* at 14 (quoting *Fausto*, 484 U.S. at 444-45). Thus, allowing the plaintiffs to pursue their equal protection claim outside of the CSRA would have "reintroduce[d] the very potential for inconsistent decisionmaking and duplicative judicial review that the CSRA was designed to avoid." *Id.*

Here, as in *Elgin*, the *Thunder Basin* factors point towards preclusion. First, whether claims are initially brought before the MSPB or the FLRA, the CSRA provides for meaningful judicial review of Plaintiffs' constitutional arguments in the federal courts of appeal. *See Elgin*, 567 U.S. at 16-21; *Trump*, 929 F.3d at 755-59 (absence of pre-implementation review did not bar meaningful review, even where plaintiffs claimed that executive orders violated the constitution). Second, Plaintiffs' constitutional arguments regarding the prospective termination of federal

employees are not "wholly collateral" to the CSRA because challenges to adverse employment actions are "precisely the type of personnel action regularly adjudicated" within the scheme. *Elgin*, 567 U.S. at 22. Third, while Plaintiffs' constitutional arguments are outside the agencies' expertise, the MSPB and FLRA may still apply their expertise to other claims raised by federal employees and their unions. *Id.* at 23; *see also Nat'l Treasury Emps. Union*, 2025 WL 561080, at *8 ("[A]lthough the FLRA may lack expertise on the constitutional claims, the agency could 'moot the need to resolve the unions' constitutional claims' by finding that the President's actions violated the RIF statute." (citation omitted)).

Plaintiffs also argue that their claims are not precluded because the CSRA does not permit each of them to pursue its administrative remedies. But when Congress enacted the CSRA, it carefully prescribed who may challenge federal employment decisions (including federal employees and labor unions) and where they may bring their challenges (before the MSPB and the FLRA). The scheme's limitations are binding, even on the federal employees who are subject to federal employment decisions. *See Fausto*, 484 U.S. 439. Accordingly, it's unlikely Congress intended third parties who are only tangentially affected by federal employment decisions to have the right to attack those decisions directly in federal

district courts.[1] *See Filebark v. U.S. Dep't of Transp.*, 555 F.3d 1009, 1014 (D.C. Cir. 2009) ("Congress had no intention of providing claimants like these—unmentioned in the CSRA—with a level of access to the courts unavailable to almost any other federal employees, including those that the CSRA identifies as most worthy of procedural protection." (citation omitted)).[2]

II.

Even if Plaintiffs' claims are justiciable, Defendants are likely to prevail.

Article II vests the President with authority over the Executive Branch. *See Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 203 (2020) ("Under our Constitution, the 'executive Power'—all of it—is 'vested in a President,' who must 'take Care that the laws be faithfully executed.'" (quoting U.S. CONST. art. II, § 1, cl. 1; and citing *id.*, § 3)). His authority "necessarily encompasses 'general administrative control of those executing the laws,' throughout the Executive

[1] There are also serious questions whether all the non-federal-union Plaintiffs have standing. For example, the district court (which "reserve[d] a fuller analysis for another day") deemed it sufficient that the City of Baltimore has residents who are federal employees who might lose their jobs and who therefore might pay less in taxes. *Am. Fed'n of Gov't Emps., AFL-CIO v. Trump*, No. 25-cv-03698-SI, 2025 WL 1482511, *10 (N.D. Cal. May 22, 2025). It cannot be the case that any individual or entity who might be remotely affected by a RIF has standing.

[2] Even assuming Plaintiffs' notice-and-comment claim could be brought outside of the CSRA framework, the district court's order does not address final agency action: it is the agency RIFs that determine "rights or obligations" and from which "legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citations omitted).

Branch of government, of which he is the head." *Building & Constr. Trades Dep't, AFL-CIO v. Allbaugh*, 295 F.3d 28, 33 (D.C. Cir. 2002) (quoting *Myers v. United States*, 272 U.S. 52, 164 (1926)). And it "include[s] the authority to prescribe reorganizations and reductions in force." *Nixon v. Fitzgerald*, 457 U.S. 731, 757 (1982).

Additionally, agencies have statutory authority to terminate employees, 5 U.S.C. § 3101, and to conduct RIFs, *id.* § 3502, and that statutory authority contemplates that agency RIFs may affect a "significant number of employees," *id.* § 3502(d)(1)(B). The Office of Personnel Management (OPM) in particular has statutory authority to "prescribe regulations for the release of competing employees in a reduction in force," *id.* § 3502(a), and by regulation it "may examine [another] agency's preparations for reduction in force at any stage," 5 C.F.R. § 351.205. The Office of Management and Budget (OMB) also has statutory authority to "[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)(4).

Through Executive Order 14210, the President pursued his policy objective of reducing the size of the federal government by directing the agencies to "promptly undertake preparations to initiate large-scale [RIFs], consistent with applicable law," and to prioritize "offices that perform functions not mandated by

statute or other law." Exec. Order No. 14,210, 90 Fed. Reg. 9669, § 3(c) (Feb. 14, 2025). Subsequently, OMB and OPM issued a memorandum providing guidance on the implementation of the Executive Order and directing agencies to submit "Agency RIF and Reorganization Plans" for review and approval by specified deadlines. OMB & OPM, *Guidance on Agency RIF and Reorganization Plans* (Feb. 26, 2025). The memorandum provides that 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 services." *Id.* at 2. It also reiterates that agencies "should review their statutory authority and ensure that their plans and actions are consistent with such authority." *Id.*

The Executive Order and the memorandum are far from ultra vires. As the authorities cited above make clear, the President has the right to direct agencies, and OMB and OPM to guide them, to exercise their statutory authority to lawfully conduct RIFs. *See generally Allbaugh*, 295 F.3d at 32-34.[3] Yet the district court held otherwise, concluding that the Executive Order and the memorandum are likely ultra vires because they directed "large-scale" RIFs and "reorganizations." *Am. Fed'n of Gov't Emps., AFL-CIO v. Trump*, No. 25-cv-03698-SI, 2025 WL

[3] In *City & County of San Francisco v. Trump*, 897 F.3d 1225, 1239-40 (9th Cir. 2018), an executive order's savings clause could not save it from a facial challenge. But there, unlike here, the executive order "command[ed] action" that was unlawful. *Id.* at 1240.

1482511, *1 (N.D. Cal. May 22, 2025). The court did not reach the question whether the RIFs will "essentially 'eliminate' Congressionally-created agencies or prevent those agencies from fulfilling their statutory mandates." *Id.* *19 n.18.

But that is the question that should guide the separation of powers analysis. Surely the Executive, under the direction of the President, has substantial discretion over the management of its own personnel, including the number of personnel needed to ensure that the laws are faithfully executed. *See Nixon*, 457 U.S. at 757. So long as the Executive exercises that authority within the confines set by the Legislature, it cannot be said to usurp any legislative power.

The district court did make a general statement that "[i]n some cases, as plaintiffs' evidence shows, agency changes intentionally or negligently flout the tasks Congress has assigned them" and "[a]fter dramatic staff reductions, these agencies will not be able to do what Congress has directed them to do." *Id.* at *1. In the footnote that follows, the district court "highlight[ed] a few examples" of "what is at stake in this litigation." *Id.* *1 n.1. But the cited examples do not identify any statutory mandates. For instance, the court noted that RIFs have resulted in or may result in the closures of the Pittsburgh office of the National Institute for Occupational Safety and Health (NIOSH) or the San Francisco office of Head Start, but it did not assess whether those offices are statutorily required. *Id.* at 1 n.1. Additionally, the court observed that RIFs may result in delays in the

provision of services by the Social Security Administration and the Farm Service Agency, but it did not analyze whether those delays amount to an abdication of statutory duties.

Because the district court failed to analyze and to make findings whether the RIFs likely have resulted or will result in statutory violations, it applied the wrong legal standard. Therefore, even if Plaintiffs' claims are justiciable, Defendants are likely to prevail in this appeal.

III.

The remaining factors also favor a stay pending appeal, as in other recent cases enjoining Executive actions. *See, e.g.*, *Office of Pers. Mgmt. v. Am. Fed'n of Gov't Emps.*, No. 24A904, 2025 WL 1035208, at *1 (U.S. Apr. 8, 2025) (granting stay pending appeal of preliminary injunction prohibiting termination of probationary employees); *Dep't of Educ. v. California*, 145 S.Ct. 966 (2025) (per curiam) (granting stay pending appeal of temporary restraining order mandating disbursement of funds).

The Executive undoubtedly has a legitimate interest in—and "has traditionally been granted the widest latitude in"—"the 'dispatch of its own internal affairs.'" *Sampson v. Murray*, 415 U.S. 61, 83 (1974) (quoting *Cafeteria and Rest. Workers Union, Loc. 473, A.F.L.-C.I.O. v. McElroy*, 367 U.S. 886, 896 (1961)). Despite this, the preliminary injunction is expansive—prohibiting

approximately 20 agencies from carrying out RIF-related activities, including interagency planning activities, as directed by the President—on the premise that any such activities related to the Executive Order are tainted. We should have been mindful of the limits of our own powers and stayed the injunction that interferes in the lawful conduct of a coordinate branch.

IV.

Because we should have granted Defendants' motion to stay the preliminary injunction pending appeal, I respectfully dissent.