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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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

Plaintiffs,

v.

UNITED STATES OFFICE OF  
MANAGEMENT AND BUDGET, et al.;

Defendants.

Case No. 3:25-cv-08302-SI

**MEMORANDUM OF POINTS &  
AUTHORITIES IN SUPPORT OF MOTION  
OF PLAINTIFFS AFGE AND AFSA FOR  
TEMPORARY RESTRAINING ORDER  
AND ORDER TO SHOW CAUSE**

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## INTRODUCTION

Plaintiff American Federation of Government Employees (“AFGE”) and proposed Plaintiff American Foreign Service Association (“AFSA”)<sup>1</sup> move this Court for an immediate temporary restraining order (“TRO”) staying and enjoining the imminent and unlawful execution of reductions in force (“RIFs”) by the Defendant United States Department of State (“State Department”), scheduled for Friday, December 5, 2025. Those RIFs would violate the federal legislation that ended the federal government shutdown, which prohibits implementation of any RIFs through January 30, 2026, and mandates the rescission of previously noticed RIFs implemented during the shutdown. Pub. L. No 119-37, §120, 139 Stat 495 (2025) (the “Continuing Resolution” or “CR”).

On December 1, 2025, relying on the direction of Defendants Office of Personnel Management (“OPM”) and Office of Management and Budget (“OMB”), Defendant State Department informed employees that they will be permanently separated from federal employment on December 5, 2025. This notice, and the direction under which it issued, were premised on Defendants’ position that the Continuing Resolution signed into law on November 12, 2025 applies only to RIFs that were noticed on or after October 1, 2025, and so does not prohibit those actions.

Defendants are wrong. The plain language of the Continuing Resolution prohibits any actions implementing any RIFs of any employees at any agency between November 12, 2025 and January 30, 2026, *and* requires rescission of any previously issued RIF notices (regardless of when they were issued) if the RIFs were implemented during the shutdown. Plaintiffs are therefore likely to prevail on their claims, which enforce the plain language of this statute. Unless a TRO issues, Defendants’ imminent actions will cause Plaintiffs and the employees they represent significant irreparable harm, and the balance of equities and public interest support halting these unlawful acts. Plaintiffs therefore

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<sup>1</sup> Plaintiffs have filed herewith an Unopposed Motion for Leave to File Supplemental Complaint that adds AFSA as a plaintiff to this action in light of Defendants’ decision to proceed with unlawful RIFs at the State Department. This motion for a temporary restraining order is filed on behalf of Plaintiff AFGE and proposed Plaintiff AFSA, which represent employees of the State Department who are and will be impacted by the imminent RIF separation dates.

respectfully request this Court grant this Motion for a TRO and provide relief by 9 a.m. Eastern time on Friday, December 5, 2025—in advance of the State Department’s scheduled separations.<sup>2</sup>

## BACKGROUND

### I. The 2025 Government Shutdown and the Continuing Resolution

On November 10, 2025, the United States Senate passed H.R. 5371 (the “Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026”) to end the shutdown of the federal government that began on October 1, 2025. That legislation included language protecting federal employees from taking any further actions to implement RIFs. On November 12, 2025, the United States House of Representatives passed the Senate’s version of H.R. 5371. The same day, President Trump signed the Continuing Resolution into law. Pub. L. No 119-37, 139 Stat 495 (2025).

The CR provides partial government funding through January 31, 2026, allowing the shutdown of the government to end. The CR also contains Section 120, which prohibits federal agencies from issuing or implementing RIFs through January 30, 2026, and requires agencies to rescind previous RIFs. The operative language provides:

SEC. 120. (a) PROHIBITION.—Notwithstanding section 106(1), during the period between the date of enactment of this Act and the date specified in section 106(3) of this Act, no federal funds may be used to initiate, carry out, implement, or otherwise notice a reduction in force to reduce the number of employees within any department, agency, or office of the Federal Government.

(b) APPLICABILITY.—The prohibition under subsection (a) shall apply to all civilian positions, whether permanent, temporary, fulltime, part-time, or intermittent, and without regard to the source of funding for such positions.

(c) EXCEPTION.—The prohibition under subsection (a) shall not apply to—

(1) voluntary separations or retirements;

(2) actions necessary to comply with a court order; or

(3) actions taken, beginning only on the first day of a lapse in appropriations, necessary to implement or maintain an orderly shutdown of government operations.

<sup>2</sup> Plaintiffs inquired on December 2 as to whether Defendants would agree to toll the separations at issue to avoid the need for this Motion. Leonard Decl. in Supp. of TRO, ¶¶2-3. Defendants confirmed on December 3, 2025 that they oppose this motion, and provided no confirmation that they would postpone these separations. *Id.*

(d) DEFINITIONS.—For purposes of this section, the term “reduction in force” means actions taken by an agency pursuant to section 3501 through 3504 of title 5, United States Code or section 3595 of such title, or any similar reduction of positions at any department, agency, or office of the Federal Government, unless such reduction has been provided for in this Act.

(e) Notwithstanding section 106(1), any reduction in force proposed, noticed, initiated, executed, implemented, or otherwise taken by an Executive Agency between October 1, 2025, and the date of enactment, shall have no force or effect.

(1) Any employee who received notice of being subject to such a reduction in force shall have that notice rescinded and be returned to employment status as of September 30, 2025, without interruption. Such employees shall receive all pay to which they otherwise would have been entitled in the absence of receiving such notice, including backpay in accordance with section 116 of this Act.

(2) Within 5 days of date of enactment of this Act, each Federal agency shall send notice to all affected employees and the chairs and ranking members of the Appropriations Committees of the Senate and House of Representatives of the withdrawal of the reduction in force notice and the affected employee’s reinstatement, if applicable.

(3) Notices must include reinstatement date and the amount of back pay determined in paragraph (1), if applicable.

## **II. The Administration’s Misinterpretation of Section 120 of the CR**

On November 12, 2025, OPM issued a memorandum to all federal agencies regarding the CR and the reopening of the government, which addressed Section 120 and RIFs. That memorandum (entitled “Employee Pay, Leave, Benefits, and Other Human Resources Programs Affected by the Lapse in Appropriations,” and attached to Plaintiffs’ Supplemental Complaint as Exhibit A) instructed agencies that Section 120 applies only to RIF notices issued *after* October 1, 2025:

Additionally, Section 120(e) of the Continuing Appropriations Act of 2026 requires any agencies that issued Reduction in Force (RIF) notices between October 1, 2025 and November 12, 2025 to issue notices to rescind the RIF notices within 5 days. Agencies should issue those notices and confirm to OPM the rescissions have been issued at [employ@opm.gov](mailto:employ@opm.gov). OPM will provide additional guidance separately. (Supp. Compl., Ex. A at \*1).

The November 12 OPM memorandum is significantly under-inclusive, because it instructs federal agencies to rescind only those RIFs issued since October 1, 2025 rather than “any reduction in force proposed, noticed, initiated, *executed, implemented*, or otherwise taken by an Executive Agency between October 1, 2025, and the date of enactment,” as required by the statute. Pub. L. No 119-37,

1 §120(e) (emphasis added).

2 On November 13, 2025, OPM issued a further memorandum to all federal agencies  
3 addressing Section 120 and RIFs (“Reduction in Force Actions Affected by Continuing  
4 Appropriations Act, 2026,” attached to the Supplemental Complaint as Exhibit B). That  
5 memorandum repeats the under-inclusive instruction to federal agencies:

6 Agencies must review all RIF notices issued between October 1, 2025, and November 12,  
7 2025; rescind those notices; and restore each affected employee affected by a RIF notice  
8 issued between October 1, 2025 and November 12, 2025 to their September 30, 2025  
employment status.... (Supp. Compl., Ex. B at \*2).

9 The November 13 OPM Memorandum further instructs:

10 Agencies must submit to OPM at employ@opm.gov confirmation that the agency has issued a  
11 notice to rescind any RIFs that were noticed between October 1, 2025 and November 12,  
2025, no later than November 19, 2025.

12 *Id.* at \*3. OPM’s spokesperson issued a statement to the New York Times confirming this under-  
13 inclusive interpretation: “Congress was specific in the bill it wrote that it was concerned with RIF  
14 notices issued during the shutdown, not RIFs that were noticed before Oct. 1, 2025.... RIFs that were  
15 noticed before the shutdown but happened to have a separation date that fell later were not  
16 ‘implemented or executed’ during the shutdown, but rather before.”<sup>3</sup>

17 At the time OPM issued these memos, it was aware that federal agencies had continued to  
18 implement (during the shutdown) RIF notices that had been issued to employees prior to October 1,  
19 2025.<sup>4</sup> Specifically, OPM itself instructed agencies that employees could be forced to work during  
20 the shutdown to implement previously issued RIFs (as previously challenged in this case as unlawful  
21 under the APA and contrary to the Antideficiency Act). ECF 17-3, Ex. D at 9-10. And, in general,  
22 OPM’s RIF instruction manual sets forth the many phases of RIF implementation that must occur  
23 between the time an initial RIF notice is sent to an employee and the time that the employee is later  
24

25  
26 <sup>3</sup> See <https://www.nytimes.com/2025/11/25/us/politics/gsa-fired-employees-shutdown.html> (Nov. 25, 2025).

27 <sup>4</sup> Some of these actions were enjoined by this Court. ECF 56, 92, 109. The further implementation  
28 of previously issued RIF notices was not enjoined by this Court’s October 28 preliminary injunction  
unless the agency had reissued the notice during the shutdown, or if the RIFs did not impact agency  
components with employees represented by Plaintiffs. ECF 92, 109.

separated, all of which involve substantial work by an assigned team of agency human resources employees taking care of issues regarding the impact on health benefits, retirement, and other matters. ECF 17-1 at 11-12.

The State Department was one of several federal agencies that had issued RIF notices to employees prior to the shutdown, with implementation and execution dates falling within the shutdown time period. Dinkelman Decl. ¶¶11-21, Ex. B-I. On December 1, 2025, the State Department revealed for the first time that OMB, along with the Department of Justice’s Office of Legal Counsel (“OLC”), had provided the State Department with “formal written guidance” regarding RIFs that had been issued prior to the October 1, 2025 shutdown but further implemented during or after the shutdown. *Id.*, Ex. K. In that “formal written guidance,” according to the State Department, OMB instructed that Section 120 does not prohibit agencies from completing RIFs that were noticed prior to the October 1, 2025 shutdown, including by effectuating the separation of employees. *Id.* The State Department, on December 2, 2025, posted the following Frequently Asked Questions on its website:<sup>5</sup>

**Will separations that occurred during the lapse in appropriations be reversed?**

- No, the Department – following formal guidance from both the Office of Management and Budget and the Department of Justice Office of Legal Counsel – has determined that H.R. 5371 does not prohibit completing RIFs that were noticed prior to the lapse in appropriations.

**Will the Department move forward with Foreign Service or other pending separations issued prior to the lapse in appropriations?**

- The Department has determined that H.R. 5371 does not prohibit completing RIFs that were noticed prior to the lapse in appropriations.

As of the time of this filing, neither OMB nor OLC have made public this “formal guidance” provided to the State Department.<sup>6</sup>

These OPM and OMB instructions to federal agencies, like the prior OMB Lapse

<sup>5</sup> See Department of State, FAQs for Employees Separated via a RIF Action (Dec. 2, 2025), <https://www.state.gov/faqs-for-employees-separated-via-a-rif-action/> (last accessed Dec. 3, 2025).

<sup>6</sup> See OMB website, <https://www.whitehouse.gov/omb/information-resources/guidance/memoranda/> (last accessed December 3, 2025); OLC website, <https://www.justice.gov/olc/opinions> (last accessed December 3, 2025)



Memorandum and OPM guidance telling agencies that RIFs could be implemented during the shutdown and other OPM and OMB directives to federal agencies regarding federal employment (see ECF 79-1 at 8-9), are directives regarding how agencies must interpret Section 120 of the CR and apply that law to their employees, and are not permissive or suggestions, notwithstanding the use of the term “guidance.” *See, e.g., AFGE v. Trump*, 784 F. Supp. 3d 1316, 1352 (N.D. Cal. 2025) (rejecting Defendants’ argument that they “were merely providing guidance” and finding “[l]ike other directives from the current administration, ... the memo ‘amounted to a command, not a suggestion.’”) (quoting *New York v. Trump*, No. 2025 WL 715621, at \*8 (D.R.I. Mar. 6, 2025); *AFGE v. OPM*, 2025 WL 2633791, at \*15-19 (N.D. Cal. Sept. 12, 2025) (finding that evidence demonstrated that OPM directed terminations of probationary employees despite argument that the agency only provided “guidance”).

### **III. State Department’s Imminent Separation of Employees**

On July 11, 2025, the State Department issued RIF Notices to approximately 1,300 employees, with separation dates in September 2025 for the civil service and of November 10, 2025 for the foreign service (after a mandatory 120-day notice period). Willson Decl. ¶3; Dinkelman Decl. ¶10. The State Department granted extensions of separation dates to a small number of civil service employees, in response to requests from affected employees who had recently given birth and/or faced medical issues. Willson Decl. ¶¶4-5.

During the shutdown, the State Department continued to implement the stages of these RIFs in preparation for final separation of the employees, including by processing personnel paperwork in advance of the planned separations. Willson Decl. ¶6, Exs. A-B; Dinkelman Decl. ¶10. For example, the State Department took steps that included processing the mandatory SF-50 paperwork for these to-be-separated employees. Willson Decl., Ex. B. Likewise, for the foreign service, the State Department took many steps to implement and prepare for the employees’ November 10 separation, including issuing assessments of retirement eligibility and other personnel-related documents and communications. Dinkelman Decl. ¶¶11-21, Exs. B-I. However, the November 10 date came and went without the State Department executing the RIF. Dinkelman Decl. ¶22. Instead, on or around November 10, affected employees received a message stating only that their



1 administrative leave would continue. *Id.* ¶23, Ex. J. The RIF notices were not re-issued, and  
 2 employees received nothing further from the State Department regarding the now-expired RIF  
 3 notices until December 1, 2025. *Id.* ¶¶24-25.

4 On December 1 and 2, 2025, the State Department notified employees for the first time that  
 5 they were not covered by the CR and would be separated from federal employment imminently, on  
 6 December 5, 2025. *Id.* ¶¶25, 27; Willson Decl. ¶¶7-8. The foreign service employees received an  
 7 email notice that stated, in its entirety:

8 Following formal written guidance from both the Office of Management and Budget and  
 9 Department of Justice Office of Legal Counsel, the Department of State's Office of the Legal  
 10 Adviser has determined that completing the reductions in force (RIFs) noticed prior to the  
 11 lapse in appropriations does not violate the Antideficiency Act (ADA) or any other restriction  
 within HR 5371. Given this determination, the Department will finalize your separation or  
 involuntary retirement on Friday, December 5.

12 Dinkelman Decl., Ex. K. The civil service employees received a similar message, largely without a  
 13 new separation date (although some employees were also informed they would be separated on  
 14 December 5). Willson Decl., Exs. C, E. On December 2, 2025, three days prior to the date on which  
 15 it intended to permanently separate the affected employees, the State Department posted the FAQ  
 16 referenced above to its website for the first time. *Supra* at n.5.

#### 17 **IV. Imminent Harm to Plaintiffs**

18 Plaintiffs AFGE and AFSA and the employees at the State Department they represent who are  
 19 subject to these imminent actions will suffer irreparable harm if these separations are permitted to  
 20 take place starting December 5. As a result of these imminent separations from federal employment,  
 21 employees will lose their income, their health benefits, and other incidents of employment, causing  
 22 severe irreparable harm to them and their families. Dinkelman Decl. ¶¶29, 30; Willson Decl. ¶¶10-  
 23 11, 19. For many of these employees, they will lose their careers built over years or even decades as  
 24 dedicated public servants in federal employment. Dinkelman Decl. ¶3; Willson Decl. ¶¶11, 16; Gliha  
 25 Decl. ¶14.

26 For example, one AFSA member facing separation on December 5, 2025, has completed  
 27 more than twenty years of service in the Department, repeatedly serving in high-threat positions and  
 28 building a career as a distinguished diplomat. Gliha Decl. ¶14. He survived a terrorist bombing

1 while stationed overseas in Jeddah. *Id.* ¶3. He is worried that his December 5 termination will  
2 essentially end his career because the specialized nature of his work does not translate easily to the  
3 private sector. *Id.* ¶¶15, 16. As he puts it, “I have lost the ability to continue serving American  
4 interests in critical regions where I built decades of expertise and relationships.” *Id.* ¶15. On top of  
5 the loss of his career, his family stands to lose 50% of its income because of his separation. *Id.* ¶19.  
6 He continues to suffer from bombing-related PTSD, and since receiving notification on December 2  
7 that he would be separated days later, the symptoms of his PTSD have been exacerbated, and he has  
8 had trouble sleeping and been short of temper. *Id.* ¶17.

9 For many of these employees, the imminent loss of employment means a sustained loss of  
10 income and benefits in a job market already flooded with unemployed former State Department and  
11 USAID employees. Willson Decl. ¶11. For example, one AFGE member who gave birth only a few  
12 months ago is concerned that she will be unable to find another job in the human rights advocacy  
13 space because the federal government has also eliminated grants in that space and stigmatized such  
14 work as “DEI.” Willson Decl. ¶¶13-14. For others, who are stationed overseas and must remain  
15 there in light of their families or spouses, loss of this job will mean unemployment. For example, one  
16 Foreign Service officer is married to another Foreign Service Officer who is currently posted abroad,  
17 and has very limited job opportunities abroad because of host-country laws, language requirements,  
18 and embassy restrictions. Brunsdale Decl. ¶11. Moreover, she had to give up one of the few job  
19 opportunities available to her: although she had applied for and conditionally accepted a position  
20 intended specifically for spouses of foreign service officers who are not employed with the  
21 Department, she later turned down the job under the belief that she was ineligible for the position  
22 because she would not be separated from the Department until the end of January, consistent with the  
23 Continuing Resolution. Brunsdale Decl. ¶¶12-13. Instead, she suddenly received notice that she will  
24 be separated on December 5. Brunsdale Decl. ¶14.

25 The loss of health benefits will irreparably harm employees who are already suffering or have  
26 family members suffering significant medical issues. In particular, the AFGE-represented employees  
27 at the State Department who have yet to be separated are in that category because they were in the  
28

1 midst of health care and other circumstances that led to extensions of their prior separation dates.  
 2 Willson Decl. ¶10.

### 3 ARGUMENT

#### 4 **I. This Court Should Enjoin Defendants’ Imminent Unlawful RIFs Pending Consideration 5 of a Preliminary Injunction**

6 A TRO is warranted when (1) the moving party is likely to succeed on the merits; (2)  
 7 irreparable harm is likely in the absence of preliminary relief; (3) the balance of equities tips in the  
 8 movant’s favor; and (4) an injunction is in the public interest. Fed. R. Civ. P. 65 (b)(1), (c); *Winter v.*  
 9 *Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). All factors strongly favor a TRO.

#### 10 **A. Plaintiffs Are Likely to Succeed on the Merits**

##### 11 **1. OPM and OMB’s November directives to agencies to continue 12 implementing previously noticed RIFs are contrary to law and are 13 therefore ultra vires and violate the APA**

14 OPM and OMB’s directives that agencies can continue to implement RIFs where the initial  
 15 RIF notice was issued prior to October 1, 2025 are contrary to Section 120 of the Continuing  
 16 Resolution and direct agencies to act in violation of the Appropriations Clause. The plain language  
 17 of Section 120(a) prohibits any further spending to implement *any* RIFs between November 12, 2025  
 18 and January 30, 2026, and is in no way limited to implementing “new” RIF notices. Further, Section  
 19 120(e) requires rescission of any RIFs that were implemented during the shutdown period and does  
 20 not limit that mandate to RIF notices issued only after October 1, 2025. The directive to the State  
 21 Department to further implement these RIFs because the initial notice was issued prior to October 1  
 22 violates the Administrative Procedure Act (“APA”), 5 U.S.C. §706 (2)(A), (B) and (C), and the  
 23 Constitution, and is *ultra vires*.

##### 24 **a. Section 120 prohibits implementation of any RIFs regardless of 25 whether they were initiated before the shutdown period**

26 The gravamen of OPM and OMB’s interpretation of Section 120 is that Congress intended  
 27 Section 120 to cover only RIFs that were noticed on or after the shutdown began on October 1, 2025.  
 28 But Section 120(a) plainly prohibits further implementation of any RIFs regardless of when the initial  
 RIF notice was sent, and Section 120(e) likewise is not limited to RIFs issued after October 1. Thus,  
 nothing in the plain language of Section 120 supports Defendants’ interpretation. In interpreting

1 Section 120 of the CR, “we start where we always do: with the text of the statute.” *Van Buren v.*  
 2 *United States*, 593 U.S. 374, 381 (2021). “It is a well-recognized rule of statutory construction that  
 3 ‘[t]he plain meaning of the statute controls, and courts will look no further, unless its application  
 4 leads to unreasonable or impracticable results.’” *Eisinger v. Fed. Lab. Rels. Auth.*, 218 F.3d 1097,  
 5 1102 (9th Cir. 2000) (quoting *United States v. Daas*, 198 F.3d 1167, 1174 (9th Cir. 1999)).

6 First, with respect to Section 120(a), that provision prohibits the use of *any* federal funds from  
 7 November 12, 2025 through January 30, 2026 “to initiate, carry out, implement, or otherwise notice a  
 8 reduction in force to reduce the number of employees within any department, agency, or office of the  
 9 Federal Government,” without qualification. Pub. L. No 119-37, §120(a). This language is not  
 10 limited, for example, by when a RIF was first issued; nor did Congress limit the prohibition only to  
 11 “new” RIFs. Instead, Congress used the terms “implement” and “carry out,” both of which  
 12 encompass any steps taken to complete an action or process. *See, e.g., Implement*, Garner’s Modern  
 13 English Usage (4th ed. 2016) (“to carry out or put into effect; to take practical steps toward the  
 14 fulfillment of”); *Carry Out*, Merriam-Webster, [https://www.merriam-](https://www.merriam-webster.com/dictionary/carryout)  
 15 [webster.com/dictionary/carryout](https://www.merriam-webster.com/dictionary/carryout) (“to bring to a successful issue”).<sup>7</sup>

16 Any interpretation limiting Section 120(a) to newly issued RIF notices would render the  
 17 words “carry out” and “implement” meaningless. But courts “must ‘give effect, if possible, to every  
 18 clause and word of [the] statute.’” *Williams v. Taylor*, 529 U.S. 362, 404 (2000) (quoting *United*  
 19 *States v. Menasche*, 348 U.S. 528, 538–39 (1955)). If Congress meant to prohibit only the  
 20 expenditure of federal funds for new RIF notices, all the listed terms in Section 120(a) would be  
 21 entirely duplicative: there is no difference between initiating notice, carrying out notice,  
 22 implementing notice, or otherwise noticing a reduction in force.<sup>8</sup> The better reading of the statute,  
 23

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24 <sup>7</sup> If Congress meant this provision to apply only to newly issued RIFs, it could have stopped after  
 25 “initiate,” and there would have been no need to include the broader words “carry out” or  
 “implement,” since the issuance of new RIF notices would have already been prohibited.

26 <sup>8</sup> The word “otherwise” does not alter the broad meaning of the terms in this list. The Supreme Court  
 27 has explained that “a general phrase can be given a more focused meaning by the terms linked to it,”  
 28 *Fischer v. United States*, 603 U.S. 480, 488 (2024), but that analysis does not require reading the final  
 term in a list to be entirely duplicative of the other express terms. *See id.* at 489 (“[D]epending on the  
 context, ‘the word otherwise can’—though not ‘must’—refer to a crime that is similar to the listed

1 and the only one that gives these terms any independent meaning, is that it covers any action taken to  
 2 further any RIF, from the initiation and notice through all the steps of implementation, including  
 3 carrying out a final separation—exactly what the statute says. Although some overlap in the agency  
 4 actions listed may remain (as between “carry out” and “implement,” or “initiate” and “otherwise  
 5 notice”), “‘surplusage is nonetheless disfavored,’ and our ‘construction that creates substantially less  
 6 of it is better than a construction that creates substantially more.’” *Fischer*, 603 U.S. at 496 (citation  
 7 omitted).

8 Moreover, the terms “carry out” and “implement” apply to “reduction in force,” which  
 9 includes actions far beyond just the sending of the initial notice. Section 120 defines “reduction in  
 10 force” as “*actions* taken by an agency pursuant to section 3501 through 3504 of title 5, United States  
 11 Code or section 3595 of such title, or any similar reduction of positions at any department, agency, or  
 12 office of the Federal Government, unless such reduction has been provided for in this Act.” Pub. L.  
 13 No 119-37, §120(d) (emphasis added). By defining “reduction in force” to include all of the actions  
 14 taken by an agency to effectuate the removal of positions, Section 120 thus broadly prohibits any of  
 15 the many steps that must occur to implement a RIF, from sending an initial RIF notice through  
 16 separation of employees. *Supra* at 4. The referenced statutes relate broadly to the “release of  
 17 competing employees in a reduction in force,” not just to the initial notice process for such  
 18 reductions, *see, e.g.*, 5 U.S.C. §3502(a). Similarly, OPM’s regulations implementing these statutes  
 19 pertain to actions beyond the issuance of a RIF notice, making clear that the notice is just one of the  
 20 many steps required to implement a RIF. *See generally* 5 C.F.R. part 351. Actions taken to release  
 21 federal employees—including those taken to finally separate those who have already received  
 22 notice—are plainly encompassed by Section 120’s statutory definition of “reduction in force,” and  
 23

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24 examples in some respects but different in others.’”) (citations omitted). Moreover, *Fischer*’s  
 25 interpretation of “otherwise” relied on the canon of *noscitur a sociis* to interpret ambiguous text, a  
 26 canon that would be inappropriate here. “Rules of statutory construction are to be invoked as aids to  
 27 the ascertainment of the meaning or application of words otherwise obscure or doubtful. They have  
 28 no place ... except in the domain of ambiguity.” *Russell Motor Car Co. v. United States*, 261 U.S.  
 514, 519 (1923); *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 227 (2008) (“In any event, we do not  
 woodenly apply limiting principles every time Congress includes a specific example along with a  
 general phrase.”). Where, as here, the text is unambiguous, there is no need to apply canons of  
 construction to aid that analysis.

1 the implementation of that separation is thus covered by Section 120(a). Further, nowhere does the  
 2 definition in Section 120(d) include a qualifier: it applies broadly to “any” RIF or reduction in  
 3 positions at any agency, which in this case means *all* RIFs, and does not exclude RIFs where the  
 4 agency issued the RIF notice prior to October 1, 2025.

5 Second, the text and structure of the remainder of Section 120 confirm that 120(a) prohibits  
 6 any actions to implement RIFs during this time period—regardless of when any RIFs were noticed.  
 7 Initially, the text of Section 120(c) shows that when Congress intended to limit the scope of Section  
 8 120(a), it did so expressly. Section 120(c) provides for three enumerated exceptions to Section  
 9 120(a): “(1) voluntary separations or retirements; (2) actions necessary to comply with a court order;  
 10 or (3) actions taken, beginning only on the first day of a lapse in appropriations, necessary to  
 11 implement or maintain an orderly shutdown of government operations.” Pub. L. No 119-37, §120(c).  
 12 While adopting these exceptions, Congress did not exempt any of the many existing (and highly  
 13 publicized) RIFs that had been noticed prior to the October 1, 2025 shutdown. “[W]here Congress  
 14 explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be  
 15 implied, in the absence of evidence of a contrary legislative intent.” *Hillman v. Maretta*, 569 U.S.  
 16 483, 496 (2013) (quoting *Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616–617 (1980)).

17 Further, Section 120(a) operates in concert with Section 120(e). Under Section 120(e), “any  
 18 reduction in force proposed, noticed, initiated, *executed*, *implemented*, or otherwise taken by an  
 19 Executive Agency between October 1, 2025, and the date of enactment, shall have no force or  
 20 effect.” Pub. L. No 119-37, §120(e) (emphasis added). This language expressly refers not only to  
 21 RIFs proposed, initiated, or noticed during the shutdown, but also to any RIF “executed” or  
 22 “implemented” after October 1. OPM and OMB’s interpretation of this language to cover only “RIF  
 23 notices issued between October 1, 2025, and November 12, 2025,” *supra* at 3-4, is directly contrary  
 24 to the statutory language. Again, courts must give effect to all of these terms. *Williams*, 529 U.S. at  
 25 404. Nor should courts add limiting language or qualifications where Congress provided none.  
 26 Nothing in Section 120(a)’s language states that the RIF in question must be noticed after October 1,  
 27 2025 for the protections of the provision to apply. And at the time this law was enacted, many highly  
 28 publicized RIFs had been announced and noticed (including by the State Department), and were



1 being implemented (even if not yet completed) during the shutdown.<sup>9</sup> Despite this, Congress did not  
 2 include the limitation that OPM and OMB would have the Court read into the statute.<sup>10</sup>

3 The best reading of the statute as a whole requires the unwinding of *any* RIF-related actions  
 4 taken during the shutdown and the prohibition of any further action to implement any RIFs by federal  
 5 agencies. Taken together, these provisions ensure that all covered federal employees return to and  
 6 remain in the employed status they held as of September 30, 2025, just before the prior congressional  
 7 appropriations lapsed. Further, that OMB and OLC issued this narrow statutory interpretation in  
 8 something called a “formal written guidance” matters not at all; as the Supreme Court has explained,  
 9 agencies receive no deference in the realm of statutory interpretation, which is a function of the  
 10 Article III courts. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 391-92 (2024).

11 Finally, any attempt by Defendants to rely on legislative history to inform the meaning of  
 12 Section 120’s plain text should be disregarded. “It is a fundamental principle of appropriations law  
 13 that we may only consider the text of an appropriations rider, not expressions of intent in legislative  
 14 history.” *United States v. McIntosh*, 833 F.3d 1163, 1178 (9th Cir. 2016). “An agency’s discretion to  
 15 spend appropriated funds is cabined only by the ‘text of the appropriation,’ not by Congress’  
 16 expectations of how the funds will be spent, as might be reflected by legislative history.” *Id.* (quoting  
 17 *Salazar v. Ramah Navajo Chapter*, 567 U.S. 182, 200 (2012)). Thus, any cherry-picked statements  
 18 by legislators that focus on RIFs issued during the shutdown (which plainly was one of Congress’s  
 19 concerns, but not the only concern) will not further OPM and OMB’s argument, and in any event  
 20 there are just as many statements evidencing legislative intent to broadly protect employees from any  
 21 further RIF actions going forward (*e.g.*, Supp. Compl. ¶258).

22  
 23  
 24 <sup>9</sup> *E.g.*, Associated Press, *State Department Lays Off Over 1,300 Employees Under Trump*  
 25 *Administration Plan* (July 11, 2025), available at: <https://apnews.com/article/layoffs-diplomats-state-department-trump-rubio-bfdb86767b7bd5b6570819d404a7782e>.

26 <sup>10</sup> That Congress drafted this section to broadly apply to any RIF implemented during the shutdown  
 27 regardless of whether the RIF notice was issued prior to the shutdown is further supported by the  
 28 reference to “reinstatement,” and returning employees to status “without interruption.” Pub. L. No  
 119-37, §120(e)(1). The RIF regulations (and some agency-specific statutes and bargaining  
 agreements) require at least 60 days’ notice (which OPM is allowed to reduce in limited  
 circumstances, *see* 5 C.F.R. §351.801). If Section 120(e) were intended to cover *only* those RIFs  
 issued during the shutdown, there would be little practical need for this reinstatement remedy.



**b. Implementation of OMB and OPM's directives would violate the Appropriations Clause**

OPM and OMB's directives authorizing implementation of RIFs that were initially noticed prior to October 1 also directs agencies to violate the Constitution. Under the Appropriations Clause, "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." U.S. Const. art. I, §9, cl. 7. "The Clause has a 'fundamental and comprehensive purpose ... to assure that public funds will be spent according to the letter of the difficult judgments reached by Congress as to the common good and not according to the individual favor of Government agents.'" *McIntosh*, 833 F.3d at 1178 (quoting *Office of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 427-28 (1990)). The Appropriations Clause allows Congress to restrict the use of funds for certain purposes, regardless of whether those purposes are otherwise lawful. *Office of Pers. Mgmt.*, 496 U.S. at 425 ("Any exercise of a power granted by the Constitution to one of the other branches of Government is limited by a valid reservation of congressional control over funds in the Treasury."). As Defendants explained in the preliminary injunction hearing in this very case, "if [Congress] includes an appropriation rider that specifically says, 'No funds may be used by this agency to carry out X, Y, Z,' I think we would all agree that that is a program that the Government cannot statutorily carry out." ECF 97 at 8. That is precisely what Congress has done here, in enacting Section 120(a). *See supra* at 10. But OPM and OMB have now instructed agencies that they may nevertheless carry out the very action Congress has prohibited.

\* \* \*

OMB and OPM have no authority to direct other agencies to apply a misinterpretation of, and to violate, federal law or the Appropriations Clause. For all of these reasons, actions of OMB and OPM therefore violate the Administrative Procedure Act because they are inconsistent with law in violation of 5 U.S.C. §706(2)(A), are contrary to the Constitution in violation of 5 U.S.C. §706(2)(B), exceed statutory authority in violation of 5 U.S.C. §706(2)(C), and are ultra vires.

**2. The imminent separations at the State Department are contrary to Sections 120(a) and 120(e), and thus violate the APA and the Appropriations Clause**

The State Department's imminent action to implement RIFs through final separations

1 beginning on December 5, 2025, in reliance on OMB's "formal written guidance," is contrary to  
2 Section 120 and therefore violates the Appropriations Clause for largely the same reasons that OPM  
3 and OMB's directives are contrary to statute and the Constitution.

4 On December 1, 2025, employees represented by both AFSA and AFGE received notice from  
5 the State Department that it was "completing the reductions in force" it had previously noticed, and  
6 "the Department will finalize your separation or involuntary retirement on Friday, December 5."  
7 Willson Decl., Ex. E; Dinkelman Decl., Ex. K. These planned actions violate both Sections 120(a)  
8 *and* (e).

9 First, the State Department's actions to separate these employees "implement" and "carry out"  
10 RIFs after November 12, 2025, which Section 120(a) prohibits. There is no possible mechanism by  
11 which these employees can be separated from federal employment that does not involve the  
12 expenditure of time and resources by agency staff, and therefore, the federal funds prohibited by  
13 Section 120(a). For all the same reasons explained above, Section 120(a)'s prohibition is not limited  
14 to issuing or implementing new RIFs, and the State Department can no more escape the broad scope  
15 of Section 120(a) than can OPM and OMB.

16 Second, the RIFs at issue are also covered by Section 120(e), which requires the rescission of  
17 any prior RIF notices "implemented" after October 1. Pub. L. No 119-37, §120(e). All of the  
18 employees subject to State's attempt to separate them from employment were employed in their  
19 positions when the shutdown began on October 1. Dinkelman Decl. ¶10; Willson Decl. ¶5. And the  
20 evidence is overwhelming that the State Department continued to take action to implement the RIFs  
21 during the shutdown, in anticipation of and preparation for separating these employees from service  
22 once their notice period ran. The foreign service employees were given a separation date of  
23 November 10, 2025, and as that date approached during the shutdown, the State Department took  
24 numerous steps to further implement the RIF, including sending employees materials related to their  
25 impending separations, such as SF-50 personnel forms. Dinkelman Decl. ¶¶11-21. Likewise, the  
26 State Department processed the separations of the AFGE-represented employees. Willson Decl. ¶6.

27 After the shutdown ended, the State Department did not comply with Section 120(e) by  
28 rescinding the prior RIF notices for RIFs that it had continued to implement during the shutdown;

1 instead, it is trying to move forward to effectuate these RIFs. But Section 120(e) requires the State  
 2 Department to rescind any RIF that it implemented after October 1. And, if Plaintiffs are correct that  
 3 Section 120(e) renders these RIFs null and void and requires rescission, then any attempt to impose a  
 4 new separation date also necessarily would require issuing a *new* RIF notice (which, even under  
 5 Defendants' interpretation, would be prohibited by Section 120(a)). Section 120 does not permit the  
 6 State Department to avoid the application of either provision by holding RIFs in abeyance and then  
 7 implementing them several weeks later than planned, with four days' notice to employees of their  
 8 final separation date.

9 Finally, the State Department's actions to implement these RIFs violate the Appropriations  
 10 Clause, for all the same reasons explained above. The Constitution's "straightforward and explicit  
 11 command ... means simply that no money can be paid out of the Treasury unless it has been  
 12 appropriated by an act of Congress." *Office of Pers. Mgmt.*, 496 U.S. at 424. Where an agency  
 13 spends money for a purpose prohibited by an appropriations rider, it is "drawing funds from the  
 14 Treasury without authorization by statute and thus violating the Appropriations Clause." *McIntosh*,  
 15 833 F.3d at 1175; *see id.* at 1172-73 (allowing defendants to seek to enjoin expenditure of funds on  
 16 their criminal prosecutions where expenditure barred by an appropriations rider). The State  
 17 Department's prior and future actions to plan for and determine final separation dates, prepare the  
 18 correct paperwork, address any individual mistakes or questions that arise, reassign work to other  
 19 employees, and more all require drawing on federal funds for the staff and work being conducted.  
 20 Those actions violate the Appropriations Clause.

### 21 **3. The OPM and OMB memoranda and the decision to separate the State** 22 **Department employees are final agency actions subject to the APA**

23 The OPM and OMB memoranda and the decision announced by the State Department to  
 24 imminently separate employees are "final agency action" and thus reviewable under the APA. 5  
 25 U.S.C. §704. To be final, an "action must (1) 'mark the consummation of the agency's  
 26 decisionmaking process' and (2) 'be one by which rights or obligations have been determined, or  
 27 from which legal consequences will flow.'" *Oregon Nat. Desert Ass'n v. U.S. Forest Serv.*, 465 F.3d  
 28 977, 982 (9th Cir. 2006) (quoting *Bennett v. Spear*, 520 U.S. 154, 178 (1997)); *see also Immigrant*  
*Defs. L. Ctr. v. Noem*, 145 F.4th 972, 991 (9th Cir. 2025). Both factors are established here.

As both the Ninth Circuit and this Court have recently held in several cases, OMB and OPM's instructions to other agencies satisfy this "pragmatic and flexible" finality standard, *Oregon Nat. Desert Ass'n*, 465 F.3d at 982, where the agencies make conclusive, final decisions of law or review and approve other agency plans. *See, e.g.*, ECF 94 at 26-27; *AFGE v. Trump*, 139 F.4th 1020, 1039 (9th Cir. 2025). OPM's November 12 and 13 memoranda to all federal agencies and the OMB's "formal written guidance" to the State Department "mark the consummation of the agency's decisionmaking process." *Bennett*, 520 U.S. at 178; 5 U.S.C. §704. Those directives set out the agencies' interpretations and instructions to agencies regarding the meaning of statutory authority and specifically direct agencies that the CR only applies to RIFs noticed after October 1, 2025, thus altering the established legal regime and determining the rights from which legal consequences will flow to federal employees. ECF 94 at 27; *Bennett*, 520 U.S. at 178; *see also U.S. Army Corps of Eng'rs v. Hawkes Co.*, 578 U.S. 590, 599 (2016) (courts are to take a "pragmatic" approach to applying the *Bennett* finality test).

In addition, the State Department has made the further final decision of *when* to implement these RIFs that OPM and OMB have authorized it to effectuate, and to do so on *very* short notice. That decision, likewise, marks the culmination of further decision-making from which legal consequences will flow to the affected federal employees.

#### **B. Plaintiffs Face Imminent and Irreparable Harm**

As discussed above, AFGE and AFSA and the employees they represent face significant harm from the State Department's current scheme to implement layoffs on very short notice. *Supra* at 7-9. These actions will inflict myriad types of irreparable harm on federal employees, their families and their labor representatives. For example, federal employee members who will be terminated face irreparable injury from losing their wages and health benefits for themselves and their families, and in some cases by being forced to relocate. *See supra* at 7; *Golden Gate Rest. Ass'n v. City & Cnty. of San Francisco*, 512 F.3d 1112, 1126 (9th Cir. 2008) (loss of health coverage). Damages are not available in APA cases, making this monetary harm irreparable. *See Pangea Legal Servs. v. U.S. Dep't of Homeland Security*, 512 F.Supp.3d 966, 976 (N.D. Cal. 2021); *E. Bay Sanctuary Covenant v. Garland*, 994 F.3d 962, 984 (9th Cir. 2020). The further irreparable injury caused by these

1 separations from federal employment for this particular cohort of State Department civil service and  
 2 foreign service employees includes the disruption, and indeed termination, of careers that have been  
 3 years and even decades in the making. Dinkelman Decl. ¶3; Willson Decl. ¶¶11, 16; Gliha Decl. ¶14.  
 4 Employees will be forced into unemployment where jobs are not available. *See, e.g.,* Brunsdale Decl.  
 5 ¶11. And the loss of income and benefits has particularly irreparable impacts on employees and their  
 6 families who face difficult economic and personal circumstances including health issues. *See*  
 7 Willson Decl. ¶10. For all the reasons this Court previously recognized the receipt of a RIF notice  
 8 can impose irreparable harm, the imminent actual separation of employment poses even greater risk  
 9 to these employees' health and well-being. *See* ECF 94 at 38-40.

### 10 C. The Balance of Equities and Public Interest Weigh in Plaintiffs' Favor

11 The equities and public interest, which merge when the government is a party, *Wolford v.*  
 12 *Lopez*, 116 F.4th 959, 976 (9th Cir. 2024), strongly favor a TRO. Preserving constitutional and  
 13 statutory rights "is always in the public interest." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir.  
 14 2012) (quoting *Sammartano v. First Judicial District Court*, 303 F.3d 959, 974 (9th Cir.2002)); *see*  
 15 *also NTEU v. U.S. Dep't of Treasury*, 838 F. Supp. 631, 640 (D.D.C. 1993); *Clarke v. Office of Fed.*  
 16 *Hous. Enter. Oversight*, 355 F.Supp.2d 56, 66 (D.D.C. 2004). The severe threats to the public  
 17 presented by the imminent State Department actions necessitate a temporary pause to protect the  
 18 status quo for Plaintiffs and the employees they represent who are adversely impacted by these  
 19 imminent separations. By contrast, the government will save time and money spent on implementing  
 20 RIFs and then potentially being later required to reverse and rescind those actions. Moreover, as this  
 21 Court has explained, "[t]here is generally no public interest in the perpetuation of unlawful agency  
 22 action. To the contrary, there is substantial public interest in having governmental agencies abide by  
 23 the federal laws that govern their existence and operations." ECF 94 at 41 (quoting *League of*  
 24 *Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016)).

### 25 CONCLUSION

26 For the foregoing reasons, Plaintiffs respectfully request this Court grant this Motion and  
 27 enter the accompanying proposed temporary restraining order and/or an order to show cause.  
 28

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Respectfully submitted,

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