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

AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES, *et al.*

Plaintiffs,

v.

UNITED STATES OFFICE OF PERSONNEL  
MANAGEMENT, *et al.*,

Defendants.

Case No. 3:25-cv-1780-WHA

**DEFENDANTS' *EX PARTE* MOTION TO  
STAY THE COURT'S MARCH 13, 2025,  
PRELIMINARY INJUNCTION PENDING  
APPEAL**

The Hon. William H. Alsup

Pursuant to Fed. R. Civ. P. 62, and this Court’s statements at the March 13, 2025, hearing, Defendants respectfully move for a stay pending appeal of the Court’s March 13, 2025, Order granting a preliminary injunction. Defendants seek a stay of the Order as to all relief order with the exception of the Court’s decision to extend the previous Temporary Restraining Order (“TRO”)—a TRO that Defendants have complied with. *See* Defs.’ *Ex Parte* Mot. to Vacate at 3-4, ECF No. 75. The Court should stay the injunction pending appeal in light of the strength of Defendants’ arguments and the harms that Defendants will suffer in the absence of a stay.

First, Defendants’ arguments that Plaintiffs lack standing and that the Court lacks subject matter jurisdiction under the doctrine announced in *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994) are likely to succeed on appeal. Plaintiffs’ federal employment and labor challenges are exclusively channeled away from district court review under both the Civil Service Reform Act (“CSRA”), Pub. L. No. 95-454 (codified in various sections under Title 5 of the U.S. Code), and Federal Service Labor-Management Relations Statute (“FSL-MRS”), 5 U.S.C. §§ 7101–35. Plaintiffs’ claims fail for lack of subject matter jurisdiction. *See, e.g., Nat’l Treasury Emps. Union, et al. v. Trump et al.*, No. 25-cv-420, 2025 WL 561080 \*6-\*8 (D.D.C. Feb. 20, 2025); *Mem. Op. at 2-5, AFGE, et al., v. Ezell, et al.*, No. 25-cv-10276 (D. Mass. Feb. 12, 2025), ECF No. 66.

Second, as detailed in the attached declarations provided by officials from the Departments of Agriculture, Defense, Energy, the Interior, the Treasury, and Veterans Affairs, the relief ordered by the preliminary injunction constitutes an extraordinary intrusion into the authority of the Executive Branch and its agencies by: (i) requiring six agencies to reinstate previously terminated probationary employees; and (ii) precluding the Office of Personnel Management (“OPM”) from giving further guidance to agencies on personnel matters. As those declarations reflect, agencies will face tremendous administrative burdens, personnel uncertainty, and interference with their internal functions as a result of complying with the Court’s preliminary injunction. *See* Decls. of Department of Defense, Department of Energy, Department of Interior, Department of Treasury, Department of Veterans Affairs, attached as Exs. 1-5; *see also* Decl. of Department of Agriculture, attached as Ex. 6. This uncertainty would only be

1 amplified if the Court’s preliminary injunction is reversed on appeal, and this Court itself noted  
 2 that appellate consideration of the preliminary injunction would be appropriate. *See* Tr. of Mar.  
 3 13, 2025, Hrg. at 57:1-3, ECF No. 90. Furthermore, the preliminary injunction subverts the  
 4 normal order of operations in an Administrative Procedure Act (“APA”) action, permitting  
 5 discovery and a deposition of an OPM official before the filing of an administrative record or  
 6 even any responsive pleading by Defendants. As a result, apart from the portion of the Court’s  
 7 March 13, 2025, Order extending its prior TRO, Defendants seek a stay of the Court’s order.

8 Defendants respectfully request an immediate ruling. If relief is not immediately granted,  
 9 Defendants intend to seek relief from the U.S. Court of Appeals for the Ninth Circuit.

### 10 BACKGROUND

11 On February 19, 2025, Plaintiffs sued OPM and its Acting Director, Charles Ezell.  
 12 Plaintiffs then filed an amended complaint while moving *ex parte* for a TRO and order to show  
 13 cause on February 23, 2025. *See* Compl., ECF No. 1; Am. Compl., ECF No. 17; Pls.’ TRO Mot.,  
 14 ECF No. 18. Plaintiffs’ claims rest on allegations that OPM had “ordered” federal agencies to  
 15 terminate probationary employees and that this was an *ultra vires* act that exceeded the scope of  
 16 OPM’s statutory authority and otherwise violated the APA. *See* Am. Compl. ¶¶ 104–42; Pls.’  
 17 TRO Mot. at 15–22. On February 24, 2025, this Court ordered Defendants to respond to  
 18 Plaintiffs’ TRO motion by February 26, 10:00am PST, and set a hearing on Plaintiffs’ motion for  
 19 February 27, 1:30pm PST. *See* Order Setting Hearing, ECF No. 21.

20 At the conclusion of the February 27 hearing, this Court issued an oral TRO, which it  
 21 later reduced to writing. As amended, the Court held that “OPM’s January 20 memo, February  
 22 14 email, and all other efforts by OPM to direct the termination of employees . . . are unlawful,  
 23 invalid, and must be stopped and rescinded.” Mem. Op. & Order Amending TRO at 24, ECF No.  
 24 45. The Court ordered OPM to provide written notice of its order to the Bureau of Land  
 25 Management (“BLM”), Department of Defense (“DOD”), Fish and Wildlife Service (“FWS”),  
 26 National Park Service (“NPS”), Small Business Administration (“SBA”), and Veterans  
 27 Administration (“VA”). *See id.* The Court then set a follow-up evidentiary hearing for March 13,  
 28 2025, at 8 AM. *See id.*

On March 4, 2025, Plaintiffs moved for leave to file a Second Amended Complaint (“SAC”), proposing to add some 43 additional defendants, including other federal agencies and agency heads that Plaintiffs allege were ordered by OPM to terminate probationary employees. *See* Pl.’s Redline of SAC ¶¶ 34–76, ECF No. 49-1. The Court granted Plaintiffs’ motion for leave to file that Second Amended Complaint on March 10, 2025, and Plaintiffs subsequently filed the Second Amended Complaint the following day. *See* ECF Nos. 88, 90.

On March 13, 2025, the Court held a hearing. At the conclusion of the hearing, the Court ordered as relief that: (1) the Court’s prior February 27, 2025, TRO be extended; (2) the Departments of Agriculture, Defense, Energy, Interior, the Treasury, and Veterans Affairs were to: immediately offer reinstatement to probationary employees terminated on or about February 13 and 14, 2025; immediately notify the terminated employees that the Court held that their terminations were unlawful; cease terminating probationary employees; cease using a prior template for probationary employees used by OPM; and to file by March 20, 2025, with the Court a list of all terminated employees and what had been done for each employee to comply with the Court’s Order; (3) OPM cease providing guidance as to whether any probationary employee should be terminated, and that agencies were to develop their own guidance; (4) discovery was to open in the action with, among other things, Plaintiffs being permitted to depose OPM employee Noah Peters within the next two weeks.<sup>1</sup>

### **ARGUMENT**

Courts consider four factors in assessing a motion for stay pending appeal: (1) the movant’s likelihood of prevailing on the merits of the appeal; (2) whether the movant will suffer irreparable harm absent a stay; (3) the harm that other parties will suffer if a stay is granted; and (4) the public interest. *See Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *Humane Soc’y of U.S. v. Gutierrez*, 523 F.3d 990, 991 (9th Cir. 2008). When the government is a party, its interests and the public interest “merge.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, the strength of Defendants arguments coupled with the breadth of the Court’s March 13, 2025, preliminary

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<sup>1</sup> The Court also directed the parties to provide further briefing on Defendants’ channeling arguments, but this portion of the Order is not relevant for the purposes of this *ex parte* stay motion.

1 injunction and the relevant equitable considerations weigh in favor of granting the partial stay  
2 pending appellate review that Defendants have requested.

3 On the first factor, as Defendants explained in their briefing on Plaintiffs’ motion for a  
4 TRO, Plaintiffs fail to establish a likelihood of success on the merits of their claims. Plaintiffs  
5 lack standing to pursue many of their claims because their asserted harms are far too speculative,  
6 and they cannot seek injunctive relief on behalf of third-party federal employees who are not  
7 before this Court.

8 The non-union Plaintiffs fail to show injury in fact. To establish injury in fact, a plaintiff  
9 must show that the defendant’s action affects him or her in a “personal and individual way,”  
10 *Lujan*, 504 U.S. at 560 n.1, rather than being a “generalized grievance,” *Food & Drug Admin. v.*  
11 *All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024). A plaintiff must show more than a  
12 “possible future injury”; he or she must show that harm has actually occurred or is “certainly  
13 impending.” *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990) (citation omitted). And  
14 “threatened injury must be *certainly impending* to constitute injury in fact, and that [a]llegations  
15 of *possible* future injury are not sufficient.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409  
16 (2013) (citation omitted).

17 In this case, the claims of injury by the non-union Plaintiffs are far too speculative to  
18 support standing to maintain this lawsuit. They are instead based on nothing more than a chain of  
19 unsupported and conclusory inferences that the termination of probationary employees will  
20 somehow lead to “anticipated reductions and delays in services,” Pls.’ Second Am. Compl.  
21 ¶¶ 151–52, ECF No. 90, “imminent harm to [their] mission to protect and restore wildlife and  
22 public lands,” *id.* ¶ 153, “likely . . . impair[ment of] the quality of . . . services,” *id.* ¶ 155, or “the  
23 risk [of] severe disruptions to . . . services,” *id.* ¶ 157. None of these speculative and conclusory  
24 assertions is sufficient to show that a harm has actually occurred or is “certainly impending.”  
25 *Accord Whitmore*, 495 U.S. at 158 (citation omitted). Absent such a showing, the non-union  
26 Plaintiffs lack standing to maintain this action and therefore will not be able to succeed on their  
27 claims.

28 Nor can Plaintiffs pursue their claims in federal district court; instead, Congress has

provided adjudication in the FLRA and the MSPB as the sole administrative avenues before which challenges to federal employee terminations may be brought before review may be had in the court of appeals. *See, e.g., Elgin v. Dep't of the Treasury*, 567 U.S. 1, 13 (2012); *United States v. Fausto*, 484 U.S. 439, 455 (1988); *Am. Fed'n of Gov't Emps., AFL-CIO v. Trump*, 929 F.3d 748, 752 (D.C. Cir. 2019). Indeed, the non-union Plaintiffs' claims must also be channeled through the administrative processes. Non-union organizations may seek leave to intervene or participate as *amici curiae* in MSPB and FLRA proceedings. *See* 5 C.F.R. §§ 1201.34, 2422.8. As the MSPB regulations make clear, "[a]ny person, organization or agency may, by motion, ask the judge for permission to intervene," and "[a] motion for permission to intervene will be granted where the requester will be affected directly by the outcome of the proceeding." *Id.* § 1201.34(c). With limited exceptions, "[i]ntervenors have the same rights and duties as parties." *Id.* § 1201.34(d). And "[a]n amicus curiae is a person or organization who, although not a party to an appeal, gives advice or suggestions by filing a brief with the judge or the Board regarding an appeal." *Id.* § 1201.34(e). Thus, non-union Plaintiffs may raise their claims in the MSPB and FLRA proceedings in which federal employees and their unions are already litigating similar issues.<sup>2</sup>

But even if such mechanisms were not available to the non-union Plaintiffs to raise their claims, that would still not be enough to overcome Congress's determination that claims such as those presented here must be channeled through the MSPB and FLRA. As the Supreme Court has held, "[w]here a statute provides that particular agency action is reviewable at the instance of one party, who must first exhaust administrative remedies, the inference that it is not reviewable at the instance of other parties, who are not *subject* to the administrative process, is strong." *Sackett v. EPA*, 566 U.S. 120, 130 (2012) (emphasis in original). For this proposition the Court cited *Block v. Community Nutrition Institute*, which held that a statutory scheme requiring claims brought by milk *producers* to go through an administrative process precluded judicial review of

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<sup>2</sup> Moreover, there are mechanisms for obtaining classwide relief in MSPB proceedings. *See* 5 C.F.R. § 1201.27 ("One or more employees may file an appeal as representatives of a class of employees."); *Anselmo v. King*, 902 F. Supp. 273, 276 (D.D.C. 1995) ("The MSPB has the power to certify a class.").

1 an APA claim brought by milk *consumers*. 467 U.S. 340, 346-48 (1984). As the Court explained  
 2 in *Community Nutrition*, “[r]espondents would have us believe that, while Congress  
 3 unequivocally directed [milk] handlers first to complain to the Secretary that the prices set by  
 4 milk market orders are too high, it was nevertheless the legislative judgment that the same  
 5 challenge, if advanced by consumers, does not require initial administrative scrutiny. There is no  
 6 basis for attributing to Congress the intent to draw such a distinction.” *Id.* at 347; *see also*, 484  
 7 U.S. at 443 (noting the CSRA meant to provide the comprehensive remedial scheme for  
 8 evaluating adverse personnel actions). As a result, the government’s appeal is likely to prevail in  
 9 showing that the non-union Plaintiffs’ claims fail for lack of subject matter jurisdiction.

10 On the second factor, Plaintiffs will not suffer irreparable harm in the event of a stay. As  
 11 a preliminary matter, where a plaintiff seeks injunctive relief, a case “is normally moot upon the  
 12 termination of the conduct at issue” unless “there is a likelihood of recurrence.” *Demery v.*  
 13 *Arpaio*, 378 F.3d 1020, 1025–26 (9th Cir. 2004). Such a case is “no longer a ‘Case’ or  
 14 ‘Controversy’ for purposes of Article III,” “[n]o matter how vehemently the parties continue to  
 15 dispute the lawfulness of the conduct that precipitated the lawsuit.” *Already, LLC v. Nike, Inc.*,  
 16 133 S. Ct. 721, 726, 727 (2013). To this point, on March 4, 2025, OPM issued revised guidance  
 17 clarifying that “OPM is not directing agencies to take any specific performance-based actions  
 18 regarding probationary employees[,]” and further clarifying that “[a]gencies have ultimate  
 19 decision-making authority over, and responsibility for, such personnel actions.” Mem. from  
 20 Charles Ezell, Acting Director, OPM, to Heads and Acting Heads of Departments and Agencies  
 21 (Revised March 4, 2025), ECF No. 78. Thus, OPM has made it abundantly clear since the  
 22 Court’s TRO that it is not directing the termination of probationary employees and Plaintiffs  
 23 cannot be harmed by OPM guidance on probationary employees. OPM’s actions comply with  
 24 this Court’s February 27, 2025, order and render this case moot. This Court should “presume the  
 25 government is acting in good faith” when it makes declarations of this type. *America Cargo*  
 26 *Transp., Inc. v. United States*, 625 F.3d 1176, 1180 (9th Cir. 2010). The circumstances here fully  
 27 warrant that presumption.

28 In any event, OPM’s actions preclude any additional further award of preliminary

injunctive relief under well-settled principles of equitable discretion. Even if cessation of conduct does not moot a case, a plaintiff must still bear the burden of demonstrating that equitable relief is warranted, a showing that requires “more than the mere possibility” of recurrence “which serves to keep the case alive.” *United States v. W. T. Grant Co.*, 345 U.S. 629, 633 (1953); *see also TRW, Inc. v. F.T.C.*, 647 F.2d 942, 954 (9th Cir. 1981) (discussing difference between standards and burdens of proof). To obtain equitable relief, a plaintiff must establish a “likelihood of substantial and immediate irreparable injury.” *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983) (quoting *O’Shea v. Littleton*, 414 U.S. 488, 502 (1974)). That “requirement . . . cannot be met where there is no showing of any real or immediate threat that the plaintiff will be wronged again.” *Lyons*, 461 U.S. at 111. Another point highlights the lack of irreparable harm: many probationary employees have been able to challenge their terminations in the MSPB, which has issued stay orders on probationary terminations. *See, e.g.*, Defs’ Opp’n to Mot. for TRO, at 6, ECF No. 33; *see also* Ex. 6 ¶ 4.<sup>3</sup>

Third, the balance of equities and public interest overwhelmingly favor a stay pending appeal. The preliminary injunctive relief ordered by the Court at the March 13, 2025, is overbroad. While Defendants do not object to (or seek any stay of) any extension of the TRO, Defendants submit that the Court granted improper relief when it ordered the Departments of Agriculture, Defense, Energy, Interior, the Treasury, and Veterans Affairs to: (i) immediately offer reinstatement to probationary employees terminated on or about February 13 and 14, 2025; (ii) immediately notify the terminated employees that the Court held that their terminations were unlawful; (iii) cease terminating probationary employees; (iv) cease using a prior template for probationary employees used by OPM; and (v) to file by March 20, 2025, with the Court a list of all terminated employees and what had been done for each employee to comply with the Court’s

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<sup>3</sup> The existence of MSPB orders staying the termination of probationary employees does not undermine Defendants’ need for a stay here. For one, the MSPB stay order could be lifted, but Defendants would still be required to comply with this Court’s preliminary injunction absent a stay. For another, the narrower MSPB stay order emphasizes that the Court’s preliminary injunction is far broader than what is needed to protect terminated probationary employees from suffering harm. In fact, that MSPB stay order ostensibly eliminates the need for relief as to any probationary employees of USDA. *See* Ex. 6 ¶¶ 4-5.

1 Order. The Court’s Order was similarly improper when it ordered: OPM to cease providing  
 2 guidance as to whether any probationary employee should be terminated and that agencies were  
 3 to develop their own guidance; and discovery to open in the action with Plaintiffs being  
 4 permitted to depose OPM employee Noah Peters within the next two weeks.

5 Each portion of the Court’s relief is against the public interest and public equities. In  
 6 directing certain named agencies to reinstate employees and guiding their employment practices  
 7 *en masse*, the relief exceeds the scope of the Court’s equitable powers. Reinstatement of  
 8 employees is an “extraordinary remedy” even in employment actions by individuals. *Equal Emp.*  
 9 *Opportunity Comm’n v. City of Janesville*, 630 F.2d 1254, 1259 (7th Cir. 1980). But here, the  
 10 Court has ordered that remedy as to thousands of individuals and precluded six federal agencies  
 11 from taking any further employment action as to an entire class of employees going forward.  
 12 That is a remarkable intrusion into the operation of the Executive Branch and into the  
 13 functioning of each of these agencies as they seek to implement the President’s workforce  
 14 optimization initiative. *See, e.g., White v. Berry*, 171 U.S. 366, 377 (1898) (holding that a court  
 15 cannot, “by injunction, restrain an executive officer from making a wrongful removal of a  
 16 subordinate appointee, nor restrain the appointment of another”); *see also* Ex. 1 ¶ 13; Ex. 2 ¶ 12;  
 17 Ex. 3 ¶ 14. Indeed, as a practical matter, the requirement for agencies to reinstate employees puts  
 18 significant burdens on agencies, including the administrative burdens of having to onboard  
 19 reinstated employees while leaving supervisors in a murky state of affairs should an appellate  
 20 court reverse this Court’s preliminary injunction. *See* Ex. 1 ¶¶ 9-12; Ex. 2 ¶¶ 8-11; Ex. 3 ¶¶ 10-  
 21 13; Ex. 4 ¶¶ 5-8; Ex. 5 ¶¶ 8-10; Ex. 6 ¶ 5. In precluding OPM from providing guidance to  
 22 agencies on personnel matters, the Court effectively binds the agency from exercising its  
 23 assigned role in the Executive Branch. *See, e.g.,* 5 U.S.C. § 1103.

24 Finally, in opening discovery and directing a deposition to be conducted, the Court  
 25 subverts the normal order of operation in an APA case. As Defendants previously explained  
 26 “court reviewing agency action under the APA must limit its review to the administrative  
 27 record.” *San Luis & Delta-Mendota Water Auth. v. Locke*, 776 F.3d 971, 992 (9th Cir. 2014)  
 28 (citing *Camp v. Pitts*, 411 U.S. 138, 142 (1973)); *see also Bellion Spirits, LLC v. United States*,

1 335 F.Supp.3d 32, 43 (D.D.C. 2018) (holding that constitutional challenges to agency actions,  
2 such as Plaintiffs' *ultra vires* claim must also be decided on an administrative record). While  
3 supplementation of that record may be permissible with exceptions that may only occur where,  
4 after the record has been filed, the administrative record "is incomplete" and where "necessary to  
5 plug holes in the administrative record." *Wilson v. Comm'r*, 705 F.3d 980, 991 (9th Cir. 2013)  
6 (quotations omitted); *see also Kunaknana v. Clark*, 742 F.2d 1145, 1152 (9th Cir. 1984). No  
7 administrative record has been filed in this action, and, indeed, no responsive pleadings have  
8 been filed in this action either. As a result, Defendants submit that this Court should not have and  
9 cannot yet order discovery in this APA action unless and until it determines that the  
10 administrative record is incomplete.

### 11 CONCLUSION

12 For good cause shown herein, this Court should grant Defendants' motion to stay its  
13 preliminary injunction apart from its order extending the TRO. Defendants respectfully request  
14 an immediate ruling on this motion, after which time Defendants intend to seek relief from the  
15 Ninth Circuit.

1 Dated: March 14, 2025

Respectfully submitted,

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

AMERICAN FEDERATION OF  
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Plaintiffs,

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UNITED STATES OFFICE OF PERSONEL  
MANAGEMENT, *et al.*,

Defendants.

Case No. 3:25-cv-1780-WHA

**DECLARATION OF TIMOTHY D. DILL  
IN SUPPORT OF DEFENDANTS'  
MOTION FOR STAY OF MARCH 13,  
2025, ORDER**

1 I, Timothy D. Dill, declare, pursuant to 28 U.S.C. § 1746, as follows:

2 1. I am currently the official performing the duties of the Assistant Secretary of  
3 Defense for Manpower and Reserve Affairs of the Department of Defense (“Department”),  
4 headquartered in Washington, D.C. I have served in this position since January 22, 2025.

5 2. In my role at the Department, I am responsible for personnel management. I have  
6 the responsibility for tracking and recording personnel actions, including terminations. I assist in  
7 ensuring that all personnel actions comply with federal law, including those related to  
8 probationary employees.

9 3. Probationary employees in the competitive service are employees who have been  
10 employed for less than one year. In the excepted service, the probationary period is two years.

11 4. The probationary period is part of the hiring process, and probationary employees  
12 have extremely limited protections against termination compared to employees with final  
13 appointments.

14 5. The probationary period is essentially an extended trial period for a finalized  
15 appointment. Supervisors evaluate probationary employees to determine whether the employees  
16 would be a good fit for long-term employment. While on probation, an employee receives no  
17 assurance of a final appointment.

18 6. On January 20, 2025, my office received a guidance memorandum from the  
19 Office of Personnel Management (“OPM”), which requested that agencies review all  
20 probationary employees and identify which employees should be retained and which should be  
21 terminated.

22 7. Consistent with the OPM guidance, the Department reviewed all probationary  
23 employees’ performance to determine which employees to keep and which to terminate.

24 8. Department records indicate that it fired 16 total probationary employees on or  
25 about February 13 and 14, 2025.

26 9. The Court’s order, requiring the Department to reinstate all probationary  
27 employees terminated on or about February 13 and 14, 2025, will impose substantial burdens on  
28

1 the Department, cause significant confusion, and potentially subject terminated employees to  
2 extreme whiplash.

3 10. Offers of reinstatement will impose significant administrative burdens on the  
4 Department. Among other things, all reinstated employees will require onboarding, including  
5 certain training, filling out human resources paperwork, obtaining new security badges, and re-  
6 enrolling in benefits programs.

7 11. Offers of reinstatement will also cause confusion for agency and employee alike.  
8 Employees who were terminated just weeks ago will be offered reinstatement. Yet an appellate  
9 ruling could reverse the district court's order before terminated employees accept their  
10 reinstatement or before they reenter on the job. The Department could withdraw any offers of  
11 reinstatement in that circumstance. And even if the employees are reinstated prior to any  
12 reversal of the district court's order, the reinstated employees will remain on probation and could  
13 again be terminated. In short, employees could be subjected to multiple changes in their  
14 employment status in a matter of weeks.

15 12. The tremendous uncertainty associated with this state of affairs would preclude  
16 supervisors from appropriately managing their workforce. Work schedules and assignments  
17 would effectively be tied to hearing and briefing schedules set by the courts. It would be  
18 extremely difficult to assign new work to reinstated employees in light of the uncertainty over  
19 their future status.

20 13. Finally, offering reinstatement to terminated probationary employees will  
21 interfere with the effective functioning of the Department. Reinstating such employees would  
22 undermine the efficiency of the Department. In addition, it would interfere with the  
23 Department's plans to implement the President's workforce optimization initiative. The  
24 Department has engaged in a broader effort to determine civilian reductions based on a  
25 comprehensive readiness impact analysis on the size and appropriate mix of the Total Force.

26 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true  
27 and correct.

1 Dated: March 14, 2025

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3  
4 Timothy D. Dill  
5 Performing the Duties of the  
6 Assistant Secretary of Defense for  
7 Manpower and Reserve Affairs  
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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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AMERICAN FEDERATION OF  
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Plaintiffs,

v.

UNITED STATES OFFICE OF PERSONEL  
MANAGEMENT, *et al.*,

Defendants.

Case No. 3:25-cv-1780-WHA

**DECLARATION OF REESHA  
TRZNADEL IN SUPPORT OF  
DEFENDANTS' MOTION FOR STAY OF  
MARCH 13, 2025, ORDER**

1 I, Reesha Trznadel, declare, pursuant to 28 U.S.C. § 1746, as follows:

2 1. I am the Acting Chief Human Capital Officer of the Department of Energy  
3 (“Department”), headquartered in Washington, D.C. I have served in this position since February  
4 28, 2025.

5 2. In my Acting role at the Department, I oversee those responsible for personnel  
6 management. I oversee those responsible for tracking and recording personnel actions, including  
7 terminations. I assist in ensuring that all personnel actions comply with federal law, including  
8 those related to probationary employees.

9 3. Probationary employees in the competitive service are generally employees who  
10 have been employed for less than one year. In the excepted service, the probationary period is  
11 two years for most employees.

12 4. The probationary period is part of the hiring process, and the Department is  
13 generally subject to less stringent procedural requirements when terminating a probationary  
14 employee versus terminating employees with final appointments.

15 5. The probationary period is an extended tryout for a finalized appointment.  
16 Supervisors evaluate probationary employees to determine whether the employees would be a  
17 good fit for long-term employment. An employee’s appointment is not final until they have  
18 completed their probationary period.

19 6. On January 20, 2025, although I was not serving in this position at that time, it is  
20 my understanding that the Department received a guidance memorandum from the Office of  
21 Personnel Management (“OPM”), which requested that agencies identify all probationary  
22 employees and determine whether those employees should be retained.

23 7. The Department terminated approximately 555 probationary employees between  
24 February 13 and 14, 2025.

25 8. The Court’s order, requiring the Department to reinstate all probationary  
26 employees terminated on or about February 13 and 14, 2025, could impose administrative  
27 burdens on the Department.  
28

1           9.       Offers of reinstatement could impose administrative burdens on the Department.  
2 Among other things, all reinstated employees will have to be identified, contacted, and  
3 onboarded again. The onboarding process includes going through training, filling out human  
4 resources paperwork, receiving new equipment, obtaining new security badges and clearances,  
5 and re-enrolling in benefits programs.

6           10.     I understand from managers that offers of reinstatement could cause confusion.  
7 Employees who were terminated just weeks ago will be offered reinstatement. Yet an appellate  
8 ruling could reverse the district court's order before terminated employees accept their  
9 reinstatement or before they reenter on the job. The Department could withdraw any offers of  
10 reinstatement in that circumstance. And even if the employees are reinstated prior to any reversal  
11 of the district court's order, the reinstated employees will remain on probation and could again  
12 be terminated. In short, employees could be subjected to multiple changes in their employment  
13 status in a matter of weeks.

14           11.     I understand from managers that the uncertainty associated with this state of  
15 affairs could impede supervisors from efficiently managing their workforce. Work schedules and  
16 assignments would effectively be tied to hearing and briefing schedules set by the courts. It  
17 would be inefficient and disruptive to assign new work to reinstated employees in light of the  
18 uncertainty over their future status.

19           12.     Finally, I understand from managers that offering reinstatement to terminated  
20 probationary employees could interfere with the effective functioning of the Department. Since  
21 February, the Department has made meaningful changes to accommodate the challenged  
22 terminations, including reassigning the necessary functions of the terminated employees.

23           Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true  
24 and correct.

1 Dated: March 14, 2025

2  
3  
4 /s/ *Reesha Trznadel*

5 REESHA TRZNADEL  
6 ACTING CHIEF HUMAN CAPITAL OFFICER  
7 US DEPARTMENT OF ENERGY  
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*Counsel for Defendants*

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

AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES, *et al.*

Plaintiffs,

v.

UNITED STATES OFFICE OF PERSONNEL  
MANAGEMENT, *et al.*,

Defendants.

Case No. 3:25-cv-1780-WHA

**DECLARATION OF MARK D. GREEN IN  
SUPPORT OF DEFENDANTS' MOTION  
FOR STAY OF MARCH 13, 2025, ORDER**

1 I, Mark D. Green, declare, pursuant to 28 U.S.C. § 1746, as follows:

2 1. I am the Deputy Assistant Secretary for Human Capital, Learning, and Safety at  
3 the U.S. Department of the Interior (“Department”), headquartered in Washington, D.C. I have  
4 served in this position since September 2022.

5 2. In my role at the Department, I am responsible for personnel management. I have  
6 the responsibility for tracking and recording personnel actions, including terminations. I assist in  
7 ensuring that all personnel actions comply with federal law, including those related to  
8 probationary and trial period appointees.

9 3. Probationary appointees in the competitive service are individuals who have been  
10 working in their respective positions for less than one year. In the excepted service, the trial  
11 period is generally two years.

12 4. Probationary and trial periods are part of the hiring process, and probationary and  
13 trial period appointees have extremely limited protections against termination compared to  
14 individuals who satisfy the definition of “employee,” and accordingly enjoy greater due process  
15 protections.

16 5. Probationary and trial periods are essentially extended tryouts for finalized  
17 appointments. Supervisors evaluate probationary and trial period appointees to determine  
18 whether the individuals would be a good fit for long-term employment. While working  
19 throughout probationary or trial periods, individuals receive no assurance of final appointments  
20 and of becoming employees.

21 6. On or about January 20, 2025, I reviewed a guidance memorandum issued by the  
22 Office of Personnel Management (“OPM”), which requested that the Department and other  
23 agencies review all probationary and trial period appointees and identify which individuals  
24 should be retained and which should be terminated.

25 7. Consistent with the OPM guidance, the Department reviewed all probationary and  
26 trial period appointees’ performances to determine which individuals to keep and which to  
27 terminate.  
28

1           8.       The Department continued this review process even after OPM clarified its earlier  
2 guidance on February 14 and 24, 2025.

3           9.       On or after February 14, 2025, the Department terminated the competitive service  
4 appointments of 1303 individuals during their respective probationary periods and terminated the  
5 excepted service appointments of 409 individuals during their respective trial periods. Although  
6 OPM offered language for potential use in developing termination notices, the Department did  
7 not adopt OPM's suggestions, and instead, independently developed language used in the  
8 termination notices that informed affected individuals of these personnel decisions.

9           10.      The Court's order, requiring the Department to reinstate all probationary and trial  
10 period appointees terminated on or after February 14, 2025, will impose substantial burdens on  
11 the Department, cause significant confusion, and potentially subject terminated individuals to the  
12 receipt of conflicting or contradictory information.

13          11.      Offers of reinstatement will impose significant administrative burdens on the  
14 Department. Among other things, all reinstated individuals will have to be onboarded again,  
15 which would include the labor-intensive processes of coordinating human resources efforts and  
16 paperwork, issuing new security badges, re-enrolling affected individuals in benefits programs,  
17 and calculating and processing the amount of any financial obligation that the Department may  
18 owe as a result of the reinstatement offers and the amounts, if any, that reinstated individuals  
19 request to have withheld for various work-related benefits.

20          12.      Offers of reinstatement will also cause confusion for the Department and  
21 terminated individuals, more than three hundred (300) of whom have appeals currently pending  
22 before Administrative Judges assigned to U.S. Merit Systems Protection Board (MSPB)  
23 Regional and Field Offices. Persons who were terminated just weeks ago would receive  
24 reinstatement offers, the issuance of which would impact pending or potential MSPB appeals.  
25 Yet an appellate ruling could reverse the district court's order before terminated individuals  
26 accept their reinstatement or before they re-enter on the job. The Department could withdraw any  
27 offers of reinstatement in that circumstance and correspondingly impact pending or potential  
28 MSPB appeals. And even if the individuals are reinstated prior to any reversal of the district


1 court's order, the reinstated individuals may remain as probationary or trial period appointees  
 2 and could again be subject to termination actions, which would again inform affected individuals  
 3 of their rights associated with filing MSPB appeals, filing complaints pursuant to processes  
 4 established by the U.S. Equal Employment Opportunity Commission, and filing complaints  
 5 pursuant to processes established by the U.S. Office of Special Counsel. In short, individuals  
 6 could be subjected to multiple changes in their employment status in a matter of weeks and could  
 7 be forced to untangle the maze of their potential appeal rights.

8 13. The tremendous uncertainty associated with this confusion and these  
 9 administrative burdens would preclude supervisors from appropriately managing their  
 10 workforce. Work schedules and assignments would effectively be tied to hearing and briefing  
 11 schedules set by the courts. It would be extremely difficult to assign new work to reinstated  
 12 individuals in light of the uncertainty over their future status.

13 14. Finally, offering reinstatement to terminated probationary or trial period  
 14 appointees will interfere with the effective functioning of the Department. On and after February  
 15 14, 2025, the Department has made meaningful changes to address the challenged terminations,  
 16 including reassigning the duties performed by the terminated individuals, many of whom would  
 17 have no duties to perform if they accepted reinstatement.

18 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true  
 19 and correct.

20 Dated: March 14, 2025

21  
 22  Digitally signed by  
 23 /s/ MARK GREEN  
 Date: 2025.03.14  
 14:33:28 -04'00'

24 MARK D. GREEN

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Acting United States Attorney  
PAMELA T. JOHANN (CABN 145558)  
Chief, Civil Division  
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*Counsel for Defendants*

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

AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES, *et al.*

Plaintiffs,

v.

UNITED STATES OFFICE OF PERSONNEL  
MANAGEMENT, *et al.*,

Defendants.

Case No. 3:25-cv-1780-WHA

**DECLARATION OF TREVOR NORRIS IN  
SUPPORT OF DEFENDANTS' MOTION  
FOR STAY OF MARCH 13, 2025, ORDER**

1 I, Trevor Norris, declare, pursuant to 28 U.S.C. § 1746, as follows:

2 1. I am Deputy Assistant Secretary (DAS) for Human Resources (HR) for the United  
3 States Department of the Treasury, headquartered in Washington, D.C. I have served in this  
4 position since October 2017.

5 2. As DAS for HR, I oversee all human capital programs for the Department of the  
6 Treasury and its bureaus (collectively, “Treasury”). I have the responsibility for tracking and  
7 recording personnel actions, including terminations.

8 3. Based on my roles and responsibilities, I am familiar with the number of  
9 separated probationary Treasury employees affected by the Court’s March 13, 2025, Order.

10 4. Treasury separated 7,605 probationary employees between February 19 and  
11 March 7, 2025.

12 5. The Court’s order requiring reinstatement of these terminated employees will  
13 impose substantial burdens on Treasury, cause significant confusion, and potentially subject  
14 terminated employees to extreme whiplash.

15 6. Treasury would face several administrative challenges in returning terminated  
16 probationary employees to the rolls and onboarding them. These include developing official  
17 notice to mail and/or email to affected employees; processing back pay; restoration of benefits;  
18 issuing equipment; putting the individuals back into personnel systems; finding work space since  
19 the Agency has executed a return to office as of March 10, 2025; allowing building access; re-  
20 credentialing; and reallocation of work.

21 7. Offers of reinstatement will also cause confusion for agency and employee alike.  
22 Employees who were terminated just weeks ago will be offered reinstatement. Yet an appellate  
23 ruling could reverse the district court’s order before terminated employees accept their  
24 reinstatement or before they reenter on the job. Treasury could withdraw any offers of  
25 reinstatement in that circumstance. And even if the employees are reinstated prior to any reversal  
26 of the district court’s order, the reinstated employees will remain on probation and could again  
27 be terminated. Further, in response to President Trump’s February 11, 2025, Executive Order  
28 *Implementing the President’s “Department of Government Efficiency” Workforce Optimization*

1 *Initiative*, Treasury has submitted Phase 1 of its Agency Reduction in Force and Reorganization  
2 Plan (ARRP) to the Office of Management and Budget and Office of Personnel Management.  
3 This plan contemplates significant personnel reductions in Treasury bureaus under Reduction in  
4 Force procedures that will almost certainly result in subsequent removal of an unknown number  
5 of these probationary employees. In short, employees could be subjected to multiple changes in  
6 their employment status in a matter of weeks.

7 8. The uncertainty associated with this situation would challenge supervisors in  
8 effectively managing their workforce. Work schedules and assignments would effectively be tied  
9 to hearing and briefing schedules set by the courts. It would be difficult to assign new work to  
10 reinstated employees considering the uncertainty over their future status.

11  
12 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true  
13 and correct.

14 Dated: March 14, 2025

15  
16 John T. Norris  
17 Digitally signed  
by John T. Norris  
Date: 2025.03.14  
13:20:05 -04'00'  
18 J. Trevor Norris

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Acting United States Attorney  
PAMELA T. JOHANN (CABN 145558)  
Chief, Civil Division  
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*Counsel for Defendants*

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

AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES, *et al.*

Plaintiffs,

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UNITED STATES OFFICE OF PERSONEL  
MANAGEMENT, *et al.*,

Defendants.

Case No. 3:25-cv-1780-WHA

**DECLARATION OF MARK  
ENGELBAUM IN SUPPORT OF  
DEFENDANTS' MOTION FOR STAY OF  
MARCH 13, 2025, ORDER**

1 I, Mark Engelbaum, declare, pursuant to 28 U.S.C. § 1746, as follows:

2 1. I am the Assistant Secretary of Human Resources and Administration/Operations,  
3 Security, and Preparedness of the Department of Veterans Affairs (“Department”), headquartered  
4 in Washington, D.C. I have served in this position since February 13, 2025.

5 2. In my role at the Department, I am responsible for personnel management. I have  
6 the responsibility for overseeing the personnel enterprise and tracking and recording of personnel  
7 actions, including terminations. I assist in ensuring that all personnel actions comply with federal  
8 law, including those related to probationary employees.

9 3. Probationary employees in the competitive service are employees who have been  
10 employed for less than one year. In the excepted service, the probationary period may be up to  
11 two years.

12 4. The probationary period is part of the hiring process, and probationary employees  
13 have limited protections against termination.

14 5. The probationary period is essentially an extended tryout to determine the fitness  
15 of the employee and, according to regulation, an agency “shall terminate his or her services  
16 during this period if the employee fails to demonstrate fully his or her qualifications for  
17 continued employment.”

18 6. On January 20, 2025, the VA received a guidance memorandum from the Office  
19 of Personnel Management (“OPM”), which stated that “agencies should identify all employees  
20 on probationary periods” and “should promptly determine whether those employees should be  
21 retained at the agency.”

22 7. The Department fired approximately 500 probationary employees between  
23 February 13 and 14, 2025, out of approximately 46,000 probationary employees onboard at that  
24 time.

25 8. The Court’s order, requiring the Department to reinstate all probationary  
26 employees terminated on or about February 13 and 14, 2025, will impose substantial burdens on  
27 the Department, cause significant confusion, and will cause turmoil for the terminated  
28 employees.



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*Counsel for Defendants*

**UNITED STATES DISTRICT COURT  
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SAN FRANCISCO DIVISION**

AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES, *et al.*

Plaintiffs,

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UNITED STATES OFFICE OF PERSONEL  
MANAGEMENT, *et al.*,

Defendants.

Case No. 3:25-cv-1780-WHA

**DECLARATION OF MARY PLETCHER  
RICE IN SUPPORT OF DEFENDANTS'  
MOTION FOR STAY OF MARCH 13,  
2025, ORDER**

1 I, Mary Pletcher Rice, declare, pursuant to 28 U.S.C. § 1746, as follows:

2 1. I am the Acting Principal Deputy Assistant Secretary for Administration within  
3 Departmental Administration at the United States Department of Agriculture (“USDA” or  
4 “Department”), headquartered in Washington, D.C. I have served in this position since January  
5 31, 2025, and I have been employed at USDA since 2018.

6 2. In my role at USDA, I currently oversee the Department’s Office of Human  
7 Resources Management and I have purview over USDA subagencies’ Chief Operating Officers  
8 and Human Resources Offices.

9 3. Approximately 5,714 probationary employees were terminated from USDA  
10 beginning February 13, 2025, and concluding on or around February 17, 2025.

11 4. USDA is already reinstating the terminated probationary employees, pursuant to a  
12 45-day March 5, 2025, Stay Order from the Merit Systems Protection Board, which was  
13 requested by the Office of Special Counsel.

14 5. Whether required by operation of the March 5, 2025, MSPB Stay Order and/or  
15 this Court’s March 13, 2025, Order granting a preliminary injunction, reinstating the terminated  
16 probationary employees is complex and places the following logistical burdens on USDA and its  
17 approximately 29 subordinate Mission Areas, Agencies, and Staff Offices, including USDA’s  
18 multiple human resources offices: (1) initiating the process of placing all removed probationary  
19 employees, who received February 2025 termination letters, into pay status, and providing  
20 backpay, from the date of the termination notice through the present, which involves several  
21 systems and applies across multiple pay periods; (2) ascertaining whether some of the  
22 probationary employees choose to resign, due to having secured other employment or not  
23 wanting to return to duty at USDA; (3) reinstituting and ensuring operational status of secured  
24 LincPasses, office space, and equipment (including laptops in most instances) for those  
25 individuals whose mission criticality requires on-site work; and (4) addressing, as appropriate,  
26 any identified or substantiated threats to the physical safety of USDA’s existing 111,000 person  
27 workforce and security of USDA’s physical plants and assets across the nation.

1 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true  
2 and correct.

3  
4 Dated: March 14, 2025

5  
6 Digitally signed by  
MARY RICE  
Date: 2025.03.14  
15:01:04 -04'00'  
7  
8 MARY PLETCHER RICE

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*Counsel for Defendants*

**UNITED STATES DISTRICT COURT  
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AMERICAN FEDERATION OF  
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Plaintiffs,

v.

UNITED STATES OFFICE OF PERSONEL  
MANAGEMENT, *et al.*,

Defendants.

Case No. 3:25-cv-1780-WHA

**[PROPOSED] ORDER GRANTING *EX*  
*PARTE* MOTION TO STAY THE  
COURT'S MARCH 13, 2025  
PRELIMINARY INJUNCTION PENDING  
APPEAL**

**[PROPOSED] ORDER**

Good cause appearing, Defendants' *Ex Parte* Motion to Stay the Court's March 13, 2025 Preliminary Injunction Pending Appeal is hereby GRANTED. The preliminary injunction is hereby stayed pending the resolution of Defendants' appeal of the March 13, preliminary injunction.

DATED:

\_\_\_\_\_  
HON. WILLIAM H. ALSUP  
United States District Judge