

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

No. C 25-01780 WHA

Plaintiffs,

v.

**ORDER ON MOTION FOR
PRELIMINARY INJUNCTION BY
UNION PLAINTIFFS AND STATE
OF WASHINGTON**

UNITED STATES OFFICE OF
PERSONNEL MANAGEMENT, et al.,

Defendants.

INTRODUCTION

Three groups of plaintiffs — private organizations, public-sector labor unions, and the State of Washington — challenge the Office of Personnel Management’s unlawful usurpation of other federal agencies’ authority to hire and fire their own employees. After holding that OPM’s recent directive to fire employees at other agencies was unlawful, the district court granted provisional relief, including an order requiring the reinstatement of employees at six federal agencies. That reinstatement order, however, was stayed by the Supreme Court. Since then, additional plaintiffs have joined the suit and seek additional relief, and an order held that the public-sector labor union plaintiffs have standing to seek provisional relief. This order rules on provisional relief as to those plaintiffs.

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FINDINGS OF FACT

In February 2025, the United States Office of Personnel Management unlawfully directed the mass termination of thousands of probationary employees in all federal agencies. OPM did not merely suggest such terminations — it directed them.

First, OPM directed federal agencies to fire their probationary employees.

In a January 20 memo to federal agencies, OPM directed each agency to identify all employees on probationary periods and send a list to OPM. (Dkt. No. 111-1 at 1). The memo explained: “Employees on probationary periods can be terminated during that period without triggering appeal rights to the Merit Systems Protection Board (MSPB)” (*ibid.*). In a February 12 email, OPM directed agencies “to action those you know you wish to separate by the end of the day tomorrow, 2/13/2025, using the attached template letter,” and requested further “daily” progress reports “through at least the end of the week” (Dkt. No. 111-5 at 1).

At this time, OPM conducted conference calls with the Chief Human Capital Officer Council “every day” (Dkt. No. 188-1 at 63:13–17). OPM also held “probably about maybe 7 to 15” individual calls with various chiefs of staff and other agency political appointees concerning probationary employees (Dkt. No. 188-1 at 65:19–66:2). Despite requests by the district judge, defendants have declined to place direct evidence of the contents of those calls into the record.

In a February 14 email, OPM pushed the “action” deadline back, stating:

We have asked that you separate probationary employees that you have not identified as mission critical no later than end of the day Monday, 2/17. We have attached a template letter.

(Dkt. No. 111-2 at 1).

A “Forest Service Briefing Paper” circulated by its human resource management to “Supervisor[s]/Leader[s]” stated:

All federal agencies, including the Department of Agriculture, were notified on February 12, 2025, by the Office of Personnel Management (OPM) to terminate all employees who have not completed their probationary or trial period. . . . OPM *directed* agencies to separate Probationary employees starting 2/13/25

1 Based on this *direction* it is necessary to start providing notices of
2 separation to employees in probationary and trial period positions
3 starting 2/13/25.

(Dkt. No. 71 at 16 (emphasis added) (February 13, 2025)).

4 On February 13, the Department of Energy sent one or more termination letters stating:
5 “*Per OPM instructions*, DOE finds that your further employment would not be in the public
6 interest” (Dkt. No. 70-14 at 15 (emphasis added)).

7 That same day, a probationer at the Bonneville Power Administration (within the DOE)
8 received a termination letter that stated: “*Per OPM instructions*, DOE finds that your further
9 employment would not be in the public interest. For this reason, you are being removed from
10 your position with DOE and the federal civil service effective today” (Dkt. No. 39-4 at 10
11 (emphasis added)).

12 On February 14, a probationer terminated by the Foreign Agricultural Service asked the
13 Department of Agriculture’s deputy CHCO, Crystal Harris, about the “specific details of my
14 performance that were evaluated and found to be insufficient” (Dkt. No. 39-6 at 5–6). The
15 response: “[A]gencies were *directed* to begin providing termination notices . . . beginning
16 immediately upon OPM notification” (*ibid.*).

17 On February 18, meanwhile, the National Science Foundation fired its probationers *en*
18 *masse* via Zoom. During that call, NSF officials stated: “We were *directed* last Friday
19 [February 14] by OPM to terminate all probationers except for a minimal number of mission
20 critical probationers” (Dkt. No. 18-9 at 27 (emphasis added)). When confronted by the
21 terminated probationers, the officials continued: “Up until Friday [February 14]. Yes. We
22 were told by OPM it was the agency’s discretion whether to remove probations or not. We
23 chose to retain them all” (*id.* at 26). But “late Friday night,” “[t]hey told us that they *directed*
24 us to remove probationers.” “[T]here was no limited discretion. This is not a decision the
25 agency made. This is a *direction* we received” (*id.* at 21 (emphasis added)). Asked if NSF had
26 at least *attempted* to negotiate with OPM to minimize the number of terminations, NSF
27 responded: “There’s no negotiation” (*id.* at 34). Significantly, as soon as an earlier order
28

1 herein made clear that OPM had no such authority, NSF’s director re-hired nearly all those
2 probationers.

3 In a February 21 Internal Revenue Service “town hall,” IRS Chief Human Capital Officer
4 Traci DiMartini stated:

5 I’m not sure why it’s happening Regarding the removal of
6 the probationary employees, again, that was something that was
7 *directed* from OPM. And even the letters that your colleagues
8 received yesterday were letters that were written by OPM, put
9 forth through Treasury, and given to us I cannot explain to
10 you why this has happened. I’ve never seen OPM *direct* people at
11 any agency to terminate.

12 (Dkt. No. 39-5 at 8–9 (emphasis added)).

13 She continued:

14 And our actions are being watched by OPM. So that’s, again,
15 something else that’s unprecedented. . . . Everything we do is
16 scrutinized. Everything is being looked at twice. Any changes
17 that are made in our system that show any type of action that has
18 been deemed impermissible, we have to respond to why it
19 happened.

20 (*id.* at 7–8).

21 On February 25, Tracey Therit, chief human capital officer for the Department of
22 Veterans Affairs, testified under oath at a congressional hearing before the House Committee
23 on Veterans Affairs:

24 **RANKING MEMBER TAKANO:** So nobody ordered you to
25 carry out these terminations? You did it on your own?

26 **MS. THERIT:** There was *direction* from the Office of Personnel
27 Management.

28 (Dkt. No. 39-1 at 13 (emphasis added)).

On February 26, members of the Civilian Personnel Policy Council at the Department of
Defense stated by email: “In accordance with *direction* from OPM, beginning February 28,
2025, all DOD Components must terminate the employment of all individuals who are
currently serving a probationary or trial period” (Dkt. No. 39-4 at 14 (emphasis added)).

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In a March 6 sworn declaration filed in the District of Maryland and introduced into the record by plaintiffs, meanwhile, IRS Chief Human Capital Officer DiMartini stated:

I attended several virtual meetings with Trevor Norris and other Human Capital Officers at Treasury agencies (which include the Office of the Comptroller of the Currency, the Bureau of Engraving and Printing, and the U.S. Mint) during which we discussed the *directive* to conduct mass terminations of probationary employees.

....

Mr. Norris informed us that Charles Ezell, the Acting Director of OPM, Amanda Scales, Mr. Ezell’s Chief of Staff, and Noah Peters, were the individuals spearheading the termination of probationary employees at OPM.

....

Mr. Norris specifically instructed me and the other Human Capital Officers at Treasury that *OPM would not allow us to exempt military veterans from the probationary terminations.*

(Dkt. No. 94-1 at 3–4 (emphasis added)).

An agency’s “decision” *not* to terminate was contingent on OPM approval via an “exemptions process” (*ibid.*; Dkt. No. 188-1 at 87–88; 140:2–4).

After providing OPM with the required lists of employees and seeking exemptions, if any, the federal agencies put OPM’s termination directive into practice, firing more than 24,000 probationary employees in three weeks.

Second, OPM directed agencies to fire those employees under the false pretense of “performance.”

In early February, OPM disseminated a template termination letter to be used by all agency chief human capital officers (Dkt. No. 87-1). The OPM template stated:

The Agency finds, based on your performance, that you have not demonstrated that your further employment at the Agency would be in the public interest. For this reason, the Agency informs you that the Agency is removing you from your position of [TITLE] with the Agency and the federal civil service effective [insert date and time, if necessary].

(*ibid.* (highlighting added)).

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From IRS Chief Human Capital Officer DiMartini:

My colleagues and I asked Mr. Norris what the termination letter for affected probationary employees should consist of, and they informed me that OPM had drafted a letter, Treasury made a few modifications, and that we were instructed to send this letter out.

(Dkt. No. 94-1 at 3–4).

The IRS did *not* consider probationer performance:

My office did not review or consider the actual job performance or conduct of any IRS probationary employee when issuing the termination notices. I also know that Treasury did not review or consider the actual job performance or conduct of any IRS probationary employee when issuing the termination notices. I know this because this fact was discussed openly in meetings. Practically speaking, it would take weeks or months to evaluate the job performance of 6,700 probationary employees.

(*id.* at 4).

The Department of Agriculture, for example, used the OPM template to terminate probationers “based on [their] performance” (Dkt. Nos. 18-5 at 11 (emphasis added); 181-1 at 15–16). The Department of Agriculture’s deputy chief human capital officer stated OPM “*directed* the use of a specific template and language for the notice beginning immediately upon OPM notification” (Dkt. No. 39-6 at 6 (emphasis added)). The Department of Transportation informed probationers that “based on your performance you have not demonstrated that your further employment at the DOT FAA would be in the public interest” (Dkt. Nos. 18-17 (emphasis added); 181-1 at 12–13). The Department of Defense circulated the OPM template to its civilian personnel policy council members, “[a]s provided by OPM, and for your convenience” (Dkt. No. 39-4 at 15).

On February 13, Leandra Bailey, a Physical Science Information Specialist for the Forest Service, was terminated (Dkt. No. 71). In her most recent performance review, she received the highest mark possible in every category (*id.* at 11). The OPM template she received nevertheless stated: “The Agency finds, *based on your performance*, that you have not demonstrated that your further employment at the Agency would be in the public interest” (*id.* at 13 (emphasis added)).

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1 On February 18, Dr. Andrew Frassetto, a probationer terminated by the NSF, received the
2 OPM template (Dkt. No. 18-9 at 38). In a February 13 performance review — *five days* before
3 he was terminated “*based on [his] performance*” — Dr. Frassetto’s supervisor reported in a
4 performance review:

[H]is role [is] mission critical. Dr. Frassetto has been an
5 outstanding program director, and he has taken the lead role in
6 overseeing this important and complicated portfolio for the
7 division. Dr. Frassetto came to NSF with a unique skill set in
interdisciplinary scientific research He has already
8 demonstrated an outstanding ability to balance the various aspects
of his job responsibilities and is highly effective at organizing and
9 completing all his work in an accurate and timely manner.

10

11 Dr. Frassetto’s work on this portfolio has been outstanding and he
has brought important experience to the role and has demonstrated
12 highly competent project management and oversight. He is a
program director who has needed minimal supervision and eagerly
13 seeks special assignments at higher levels of difficulty. He has
been an outstanding contributor to the division, directorate, and
14 agency.

15 (*id.* at 7–8).

16 NSF said: “The cause comes from boilerplate we received from OPM. The cause says
17 that the agency finds based on your performance that you have not demonstrated that your
18 further employment at the agency would be in the public interest” (*id.* at 30 (emphasis added)).

19 Other agencies made slight tweaks to OPM’s language — but maintained the central
20 pretense. For example, the Department of Health and Human Services substituted “fitness” for
21 “performance,” telling those fired: “Unfortunately, the Agency finds that *you are not fit for*
22 *continued employment* because your ability, knowledge, and skills do not fit the Agency’s
23 current needs” (Dkt. No. 18-10 (emphasis added)). They otherwise stayed true to the
24 OPM template, down to the footnotes (*ibid.*).

25 The National Oceanic and Atmospheric Administration used the same “fitness” language.
26 Dr. Alexandra Avila, a marine scientist from Port Angeles, Washington, began working at
27 NOAA’s Olympic Coast National Marine Sanctuary (Olympic Coast NMS) in September 2024
28 (Dkt. No. 156-3 ¶3). NOAA’s Office of National Marine Statuaries helped fund Dr. Avila’s

1 doctorate through a \$180,000 scholarship. Following completion of her Ph.D., Dr. Avila
 2 completed two post-doctorate fellowships through Oregon Sea Grant, also a part of NOAA,
 3 and then joined NOAA’s Olympic Coast NMS, where she worked until she was fired on
 4 February 27 (*id.* ¶10). Dr. Avila’s most recent performance review — completed *nine days*
 5 before her termination — reported that she “is a highly functioning and valuable member of
 6 the OCNMS team and her first 4 months as OCNMS have been a resounding success!” (*id.* at
 7 10). Prompted to document any “Deficiencies, Areas of Concern,” or “Suggestions/Strategies
 8 for Improvement” by NOAA’s standardized review form, her supervisor responded “None”
 9 and “None” (*ibid.*).

10 NOAA terminated Dr. Avila nine days later, using language similar to that used in HHS’s
 11 termination letters: “[T]he Agency finds that you are not fit for continued employment
 12 because your ability, knowledge and/or skills do not fit the Agency’s current needs” (*id.* at 7;
 13 Dkt. No. 18-10). The termination letter otherwise followed the OPM script (Dkt. No. 156-3 at
 14 7–8).

15 Krista Finlay, a natural resource management specialist with NOAA’s National Marine
 16 Fisheries Service (NMFS) “received the highest possible commendations her supervisor could
 17 make” in her most recent performance reviews, and her supervisors identified her as “mission
 18 critical for NOAA” in reports requested by OPM (Dkt. No. 70-9 ¶¶ 2, 10–11). Finlay was
 19 terminated on February 27 because she, like Dr. Avila and those at HHS, was “not fit for
 20 continued employment because [her] ability, knowledge and/or skills do not fit the Agency’s
 21 current needs” (*id.* ¶ 13). Her branch chief — who first realized Finlay was fired when she
 22 forwarded the termination email to him — believed a mistake had been made and assured her
 23 that “local NOAA officials would do everything in their power to advocate for” her (with no
 24 apparent success) (*id.* ¶ 15).

25 The template was a sham, citing “performance” as the basis for the terminations in order
 26 to evade statutory and regulatory requirements, including, for example, the construction of an
 27 “order of retention” that honors veterans’ preference eligibility.

28 * * *

1 The present action has come to include three distinct groups of plaintiffs: (1) private
2 organizations, (2) public-sector labor unions, and (3) the State of Washington (Dkt. No. 90 ¶¶
3 15–30).

4 On February 23, the union and organizational plaintiffs moved for a temporary
5 restraining order (Dkt. No. 18). On February 27, the undersigned granted a temporary
6 restraining order on behalf of the organizational plaintiffs but held that this district court likely
7 lacked jurisdiction as to the claims of the union plaintiffs (Dkt. No. 42, 45). On March 11,
8 plaintiffs filed their second amended complaint, adding the State of Washington to the matter
9 (Dkt. No. 90). On March 13, the undersigned extended the existing TRO and issued a
10 preliminary injunction, again based only on the claims of the organizational plaintiffs,
11 requiring six relief defendant agencies to offer reinstatement to probationary employees
12 terminated on or about February 13 or 14 (Dkt. No. 120 at 51–52). Also on March 13, the
13 undersigned stated that the question of relief for both the union plaintiffs and the State of
14 Washington would be considered following additional briefing (*id.* at 18, 57).

15 The government timely appealed the March 13 injunction (Dkt. No. 119). Our court of
16 appeals denied the government’s request for an immediate administrative stay (Dkt. No. 136)
17 and emergency motion for a stay pending appeal (Dkt. No. 157). On March 24, the
18 government petitioned the Supreme Court for an administrative stay. The Supreme Court
19 granted the stay on April 8. *OPM v. AFGE*, No. 24A904, 2025 WL 1035208 (Apr. 8, 2025).
20 The Supreme Court clarified that “[t]his order does not address the claims of the other
21 plaintiffs, which did not form the basis of the District Court’s preliminary injunction.” *Ibid.*

22 This order concerns the remaining plaintiffs: The unions and State of Washington.
23 Following further briefing on the issue, an order held that the district court has jurisdiction over
24 the union plaintiffs (Dkt. No. 153) and issued an order to show cause why the relief extended
25 to the private organizations (or more, or less) should not be extended to the union plaintiffs
26 (Dkt. No. 154). It also set a briefing schedule for Washington’s motion for a preliminary
27 injunction (Dkt. No. 164). The parties have finished all briefing, and oral argument was heard
28 on April 9.

1 The unions assert that probationary employees have been terminated *en masse* at the
 2 following agencies, and request an injunction reversing those actions pending resolution of this
 3 litigation: the Departments of Agriculture, Commerce, Defense, Education, Energy, Health
 4 and Human Services, Homeland Security, Housing and Urban Development, Interior,
 5 Treasury, Transportation, and Veterans Affairs, the Environmental Protection Agency, General
 6 Services Administration, National Science Foundation, and Small Business Administration
 7 (Dkt. No. 161-1 at 2–3).

8 For its part, the State of Washington seeks an injunction reinstating employees at: the
 9 Departments of Agriculture, Commerce, Defense, Education, Health and Human Services,
 10 Homeland Security, Housing and Urban Development, and the Interior (Dkt. No. 156 at 2).

11 This order grants provisional relief but not as broadly as requested.

12 ANALYSIS

13 “A plaintiff seeking a preliminary injunction must establish that [1] he is likely to
 14 succeed on the merits, that [2] he is likely to suffer irreparable harm in the absence of
 15 preliminary relief, that [3] the balance of equities tips in his favor, and [4] that an injunction is
 16 in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). “Crafting
 17 a preliminary injunction is an exercise of discretion and judgment, often dependent as much on
 18 the equities of a given case as the substance of the legal issues it presents.” *Trump v. Int’l*
 19 *Refugee Assistance Project*, 582 U.S. 571, 579 (2017). “[A] court need not grant the total
 20 relief sought by the applicant but may mold its decree to meet the exigencies of the particular
 21 case.” *Id.* at 580 (internal quotation marks omitted).

22 1. LIKELIHOOD OF SUCCESS ON THE MERITS.

23 A. PLAINTIFFS’ ULTRA VIRES AND APA CLAIMS.

24 First, OPM’s directive constituted an *ultra vires* act that infringed upon all impacted
 25 agencies’ statutory authority to hire and fire their own employees.

26 “The ability to sue to enjoin unconstitutional actions by state and federal officers is the
 27 creation of courts of equity, and reflects a long history of judicial review of illegal executive
 28

1 action, tracing back to England.” *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327
2 (2015). “Equitable actions to enjoin *ultra vires* official conduct do not depend upon the
3 availability of a statutory cause of action; instead, they seek a ‘judge-made remedy’ for injuries
4 stemming from unauthorized government conduct, and they rest on the historic availability of
5 equitable review.” *Sierra Club v. Trump*, 963 F.3d 874, 890–91 (9th Cir. 2020) (citing
6 *Armstrong*, 575 U.S. at 327), *vacated and remanded on other grounds (mootness)*, 142 S. Ct.
7 46 (2021).

8 No statute — anywhere, ever — has granted OPM the authority to direct the termination
9 of employees in other agencies. “Administrative agencies [like OPM] are creatures of statute.
10 They accordingly possess only the authority that Congress has provided.” *Nat’l Fed’n of*
11 *Indep. Bus. v. Dep’t of Lab.*, 595 U.S. 109, 117 (2022).

12 Instead, Congress’s statutory scheme grants to each agency head the authority to manage
13 its own affairs, including the hiring and firing of employees. 5 U.S.C. § 3101 (“Each
14 Executive agency, military department, and the government of the District of Columbia may
15 employ such number of employees of the various classes recognized by chapter 51 of this title
16 as Congress may appropriate for from year to year.”); 5 U.S.C. § 301 (“The head of an
17 Executive department or military department may prescribe regulations for the government of
18 his department, the conduct of its employees”); *see also, e.g.*, 42 U.S.C. § 7231 (DOE) (re
19 employees); *id.* § 7253 (re reorgs.); 38 U.S.C. §§ 303, 510 (VA); 10 U.S.C. § 113 (DOD).

20 The same is true of OPM. Congress has vested its director with the authority to “secur[e]
21 accuracy, uniformity, and justice in the functions of the Office,” “appoint[] individuals to be
22 employed by the Office,” and “direct[] and supervis[e] employees of the Office.” 5 U.S.C.
23 § 1103(a)(1)–(3). But that’s it. OPM did not have the authority to direct the firing of
24 employees, probationary or otherwise, in any *other* federal agency.

25 Defendants concede as much. Their opposition rests instead on the factual contention
26 that OPM did not issue a directive. Its sanitized record provided in support — press releases, a
27 feeble start to a yet-to-come “administrative record,” and the deposition of newly-appointed
28 OPM Special Advisor Noah Peters — is unpersuasive.

1 For example, defendants point to a trio of OPM Memos to suggest that agencies made
2 their own decisions. The first, issued on January 20, directed agencies to “identify all
3 [probationary employees] and send a report to OPM listing [them]. In addition, *agencies*
4 *should promptly determine* whether those employees should be retained at the agency” (Dkt.
5 No. 37 at 1 (emphasis added)). The second, circulated on February 12, directed agencies to
6 “action those *you know you wish to separate* by the end of the day tomorrow, 2/13/2025, using
7 the attached template letter” (Dkt. No. 111-5 at 1 (emphasis added)). The third, sent out on
8 February 14, “*asked*” the agencies to “separate probationary employees that *you* have not
9 identified as mission-critical no later than end of the day Monday, 2/17” (Dkt. No. 111-2 at 1
10 (emphasis added)).

11 A mountain of evidence shows that the actual situation was not as these memos would
12 make it seem.

13 The February 14 memo itself went on to note that “[t]hrough *the exemptions process*,
14 agencies have identified the highest-performing probationers in mission critical areas” (*id.* at 2
15 (emphasis added)). OPM Special Advisor Peters clarified that agencies went to OPM for
16 “exemptions” from the *en masse* termination program during a three-week long “process.”
17 The EEOC, FAA, and “some sort of nuclear inspection agency” requested, and received,
18 “exemptions” from OPM (Dkt. No. 188-1 at 87:13–88:16). If the agencies exercised ultimate
19 discretion, why did OPM make them apply for exemptions? The reason is obvious — OPM’s
20 directive did not leave the agencies free to keep their probationers. Defendants respond that
21 the exemption process was also just a suggestion: “But at any time an agency could have just
22 said . . . we’re not going to do anything” (*id.* at 89:10–13).

23 The record betrays defendants’ characterization of the exemptions process as a toothless
24 formality. IRS Chief Human Capital Officer DiMartini, for example, attested that Treasury
25 obeyed OPM’s denial of an exemption for veterans:

26 Mr. Norris specifically instructed me and the other Human Capital
27 Officers at Treasury that *OPM would not allow us to exempt*
28 *military veterans from the probationary terminations.*

1 (Dkt. No. 94-1 at 4 (emphasis added)).

2 The record also shows that NSF, which did try to “just ignore” OPM’s real-but-not-real
3 exemption process *was directed to — and did — fire*. The NSF officials implementing the
4 OPM directive stated: “Up until Friday [February 14]. Yes. We were told by OPM it was the
5 agency’s discretion whether to remove probations or not. We were told by OPM it was the
6 agency’s discretion whether to remove probations or not. *We chose to retain them all*” (Dkt.
7 No. 18-9 at 26 (emphasis added). But “late, late Friday night,” “[t]hey told us that they
8 *directed* us to remove probationers” (*ibid.* (emphasis added)). “[T]here was no limited
9 discretion. *This is not a decision the agency made. This is a direction we received*” (*id.* at 21)
10 (emphasis added). Defendants point to no other agency that “just ignored it” — only those that
11 were *granted* an exemption (and DOJ, which Special Advisor Peters swore was both *granted*
12 an exemption, and “just ignored it,” as convenient). * And even if some agencies refused to
13 follow OPM’s directive, the evidence is overwhelming that most felt compelled to and did
14 follow it. An “ask,” followed by a directive, is a directive. A choice — you may choose to
15 retain your probationers — followed by a caveat — if OPM grants your exemption request —
16 is not a choice.

17 Most of all, the government fails to rebut evidence drawn from a broad swathe of
18 agencies proving that they were operating under OPM direction: “OPM *directed* agencies to
19 separate Probationary employees starting 2/13/25” (USDA); “We were *directed* last Friday by
20 OPM to terminate all probationers” (NSF); “Regarding the removal of the probationary
21 employees, again, that was something that was *directed* from OPM” (Treasury); “There was
22 *direction* from the Office of Personnel Management” (VA); “In accordance with *direction*
23 from OPM . . . all DOD Components must terminate the employment of all individuals who

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26 _____
27 * Peters initially claimed that DOJ requested, and received, an exemption from the termination
28 directive (Dkt. No. 188-1 at 87:13–88:16). Later in his deposition, Peters’ recollection reversed
course: “I *think* DOJ just said, ‘We’re not doing this,’ And *I don’t even know* that there was any
reach back on or any response to that” (Dkt. No. 188-1 at 136:1–4 (emphasis added)). Peters did
not otherwise identify a single agency that “just ignored” the exemption process.

1 are currently serving a probationary or trial period” (DOD) (emphases added). Defendants did
2 not credibly rebut any of those statements (*see* Dkt. No. 188-1 at 11:15, 126:11–14, 130:1–15).

3 *Finally*, on March 14, defendants submitted declarations from six of the twenty-two relief
4 defendant agencies (Dkt. Nos. 127-1–7). Of the six, just two (the Departments of the Interior
5 and Defense) stated, in identical terms, that they “reviewed all probationary and trial period
6 appointees’ performances to determine which individuals to keep and which to terminate”
7 (Dkt. Nos. 127-1 ¶ 7; 127-3 ¶ 7). The remaining four agencies (Treasury, Energy, Agriculture
8 and the VA) omitted that claim from otherwise sound-alike declarations. These made-for-
9 litigation declarations are unconvincing on their own and do not convincingly rebut the
10 evidence above.

11 **B. ARTICLE III STANDING.**

12 “The ‘gist of the question of standing’ is whether the plaintiff has a sufficiently ‘personal
13 stake in the outcome of the controversy’ to ensure that the parties will be truly adverse and
14 their legal presentations sharpened.” *Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017)
15 (quoting *Massachusetts v. EPA*, 549 U.S. 497, 516 (2007)). A plaintiff must show that “it has
16 suffered a concrete and particularized injury that is either actual or imminent, that the injury is
17 fairly traceable to the defendant, and that it is likely that a favorable decision will redress that
18 injury.” *Massachusetts*, 549 U.S. at 517.

19 Both representational standing and direct organizational standing are at issue here.

20 “An organization has standing to bring suit on behalf of its members if ‘(1) at least one of
21 its members would have standing to sue in his own right, (2) the interests the suit seeks to
22 vindicate are germane to the organization’s purpose, and (3) neither the claim asserted nor the
23 relief requested requires the participation of individual members in the lawsuit.’” *Fellowship*
24 *of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 680–81 (9th
25 Cir. 2023) (en banc) (quoting *Fleck & Assocs., Inc. v. City of Phoenix*, 471 F.3d 1100, 1105–06
26 (9th Cir. 2006)).

27 An organization has direct organizational standing, meanwhile, “where it establishes that
28 the defendant’s behavior has frustrated its mission and caused it to divert resources in response

1 to that frustration of purpose.” *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 663 (9th
2 Cir. 2021). “Of course, organizations cannot manufacture the injury by incurring litigation
3 costs or simply choosing to spend money fixing a problem that otherwise would not affect the
4 organization at all, but they can show they would have suffered some other injury had they not
5 diverted resources to counteracting the problem.” *Ibid.* (internal quotation marks omitted); *see*
6 *also FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 384–86 (2024). At bottom, the test is
7 whether the challenged action has “directly affected and interfered with [the organization’s]
8 core business activities.” *Hippocratic Med.*, 602 U.S. at 395.

9 (i) ***Union plaintiffs.***

10 Public union plaintiffs “each represent probationary employees who have been
11 summarily fired, and falsely informed that their termination was based on performance” (Dkt.
12 No. 90 ¶ 145). “Each Union Plaintiff has the core function of representing employees in
13 federal bargaining units in collective bargaining and providing counseling, advice, and
14 representation to represented employees in the event of adverse employment actions” (*id.* ¶
15 146).

16 *First*, the union plaintiffs stand in the shoes of their members, some of whom have been
17 injured due to termination under the pretext of “performance” (Dkt. No. 198-2). Termination
18 is as clear an injury as any. Each terminated probationer has lost their livelihood, access to
19 health insurance, and myriad other rights and privileges tied to their employment. For
20 example, an unnamed international economist with the Foreign Agricultural Service (FAS),
21 Veteran Doe, was let go on grounds of “performance” (Dkt. No. 18-5 ¶¶ 10, 20). Before
22 joining FAS, he spent five years serving as a Navy Corpsman (*id.* ¶ 20). He was deployed
23 twice, to Iraq and Southeast Asia, where he provided medical support to the Marine Corps
24 (*ibid.*). Veteran Doe must now find more affordable housing for himself and his young son
25 and expects to use credit and his retirement savings to cover his living expenses while he looks
26 for work (*ibid.*). The government’s failure to timely furnish the standardized termination
27 forms necessary to file for unemployment insurance has further delayed Veteran Doe’s access
28 to financial aid (*ibid.*). “He thought he was protected as a veteran, by his status as a

1 [Presidential Management Fellow], and by his outstanding performance. He feels betrayed by
2 the government because he went to bat for this country as a soldier serving two overseas
3 deployments, but the government did not go to bat for him” (*ibid.*).

4 The above is more than enough injury for standing. But there’s more still. The decision
5 to terminate Veteran Doe under the pretense of “performance” will, unless redressed, continue
6 to injure him for the rest of his working life. Each time he applies for a job, he will no doubt
7 be asked if he has been terminated for performance, and, as it stands, he will have to concede
8 that he has — no matter the truth of it. The decision to deploy false pretense also inflicted a
9 grievous legal injury: It stripped Veteran Doe of the few statutory protections afforded to
10 probationary employees, including hard-earned veteran preferences during reductions in force.

11 The financial and legal injuries suffered by Veteran Doe are common to all terminated
12 probationers. While this order cannot possibly document how those common injuries have
13 thrown each terminated civil servant’s life into disarray, as they did Veteran Doe’s, it
14 recognizes that that was the outcome of OPM’s directive. For example, AFSCME Local 1653,
15 which represents a bargaining unit of over 2,000 civil servants at the Federal Aviation
16 Administration, reports:

17 One probationary employee who was terminated was diagnosed
18 with thyroid cancer the following day and will now lose her health
19 insurance in the face of this catastrophic diagnosis. Another
20 affected employee is a single mother of three that was already
21 waiting tables on the weekends to make ends meet. Now she has
22 lost her primary employment. Another employee was a federal
23 contractor working at the FAA for more than twenty (20) years,
24 who was recently promoted to the federal service in recognition for
25 her outstanding performance.

26 (Dkt. No. 18-17 ¶ 20).

27 These injuries are fairly traceable to each civil servant’s termination at the behest of
28 OPM. The unions have standing to seek redress on behalf of their members.

Second, the unions have themselves been harmed. Terminated union members cease to
pay their union dues — collected through voluntary payroll deductions — and thus reduce a
key source of operational funding (Dkt. Nos. 18-5 ¶ 23; 18-6 ¶ 20; 18-10 ¶ 19; 18-12 ¶ 17–18;

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1 18-14 ¶ 13). Diminished funds will in turn diminish union plaintiffs’ ability to provide
2 services to members.

3 These terminations have also frustrated the union plaintiffs’ ability to perform their core
4 functions. For example, Kory Blake, an area field services director for the Eastern Region of
5 the AFSCME, has been diverted from his typical work — organizing and representing a
6 largely non-Federal workforce in Maryland, DC, and Virginia — to address the terminations of
7 the union’s affected federal employee members (Dkt. No. 18-6 ¶ 17). Blake was not alone:

8 AFSCME has assigned several AFSCME International Union staff,
9 including myself, from various departments to address the issues
10 arising from the mass terminations and to support our members.
11 This includes three attorneys from AFSCME’s Office of the
12 General Counsel to assess the terminations, conduct legal research
13 on how to protect affected members’ legal rights, and engage in
14 legal advocacy; staff from AFSCME’s Data and Analytics
15 department to help gather and analyze member data to understand
16 the scope of the terminations and engage in member outreach;
17 several additional staff from AFSCME’s Organizing and Field
18 Services department not normally assigned to assist our federal
19 sector affiliates who are engaging directly with our affected
20 affiliates and members to provide support and coordinate
21 resources[.]

22

23 [T]hree out of a total of eight attorneys in the AFSCME Office of
24 the General Counsel are spending an extensive amount of their
25 workday addressing the terminations. One of those AFSCME
26 attorneys is assigned to support AFSCME’s organizing efforts in
27 other states but has had to temporarily pause that important
28 representation work—which is work that grows union
membership— to focus on addressing the mass terminations on an
almost full-time basis.

(Dkt. No. 18-6 ¶ 16–17).

The president of AFGE Local 2883 — representing a bargaining unit of over 1,500 civil
servants at the Center for Disease Control — attests:

Since HHS issued its probationary employee termination letters,
the Union has had to divert all its time and resources to engage
with the membership on this issue and address their concerns. The
substantial increase in emails, phone calls, and text messages
concerning the probationary employee terminations has diverted
time and resources that the Union dedicates to its mission of
advocating and negotiating for improved workplace conditions,
organizing new members, representing employees, and non-urgent

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administrative tasks to maintain the Union.

The demands placed on my time to respond to member inquiries about the mass termination have required me to set aside the representation needs of other bargaining unit employees until the evenings and weekends, have interfered with my ability to carry out my tour of duty, and necessarily postponed collective bargaining negotiations with CDC’s labor relations team, scheduled for the week of February 17, 2025

(Dkt. No. 18-10 ¶¶ 14–15).

Everett Kelley, AFGE’s national president, further attests:

Altogether, AFGE staff have been forced to spend literally thousands of hours responding to the calls and emails from members and affiliates related to probationary employee terminations that would have otherwise been spent on other matters.

For instance, the time spent responding to and addressing probationary terminations have prevented AFGE’s field representatives from filing grievances for affiliates, advising affiliates on other pressing matters such as responding to attacks on collective bargaining and organizing unrepresented members.

(Dkt. No. 18-12 ¶ 10–11; *see also* Dkt. Nos. 18-5 ¶ 11–14; 18-10 ¶ 8–9).

The unions have established that OPM’s directive “directly affected and interfered with [their] core business activities” and organizational mission. *Hippocratic Med.*, 602 U.S. at 395. That injury is fairly traceable to OPM’s directive to terminate probationary civil servants *en masse*. Union plaintiffs have direct organizational standing.

The government’s counters fall short.

First, the government argues that the unions lack standing because the second amended complaint does not describe their organizational harms with the requisite specificity (Dkt. Nos. 160 at 9; 180 at 3). In one breath, the government demands that this injunction be decided within the four corners of the complaint; in the next, it insists that the analysis must be limited to a yet-to-come “administrative record”; in the third, it grounds its counterfactual in the declaration and now deposition of OPM Special Advisor Noah Peters — not a part of the complaint *or* the administrative record. The undersigned has considered the *whole* record in crafting the present injunction.

1 *Second*, the government argues that union plaintiffs do not have representational standing
2 because they have not provided a complete accounting of each terminated probationer (Dkt.
3 No. 180 at 5). The government did not provide union plaintiffs notice when it terminated their
4 members, and when asked for a list of affected civil servants, several agencies failed to provide
5 that information (Dkt. No. 18-5 ¶ 10; 18-6 ¶ 11). “As a general rule of representational
6 standing, when it is clear and not speculative that a member of a group will be adversely
7 affected by a challenged action and a defendant does not need to know the identity of a
8 particular member to defend against an organization’s claims, the organization does not have to
9 identify particular injured members by name.” *Mi Familia Vota v. Fontes*, 129 F.4th 691, 708
10 (9th Cir. 2025).

11 *Third*, the government argues that union plaintiffs cannot show representational standing
12 because they “have not alleged . . . nor could they show, that *all* of their members: [] have been
13 affected by the terminations of probationary employees as not all their members are
14 probationary employees” (Dkt. No. 180 at 5 (emphasis added)). True, union plaintiffs
15 represent non-probationary employees unaffected by the OPM directive at issue here. So
16 what? The Sierra Club was not asked to show that every last member sat in solitude and
17 wonderment at Mineral King. *See Sierra Club v. Morton*, 405 U.S. 727 (1972). An
18 organization establishes representational standing where it shows that some subset of its
19 members have been, or imminently stand to be, injured. *Friends of the Earth, Inc. v. Laidlaw*
20 *Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 182–183 (2000). Union plaintiffs have done so here.

21 *Fourth*, the government argues that union plaintiffs’ injury is not redressable in federal
22 court: “Quite simply, reinstatement is not an available equitable remedy” (Dkt. No. 167 at 17
23 (citing *Sampson v. Murray*, 415 U.S. 61, 83 (1974))). Because this order does not grant the
24 remedy of additional reinstatement, the government’s argument is moot.

25 *Finally*, the government attempts to re-litigate mootness, arguing that its compliance with
26 the February 27 TRO rendered this action moot (Dkt. No. 167 at 18-19). The undersigned
27 heard — and denied — that argument in a prior order (Dkt. No. 88). That analysis is
28 incorporated here.

(ii) *State of Washington.*

1 Washington fails to make out standing based on the purported loss of federal services.
2 Washington argues, for example, that the termination of natural resource management
3 specialists at NOAA will result in NOAA’s inability to timely “writ[e] biological opinions to
4 permit the release of chinook salmon from WDFW and Washington Treaty Tribes hatcheries,”
5 as required by Section 7 of the Endangered Species Act (Dkt. No. 70-9 ¶ 5). Terminations at
6 NOAA’s Olympic Coast National Marine Sanctuary (Olympic Coast NMS), meanwhile, will
7 render NOAA an ineffective partner in the management of that area (Dkt. No. 70-11 ¶ 7–13).
8 Disruptions caused by terminations at FEMA, meanwhile, threatens the continued operation of
9 Washington’s Floodplains by Design program, which has spent some \$280 million dollars to
10 restore 131 miles of river and protect 7,778 acres of land and is now receiving funding
11 applications for work through 2027 (Dkt. No. 70-2. ¶¶ 7–10). As to Housing and Urban
12 Development, meanwhile, Washington asserts: “If termination of HUD staffing extends the
13 delay in federal contracting, reimbursement, and release of grant funds, the County *may* have
14 to cancel contracts with service providers” (Dkt. No. 70-6 at 6 (emphasis added)). As to the
15 CDC: “The State continues to rely on data from the CDC relating to other highly contagious
16 diseases, including measles. The recent measles outbreak has reached Washington, and the
17 State relies on adequate staffing levels at CDC to help track and contain this disease if it
18 spreads” (Dkt. No. 70-7 at 6-7).

19 The present record does not support Washington’s assertion that the cessation or
20 diminishment of federal services constitutes an actual or imminent injury “fairly traceable to
21 the challenged action.” *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149 (2010). The
22 Supreme Court has “repeatedly reiterated that ‘threatened injury must be *certainly*
23 *impending* to constitute injury in fact,’ and that ‘[a]llegations of *possible* future injury’ are not
24 sufficient.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013) (quoting *Whitmore v.*
25 *Arkansas*, 495 U.S. 149, 158 (1990)). The assertion that the termination of probationers at
26 NOAA and other agencies will necessarily result in the diminishment of the specific services
27 and partnerships identified by Washington rests on a speculative chain of contingencies. There
28

1 is little record evidence to suggest that NOAA, FEMA, *et. al.*, cannot function without the
2 probationary employees at issue here. While Washington asserts that it “continues to rely on
3 data from the CDC relating to []highly contagious diseases, including measles,” for example,
4 the inference that the termination of probationers has rendered the generation of that data
5 impossible is entirely speculative. The notion that delays at NOAA will interfere with
6 Washington’s annual release of chinook Salmon likewise rests on the unsupported inference
7 that there *will be* a delay, and that the termination of probationary employees will be the
8 proximate cause of that delay.

9 Washington also faces a redressability problem. NOAA, CDC, HUD, and others have
10 been subject to deferred resignation programs and the widespread termination of non-
11 probationary employees, neither of which are at issue here. What is to say that the
12 reinstatement of probationary employees will adequately remedy the harms identified by
13 Washington or return each agency to what Washington believes to be “adequate staffing
14 levels” (Dkt. No. 70-7 ¶ 11)? If, for example, NOAA has decided to reduce the testing
15 capacity of the Pacific Marine Environmental Laboratory, will the return of probationary
16 workers under court order remedy purported impending delays in sample turnaround? How
17 will the Court, moreover, ensure that each probationer is not only rehired and returned to active
18 duty, but is assigned to the specific tasks and teams identified by Washington? Such
19 micromanagement of agency staffing is a problem.

20 Washington has, however, established a legitimate financial injury. The state’s
21 Employment Security Department reports that it saw a 470% increase in unemployment benefit
22 claims from federal employees from February 13 to March 3, when compared to the same
23 period in the prior year (Dkt. No. 70-8 ¶¶ 11, 13). Washington has established that at least
24 some of those claimants were probationary employees. The state has expended considerable
25 additional time and resources to process those employees’ unemployment insurance claims
26 (Dkt. No. 70-8 ¶¶ 11, 13) (“Overall, the intake process is far more time-consuming for federal
27 employee unemployment benefits claimants than for most claimants”). The diversion of
28 resources necessary to service federal employees’ claims has delayed benefits payments to

1 Washingtonians and required Washington to expend additional funds from its Administrative
2 Contingency Account and Employment Services Administrative Account (*id.* ¶¶ 15, 16).
3 “A dollar of economic harm is [] an injury-in-fact for standing purposes.” *E. Bay Sanctuary*
4 *Covenant v. Trump*, 950 F.3d 1242, 1267 n.5 (9th Cir. 2020) (quoting *Carpenters Indus.*
5 *Council v. Zinke*, 854 F.3d 1, 5 (D.C. Cir. 2017)).

6 The government counters that the Supreme Court “expressly held that indirect injuries are
7 insufficient to create standing for a state to sue” in *United States v. Texas* (Dkt. No. 167 at 11
8 (citing *United States v. Texas*, 599 U.S. 670, 674 (2023))).

9 The government misstates *United States v. Texas*. “The holding of a case is not the same
10 thing as a quotation from a case. The holding is the proposition of law which requires that the
11 particular facts in that case produce the result.” *United States v. Andrade-Larrios*, 39 F.3d 986,
12 990 (9th Cir. 1994).

13 In *Texas*, a cohort of states challenged new guidelines for immigration enforcement
14 issued by the Department of Homeland Security, arguing that the guidelines “violated federal
15 statutes that purportedly required the Department to arrest *more* criminal noncitizens pending
16 their removal.” *Texas*, 599 U.S. at 673-74. *Texas* reaffirmed the well-established rule that
17 parties do not have a judicially cognizable interest in the prosecution of others. *Id.* at 677. The
18 government’s attempt to graft *Texas* onto the present dispute runs headlong into *Texas* itself:

19 And this case raises only the narrow Article III standing question
20 of whether the Federal Judiciary may in effect order the Executive
21 Branch to take enforcement actions against violators of federal
22 law—here, by making more arrests. Under this Court’s Article
23 III precedents and the historical practice, the answer is no.

24 *Id.* at 684–85. It is unsurprising, then, that our court of appeals has already rejected this
25 argument. *State v. Su*, 121 F.4th 1, 13 n.5 (9th Cir. 2024).

26 **C. IRREPARABLE HARM.**

27 In *Winter*, the Supreme Court reversed a preliminary injunction based only on a
28 “possibility” of irreparable harm, explaining: “Issuing a preliminary injunction based on a
possibility of irreparable harm is inconsistent with our characterization of injunctive relief as

1 an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is
 2 entitled to such relief.” *Winter*, 555 U.S. at 22. The party seeking a preliminary injunction
 3 must “demonstrate that irreparable injury is *likely* in the absence of an injunction.” *Winter*,
 4 555 U.S. at 22. “[U]nsupported and conclusory statements regarding harm” are not
 5 enough. *Herb Reed Enters., LLC v. Fla. Ent. Mgmt., Inc.*, 736 F.3d 1239, 1250 (9th Cir.
 6 2013).

7 (i) ***The unions.***

8 There is much less need now for an order reinstating probationary employees than there
 9 was in March — when the district court did order reinstatement. On March 4, in response to
 10 this Court’s TRO, OPM re-circulated a revised version of the January 20 memo, which read:

11 Please note that, by this memorandum, OPM is not directing
 12 agencies to take any specific performance-based actions regarding
 13 probationary employees. Agencies have ultimate decision-making
 14 authority over, and responsibility for, such personnel actions.

14 (Dkt. Nos. 64-1 at 2; 188-1 at 149:11–21). On May 13, the district court issued a preliminary
 15 injunction requiring six relief defendants to reinstate their probationary employees. That same
 16 day, a separate preliminary injunction issued by a district court in Maryland required all
 17 remaining relief defendants, except NSF, to rehire their probationers. NSF, meanwhile, had
 18 rehired all probationers following this district court’s TRO. Yes, both district court orders
 19 were eventually stayed, but much good was done in the interim. Compliance reports submitted
 20 in this district court and in Maryland showed that relief defendants rehired their terminated
 21 probationers *after* having received the March 4 revised memorandum. So, if any reinstated
 22 employees are now terminated (yet again), it will be because the agency has made the decision
 23 to do so, not because OPM has directed it. The whole point of this lawsuit has been OPM’s
 24 *ultra vires* act — not terminations made wholly by agencies themselves.

25 Union plaintiffs’ contention that they continue to face irreparable organizational harms
 26 falls short for the same reason. Just as there is little to suggest that agencies are still acting at
 27 the behest of OPM, there is little on the record to suggest that the unions’ core business
 28

1 functions are still being frustrated by such terminations. Plaintiffs’ declarations attesting to
2 such disruptions have by now grown stale.

3 * * *

4 Plaintiffs have, however, made out irreparable harm flowing from OPM’s template
5 termination letter, and its pretense of “performance” based firings. In our circuit, the “loss of
6 opportunity to pursue [one’s] chosen profession[] constitutes irreparable harm.” *Arizona*
7 *Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014) (cleaned up); *see Chalk v.*
8 *U.S. Dist. Ct. Cent. Dist. of California*, 840 F.2d 701, 709-10 (9th Cir. 1988). In *Brewer*,
9 Arizona Governor Janice Brewer issued an executive order directing state agencies to prevent
10 DACA recipients from becoming eligible for any state identification, including a driver’s
11 license. *Brewer*, 757 F.3d at 1059 (internal quotations omitted). Plaintiffs, five individual
12 DACA recipients and the Arizona DREAM Act Coalition, filed suit and moved for a
13 preliminary injunction. *Ibid.* Our court of appeals held that plaintiffs had “introduced ample
14 evidence that Defendants’ policy causes them to suffer irreparable harm” by “limiting their
15 professional opportunities.” *Id.* at 1068 (“Plaintiffs’ ability to drive is integral to their ability
16 to work — after all, eighty-seven percent of Arizona workers commute to work by car. It is
17 unsurprising, then, that Plaintiffs’ inability to obtain driver’s licenses has hurt their ability to
18 advance their careers.”).

19 Here, “performance” (or “fitness”) was a total sham, a pretense supplied by OPM via
20 their template termination letter. As IRS Chief Human Capital Officer DiMartini explained, “it
21 would take weeks or months to evaluate the job performance of 6,700 probationary
22 employees” (Dkt. No. 94-1 at 4). OPM’s deadline, meanwhile, afforded federal agencies mere
23 days. As a result, countless high-performing employees, including those highlighted above,
24 were terminated through a lie. The terminations were so divorced from reality that one *non-*
25 probationary USDA employee, who had “received two cash awards for her excellent
26 performance” and was recognized in 2023 for “expanding U.S. agriculture exports through
27 trade supporting initiatives” was wrongfully terminated because of “performance” on February
28

1 13 (Dkt. No. 18-5 at 8). USDA reversed course when she notified them that she was a full year
2 removed from her probationary period.

3 Termination under the false pretense of performance is an injury that will persist for the
4 working life of each civil servant. In pursuing future employment, each will have to concede
5 that they have been terminated based on performance. The stain created by OPM's pretense
6 will follow each employee through their careers and will limit their professional opportunities.
7 As in *Brewer*, the irreparable nature of many probationers' injury is heightened because
8 "[s]etbacks early in their careers are likely to haunt Plaintiffs for the rest of their lives."
9 *Brewer*, 757 F.3d at 1068. The below injunction is narrowly tailored to address the ongoing
10 harm made out by plaintiffs.

11 (ii) *State of Washington.*

12 Washington asserts that it faces irreparable harms from the "widespread impairment to
13 services provided to the public and fragile ecosystems in national parks and other public lands"
14 (Dkt. No. 156-1 at 13). As explained with regards to standing, the link between the
15 terminations at issue here and the purported impairment to services provided by the employing
16 agencies is "premised on a speculative chain of possibilities." *Clapper*, 568 U.S. at 410.

17 **D. THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST.**

18 Where the government is a party, the balance of the equities and the public interest
19 merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). The government argues that it has a
20 "strong interest in maintaining its authority to manage its own internal affairs" (Dkt. No. 167 at
21 28; *see also* Dkt. No. 180 at 15). That argument loses much of its force where plaintiffs show
22 — as they have here — that the government is likely to have managed those affairs in an
23 unlawful manner. "The preservation of the rights in the Constitution and the legality of the
24 process by which government agencies function certainly weighs heavily in the public
25 interest." *Nat'l Treasury Emps. Union v. U.S. Dep't of Treasury*, 838 F. Supp. 631, 640
26 (D.D.C. 1993) (Judge Harold Greene). The assertion that plaintiffs have no interest in
27 "restor[ing] or maintain[ing] employment at federal agencies at their preferred level and in
28 their preferred manner," meanwhile, mischaracterizes the relief sought by plaintiffs and is, in

1 any event, moot considering the scope of the relief granted (Dkt. No. 180 at 15).

2
3 **PROVISIONAL RELIEF**

4
5 Provisional relief is hereby granted as follows:

- 6
- 7 1. Defendants OPM and Charles Ezell are enjoined from
8 ordering, directing, or telling any other federal agency to
9 terminate the employment of any federal employee or group
10 of federal employees.
 - 11 2. All relief defendant agencies are enjoined from following any
12 OPM order or direction to fire any agency employee.
 - 13 3. All relief defendant agencies are enjoined from any further
14 use of the OPM template termination letter provided by OPM
15 — including any altered or modified versions.
 - 16 4. All relief defendant agencies who used the OPM template
17 termination notice — or variation thereof — shall provide
18 recipients with a written statement, directed to the employee
19 individually, stating that their termination was not
20 “performance” or fitness based but was made as part of a
21 government-wide mass termination. This shall be done by
MAY 8, 2025.
 - 22 5. If a particular termination was in fact carried out after an
23 individualized evaluation of that employee’s performance or
24 fitness, the Chief Human Capital Officer (or equivalent) of
25 that agency may instead submit, by **MAY 8, 2025, AT NOON**, a
26 declaration, under oath and seal, stating so and providing the
27 individual reasoning underpinning that termination.
 - 28 6. Each Chief Human Capital Officer (or equivalent) at the
relief defendant agencies shall acknowledge, in writing,
having received and read this order. Such acknowledgements
shall be filed with the Court by **MAY 8, 2025, AT NOON.**
 7. Nothing in this order prohibits any federal agency from
terminating any employee so long as the agency makes that
decision wholly on its own, does not use the OPM template
termination notice, and is otherwise in compliance with
applicable law.

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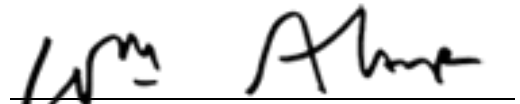
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The government requests a security pursuant to Rule 65(c), which provides that the court “may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” The government does not provide any insight into the purported costs and damages it may sustain. “The district court retains discretion ‘as to the amount of security required, *if any*.’” *Diaz v. Brewer*, 656 F.3d 1008, 1015 (9th Cir. 2011) (quoting *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir.2009)). In *Diaz*, the district court granted a preliminary injunction “to prevent a state law from taking effect that would have terminated eligibility for health-care benefits of state employees’ same-sex partners.” *Id.* at 1010. Our court of appeals affirmed the district court’s decision not to require a bond. *Id.* at 1015.

The undersigned finds that security is appropriate in the amount of one dollar per union plaintiff.

IT IS SO ORDERED.

Dated: April 18, 2025.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE