IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Defendants.)
)

PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Pursuant to Federal Rule of Civil Procedure 65 and Local Civil Rule 65.1, Plaintiffs National Treasury Employees Union (NTEU), National Federation of Federal Employees (NFFE), International Association of Machinists and Aerospace Workers (IAM), International Federation of Professional and Technical Engineers (IFPTE), and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (collectively, the Unions) submit this motion for a temporary restraining order and preliminary injunctive relief.

The Unions seek emergency relief to protect the workers they represent from the Executive Branch's active liquidation of the federal government through the mass firings of hundreds of thousands of employees (those who are considered "nonessential" for purposes of a government shutdown and those who are in probationary status) and a pressure campaign on federal workers to quit their jobs through a "deferred resignation program." The mass firings are underway and are proceeding at a staggering pace, as the President and his administration demand

agencies to implement Executive Order No. 14210, Implementing the President's "Department of Government Efficiency" Workforce Optimization Initiative (Feb. 11, 2025) and his other workforce reduction projects.

The Executive Branch's decimation of the federal civilian workforce through these actions, collectively, conflicts with Congress's constitutional prerogative to create federal agencies, legislate their missions, and fund their work. The Executive Branch's actions thus violate separation of powers principles. The mass firing of employees, in addition, violates Congress's reduction-in-force protocol.

Absent prompt injunctive relief, Plaintiff NTEU will imminently lose as much as half of its dues revenue and around half of the workers that it represents. Its bargaining power and influence with respect to its workers and at agencies where it represents workers will be diminished in a way that cannot be undone. The other union plaintiffs will likewise lose critical revenue and heft at the bargaining table.

For these reasons and those contained in the accompanying memorandum of points and authorities, the Unions thus ask this Court to immediately enjoin Section 3(c) of Executive Order No. 14210, which directs the firing of nonessential federal employees and others; the mass firing of probationary employees that is occurring across federal agencies; and further extension or implementation of the deferred resignation program.

Respectfully submitted,

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February 14, 2025

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INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
8000 East Jefferson Avenue
Detroit, MI 48214

Plaintiffs,

v.

DONALD J. TRUMP,
President of the United States
1600 Pennsylvania Avenue N.W.
Washington, D.C. 20035,

Case No. 1:25-cv-00420

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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INTRODUCTION

Plaintiffs National Treasury Employees Union (NTEU), National Federation of Federal Employees (NFFE), International Association of Machinists and Aerospace Workers (IAM), International Federation of Professional and Technical Engineers (IFPTE), and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (collectively, the Unions) represent hundreds of thousands of employees in dozens of federal agencies and departments across the nation.

This case centers on three Executive Branch actions that will soon lead to the loss of over a half-million federal employees. ***First***, on February 11, 2025, Defendant Trump issued Executive Order No. 14210, Implementing the President's "Department of Government Efficiency" Workforce Optimization Initiative (Workforce Order). Among other categories of employees, the Workforce Order directs agencies to fire workers who would be deemed "nonessential" during a government shutdown—a figure that approximated 345,000 during the last major lapse in appropriations in 2018-19. Those firings have begun. ***Second***, Defendant Office of Personnel Management (OPM) has directed federal agencies to fire their probationary employees, which number some 220,000 nationwide. Those firings have likewise begun. ***Third***, Defendant OPM threatened the approximately 2.2 million federal civil employees, urging them to resign their positions through a "deferred resignation program" or face losing their jobs. At least 75,000 employees agreed to resign.

A mass reduction of roughly twenty-five percent of the federal civilian workforce is unprecedented. It raises the novel question of whether the Executive Branch may lawfully hobble the federal agencies that Congress creates, to which Congress assigns statutory missions, and which Congress funds so that they may accomplish those legislative directives. The Unions contend that these Executive Branch actions, collectively, violate separation of powers principles. They likewise violate federal statutes and regulations governing reductions-in-force (RIFs).

The Unions seek emergency relief to preserve the status quo and to protect the workers they represent from the Executive Branch's attempts to dismantle their agencies. The mass firings are underway and are proceeding a rapid pace. Absent prompt injunctive relief, Plaintiff NTEU will imminently lose up to half of its revenue and around half of the workers that it represents. Its bargaining power and influence with respect to its workers and at agencies where it represents workers will be diminished in a way that cannot be undone. The other union plaintiffs will likewise lose critical revenue and heft at the bargaining table.

The Unions thus ask this Court to immediately enjoin Section 3(c) of the Workforce Order, which directs the firing of nonessential federal employees and other federal workers; the mass firing of probationary employees that is occurring across federal agencies; and further extensions or iterations of OPM's deferred resignation program.

FACTUAL BACKGROUND

I. The Executive Order's Directive to Agencies to Fire Hundreds of Thousands of Employees

On February 11, the President issued the Workforce Order, the purpose of which is to "restore accountability" by "eliminating waste, bloat, and insularity[.]" Workforce Order, sec. 1. The Workforce Order directs agency heads to "promptly prepare to initiate large-scale reductions in force (RIFs)" and to prioritize:

> [a]ll offices that perform functions not mandated by statute or other law . . . including all agency diversity, equity, and inclusion initiatives; all agency initiatives, components, or operations that my Administration suspends or closes; and all components and employees performing functions not mandated by statute or other law who are not typically designated as essential during a lapse in appropriations . . . .

Workforce Order, sec. 3(c).

Taking the last category alone, the RIFs that the President has directed will eliminate a substantial portion of the federal civilian workforce. During the last major shutdown, the 35-day shutdown in 2018-19, approximately 345,000 employees were not designated as essential. Eric Katz, *See Who Would Get Furloughed in a Shutdown This Year*, GovExec.com (Sept. 22, 2023), www.govexec.com/workforce/2023/09/see-who-would-get-furloughed-shutdown-year/390517/ (last accessed February 14, 2025).

Just two days after the President's Workforce Order, the CFPB began terminating employees in reliance on it. Laurel Wamsley, *Up to 100 More Workers Are Fired at CFPB as Staff Fear Mass Layoffs are Looming*, NPR.com (Feb. 13, 2025), https://www.npr.org/2025/02/13/nx-s1-5296929/cpfb-layoffs-staff-trump-doge

(last accessed February 14, 2025) (noting termination letters explicitly relying on the Workforce Order).

II. The OPM-Directed Mass Firing of Probationary Employees Across the Government

On January 20, OPM directed all federal department and agencies to provide it with a list of all probationary employees within the next four days. OPM Guidance on Probationary Periods, Administrative Leave and Details, OPM.gov, https://chcoc.gov/sites/default/files/Guidance%20on%20Probationary%20Periods%2C%20Administrative%20Leave%20and%20Details%201-20-2025%20FINAL.pdf (last accessed February 14, 2025).[1] OPM further asked the heads of all federal departments and agencies to "promptly determine whether those employees should be retained." *Id.*

By February 5 at noon, each federal department and agency had to send OPM its determination of which probationary employees, if any, should be retained. Specifically, "OPM asked agencies to submit their lists and gave them a 200-character limit to explain why the employee should stay in government." Jason Miller, *OPM Asks Agencies to Justify Keeping Probationary Employees*, Federal News Network.com (Feb. 4, 2025), https://federalnewsnetwork.com/workforce/2025/02/opm-asks-agencies-to-justify-keeping-probationary-employees (last accessed February 14, 2025). According to a

[1] Competitive employees are generally considered probationary in their first year, and excepted service employees are generally considered to be in a trial period their first two years. Both categories are referred to herein as probationary employees

source, "while OPM didn't specifically say employees would be fired if agencies indicated they did not want to retain them, there was an underlying message that these employees were on their way out." *Id.*

There are an estimated 220,000 probationary employees in the federal government. *See id.* A mass firing of nearly all probationary employees would thus wipe out about 10% of the federal civilian workforce.

The mass firing of probationary employees is underway. OPM has "directed agencies to fire all probationary employees 'with some exceptions.'" Rebecca Beitsch, *OPM Directs Agencies to Fire Government Workers Still on Probation*, The Hill.com (Feb. 13, 2025), thehill.com/homenews/administration/5144113-federal-probationary-employees-fired/ (last accessed February 14, 2025). Consistent with OPM's direction:

- On the night of February 11, the CFPB, where Plaintiff NTEU represents employees, sent its probationary employees notices of termination. Declaration of Dan Kaspar (Ex. 1) ¶ 14 (Feb. 14, 2025).
- "The Department of Veterans Affairs . . . let go of more than 1,000 employees who were in their probationary period, while the U.S. Forest Service was set to fire more than 3,000." Tim Reid et al., *Thousands Fired in US Government as Trump, Musk Purge Federal Workers*, Reuters.com (Feb. 13, 2025), https://www.reuters.com/world/us/mass-firings-federal-workers-begin-trump-musk-purge-us-government-2025-02-13/ (last accessed February 14, 2025).

- The Food and Drug Administration, where Plaintiff NTEU represents employees, is preparing to terminate nearly all its probationary employees. Declaration of Dan Kaspar (Ex. 1) ¶ 15 (Feb. 14, 2025).
- The Bureau of Engraving and Printing, another agency where Plaintiff NTEU represents employees, is preparing to fire probationary employees. Declaration of Dan Kaspar (Ex. 1) ¶ 16 (Feb. 14, 2025).
- The Department of Energy, where Plaintiff NTEU represents employees, expected to send termination notices to probationary employees yesterday. Declaration of Dan Kaspar (Ex. 1) ¶ 17 (Feb. 14, 2025).

III. OPM's "Fork in the Road" Threat to Federal Employees to Resign or Else

On January 28, OPM sent the approximately 2.2 million federal civil employees an email designed to threaten them into resigning their positions. OPM invited employees to opt into a deferred resignation program and terminate their federal employment on September 30. At the same time, OPM cautioned these employees that "the majority of federal agencies are likely to be downsized through restructurings, realignments, and reductions in force." Fork in the Road, OPM.gov, https://www.opm.gov/fork/original-email-to-employees/ (last accessed February 14, 2025).

After OPM's initial communication, the Executive Branch, including OPM, continued to ramp up the pressure on the federal civilian workforce to resign. For example, "[i]n an email to some federal employees . . . a commissioner at a department overseen by Musk's allies warned of the impending pain if they don't

leave." Holly Otterbein, *Musk Aims to Hobble Federal Workers Ahead of 'Buyout' Deadline*," Politico.com (Feb. 6, 2025), https://www.politico.com/news/2025/02/06/federal-workers-musk-buyout-fears-00202768 (last accessed February 14, 2025).

The White House has reported that about 75,000 employees—over 3% of the federal civilian workforce—opted into OPM's deferred resignation program. Garrett Haake and Megan Lebowitz, *White House Says About 75K Federal Workers Accepted 'Deferred Resignation' Offer*, nbc.com (Feb. 12, 2025), https://www.nbcnews.com/politics/white-house/white-house-says-75000-accepted-federal-buyout-trump-rcna191971.

ARGUMENT

A party seeking a temporary restraining order or preliminary injunction must establish (1) that it is likely to succeed on the merits, (2) that it is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in its favor, and (4) that an injunction is in the public interest. *Sierra Club v. United States Army Corps of Eng'rs*, 990 F. Supp. 2d 9, 24 (D.D.C. 2013) (quotation marks and alterations omitted). "In conducting an inquiry into these four factors, a district court must balance the strengths of the requesting party's arguments in each of the four required areas. If the showing in one area is particularly strong, an injunction may issue even if the showings in other areas are rather weak." *Id.* (quotation marks, alterations, and ellipsis omitted).

I. The Unions' Claims Will Likely Succeed.

To establish a likelihood of success on the merits, the Unions must show that a "serious legal question" is at issue. *WMATA v. Holiday Tours, Inc.*, 559 F.2d 841, 844 (D.C. Cir. 1977). "The court is not required to find that ultimate success by the movant is a mathematical probability, and indeed, the court may grant an injunction even though its own approach may be contrary to movants' view of the merits." *New Mexico ex rel. v. Richardson*, 39 F. Supp. 2d 48, 50 (D.D.C. 1999) (alterations omitted).

A. The President and His Administration's Mass Firing of Nonessential Workers and Probationary Employees and the Deferred Resignation Plan Violate Separation of Powers Principles.

1. Congress Has Plenary Authority Over the Existence, Mission, and Funding of Executive Agencies.

The Framers intended for Congress to be the most powerful branch of the federal government. The legislative power that the Founders envisioned "necessarily predominates" (The Federalist No. 51 (J. Madison)) and has a "tendency . . . to absorb every other" (The Federalist No. 71 (A. Hamilton)). The Constitution enshrines this predominant legislative power in Article I, Section 1: "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Congress's constitutional power entitles it to create or destroy executive agencies and dictate their missions. "To Congress under its legislative power is given the establishment of offices . . . [and] the determination of their functions and jurisdiction." *Myers v. United States*, 272 U.S. 52, 129 (1926). *Accord Buckley v.*

Valeo, 424 U.S. 1, 138 (1976) (discussing Congress's ability to create or remove federal agencies through the Necessary & Proper Clause). Congress thus "control[s]" the very "existence of executive offices." *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 500 (2010).

Congress, moreover, has the power to fund or defund executive branch agencies—and, in exercising that power, determines whether and how agencies may function. The Antideficiency Act, 31 U.S.C. § 1341, *et seq.,* which generally prohibits the executive branch from incurring obligations that Congress has not authorized, and the Impoundment Control Act, 2 U.S.C. §§ 681-688, which prevents the Executive from postponing or withholding the use of appropriated funds, illustrate this. Thus, while the President is responsible for the enforcement of federal laws, Congress alone has the power of the purse with which to fund or defund agencies and their activities.

2. The Executive Branch's Actions Intrude on Congress's Powers.

a. The President and his administration's mass firings and their resignation program—collectively, a project to eviscerate agencies that Congress created and funded—violates two bedrock principles of the separation of powers.

First, "[t]he President's power, if any, to issue [an] order must stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). *See Clinton v. City of New York*, 524, U.S. 417, 449-453 (1998) (Kennedy, J., concurring) (expressing separation of powers concerns with the Line Item Veto Act, through which the President could cancel out

certain spending provisions in legislation unilaterally). If the President could not seize steel mills when he believed national defense was at stake (*Youngstown Sheet & Tube Co.*, 434 U.S. at 588), there it must follow that the President cannot decimate entire agencies because of alleged "bloat" in the federal government. Workforce Order, sec. 1.

There is no statute that expressly authorizes the President to slash roughly one-quarter of the federal workforce, imperiling the statutory missions that Congress has assigned to federal agencies. "Nor is there any act of Congress . . . from which such a power can be fairly implied." *Youngstown Sheet & Tube Co.*, 434 U.S. at 588. Indeed, the Antideficiency Act, 31 U.S.C. § 1341 *et seq.*, shows Congress's intent that the "ongoing, regular functions of government" continue so long as Congress has funded the federal agencies that it created. 31 U.S.C. § 1342. While employees performing these functions may not work during a lapse in appropriations, the opposite is true when Congress has provided funding: they are to work—and to do so in furtherance of the statutory missions that Congress has prescribed to their agencies. Yet, under the Workforce Order, employees engaging in the "ongoing, regular functions of government" (31 U.S.C. § 1342)—nonessential employees—will be prioritized for a RIF.

Second, the Executive *must act* when Congress directs it to do so. The D.C. Circuit relied on this principle when granting a petition for a writ of mandamus ordering the Nuclear Regulatory Commission to approve or disapprove the Department of Energy's license application to store nuclear waste at Yucca

Mountain. *In re Aiken Cnty.*, 725 F.3d 255, 266-267 (D.C. Cir. 2013). Congress, through the Nuclear Waste Policy Act, required the Commission to issue its decision within a certain time. 42 U.S.C. § 10134(d). But the statutory deadline passed, and the Commission admitted that it did not intend to comply with the law. *In re Aiken Cnty.*, 725 F.3d at 258.

Then-Judge Kavanaugh, writing for the Court, explained that "[u]nder Article II of the Constitution and relevant Supreme Court precedents, the President must follow statutory mandates so long as there is appropriated money available and the President has no constitutional objection to the statute." *Id.* at 259. The President "may not," the Court continued, "decline to follow a statutory mandate . . . simply because of policy objections." *Id.* The President's discretion "does not include the power to disregard other statutory obligations that apply to the Executive Branch, such as statutory requirements to . . . implement or administer statutory projects or programs." *Id.* at 266. *See Train v. City of New York*, 420 U.S. 35, 44-45 (1974) (noting that if Congress did not authorize the Executive to withhold funds under the Federal Water Pollution Control Act from being allotted, or to only disburse certain funds, then the Executive did not have such discretion).

This principle has equal force here. An example of an act of Congress that the Executive Branch's actions undermine is the Inflation Reduction Act (IRA), Pub. L. No. 117-169. Congress passed the IRA in 2022 after the IRS workforce had shrunk

to its smallest size since the 1970s.[2] In the IRA, Congress appropriated billions of dollars for designated purposes, namely improving tax law enforcement, operations support, business systems modernization, and taxpayer services. IRA § 10301. IRS has used this IRA funding to hire thousands of new employees. For example, IRS has rapidly hired thousands of additional employees to carry out Congress's mandate to improve taxpayer service.[3]

Many new IRS employees hired under the IRA are in probationary status. IRS has an estimated 15,000 probationary employees today, many of whom were hired through IRA funds.[4] The administration's mass firing of probationary employees will therefore thwart Congress's legislated goal in the IRA of improving tax enforcement and taxpayer services.

In sum, the Executive Branch's attempt to hobble the federal agencies that Congress created and to which it assigned missions through mass firings and a pressure campaign for resignations violates separation of powers principles.

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[2] National Taxpayer Advocate, Annual Report to Congress 2022 at 27, https://www.taxpayeradvocate.irs.gov/reports/2022-annual-report-to-congress/full-report/ (last accessed February 14, 2025).

[3] *See* Congressional Research Service, *The Internal Revenue Service's Strategic Operating Plan* (June 2, 2023), https://crsreports.congress.gov/product/pdf/IF/IF12394 (last accessed February 14, 2025) (agency responded to more taxpayer calls "thanks to the hiring of 5,000 customer service representatives using IRA funds"); U.S. Department of Treasury, *Continuing Improvements to IRS Customer Service in Filing Season 2024* (June 7, 2024), https://home.treasury.gov/news/featured-stories/continuing-improvements-to-irs-customer-service-in-filing-season-2024 (last accessed February 14, 2025) (IRA funding has made thousands of new hires possible).

[4] *See* Declaration of Daniel Kaspar (Ex. 1) at ¶ 18 (Feb. 14, 2025).

B. The Executive Order's and OPM's Mass Firing Directives Violate the Reduction-in-Force Statutory and Regulatory Construct.

1. RIF Statute and Regulations.

Under Section 3(c) of the Workforce Order, "Agency Heads shall promptly undertake preparations to initiate large-scale reductions in force (RIFs) . . . ."

Congress has statutorily prescribed criteria that must be followed for both tenured and competitive employees if agencies implement RIFs. 5 U.S.C. § 3502. That statute requires, for example, that OPM issue regulations for the release of competing employees in a RIF that give due effect to employees' tenure, length of service, performance ratings and more. *Id.* § 3502(a) It also requires that agencies give advance notice of any RIF to affected employees and to their exclusive representative for collective bargaining purposes. *Id.* § 3502(d). That notice must include certain information, such as the employee's ranking relative to other employees and how that ranking was determined. *Id.* § 3502(d)(2)(D).

As Congress directed, OPM has promulgated RIF regulations. 5 C.F.R. Part 351. Those regulations apply when agencies intend to terminate employees and "the release is required because of lack of work; shortage of funds; insufficient personnel ceiling; reorganization; the exercise of reemployment rights or restoration rights; or reclassification of an employee's position due to erosion of duties[.]" 5 C.F.R. § 351.201(a)(2).

2. The Workforce Order and OPM's Instruction Direct Agencies to Violate the RIF Statute and Regulations.

The Workforce Order and OPM's instruction direct agencies to violate the RIF protocol in four separate ways.

a. The President's Order violates the RIF statute because it directs agencies to take actions which will violate the statute's mandatory notice requirements and agencies are, in fact, beginning to implement RIFs without the requisite notice. Such agency actions thus violate the Administrative Procedure Act.

The RIF statute requires that agencies give at least 60 days' notice to employees affected by a potential RIF, as well as to those employees' exclusive representative for collective bargaining agreements, before any employee is released. 5 U.S.C. § 3502(d). The statutorily required notice must include certain information, such as the employee's ranking relative to other competing employees and how that ranking was determined. 5 U.S.C. § 3502(d)(2). Congress's notice period may be shortened but only if an agency so requests because of "circumstances not reasonably foreseeable." 5 U.S.C. § 3502(e). The notice period, in any event, can never be shorter than 30 days. *Id.* § 3502(e)(3).

b. The Workforce Order impermissibly directs agencies to violate OPM's regulations and, thus, the Administrative Procedure Act. Section 1 of the Order commands that agencies must engage in RIFs for the purpose of "eliminating waste, bloat, and insularity" (Workforce Order, sec. 1)—but that is not an allowable basis for a RIF under OPM's regulations.

RIFs may be undertaken for certain specified reasons, namely "lack of work; shortage of funds; insufficient personnel ceiling; reorganization; the exercise of reemployment rights or restoration rights; or reclassification of an employee's position due to erosion of duties[.]" 5 C.F.R. § 351.201(a)(2). *See Cross v. DOT,* 127 F.3d 1443, 1446 (Fed. Cir. 1997) (a RIF is legitimately conducted if done so for one of the reasons identified in the regulation); *Rowland-Clum v. Department of the Army*, 1996 U.S. App. LEXIS 29579 at *3 (Fed. Cir. Nov. 12, 1996) (RIFs must be conducted for one of the legitimate reasons listed in the regulation).

The Workforce Order ignores these regulatory limitations. It unlawfully directs agencies to prioritize RIF'ing employees in "offices that perform functions not mandated by statute" or "employees . . .who are not typically designated as essential during a lapse in appropriations[]," (Workforce Order, sec. 3(c)), without regard to whether there is a funding shortage or other allowable reason to RIF such employees.

c. The Workforce Order likewise violates OPM regulations defining "competitive areas" for purposes of a RIF.

Before agencies begin a RIF, they must establish "competitive areas in which employees compete for retention." 5 C.F.R. § 351.402(a). A competitive area must be "defined *solely* in terms of an agency's organization unit(s) and geographical location, and it *must* include all employees within the competitive area so

defined.'" 5 C.F.R. § 351.402(b) (emphasis added).[5] "Agencies, therefore, must accommodate two elements, administrative structure and geography, in determining competitive areas. *Grier v. HHS*, 750 F.2d 944, 946 (Fed. Cir. 1984). In addition, "a competitive area 'must include all employees within the competitive area so defined.'" *Commerce v. FLRA*, 7 F.3d 243, 244 (D.C. Cir. 1993). Any agency competitive area that includes some, but not all, employees within a competitive area is unlawful.

Courts have consistently found that competitive areas that do not meet the regulatory criteria are invalid. The D.C. Circuit has held, for example, that a competitive area cannot be defined solely as encompassing bargaining unit positions. *NRC*, 895 F.2d at 157. *See also MSPB v. FLRA,* 913 F.2d 976, 980 (D.C. Cir. 1990) (defining "the competitive area to include only bargaining unit employees … is clearly prohibited under OPM regulations"); *NTEU and DHHS, Region X*, 25 F.L.R.A. 1041, 1044 (1987) (competitive area cannot be defined as encompassing all bargaining unit positions).

Because a competitive area must be defined solely in terms of an agency's organizational unit and a geographic location and must include all employees

[5] *See also* OPM, *Workforce Reshaping Operations Hand*book (March 2017) at 29, https://www.opm.gov/policy-data-oversight/workforce-restructuring/reductions-in-force/workforce_reshaping.pdf (last accessed February 14, 2025) ("The competitive area includes all employees within the organizational unit(s) and geographical location(s) that are included in the competitive area definition"); *NRC v. FLRA,* 895 F.2d 152, 157 (4th Cir. 1990) ("a competitive area must be 'defined solely in terms of an agency's organization unit(s) and geographical location, and it must include all employees within the competitive area so defined.'").

within the designated area, a competitive area cannot be defined—as the Workforce Order does—as employees within a component that the Administration might, in the future, suspend or close. Nor can it be defined vaguely as all employees who are not "typically" designated as essential during a lapse in appropriations without regard to organizational units or geography. Nor can a competitive area be defined as all probationary employees across multiple different agencies. There is no precedent for such a broad, amorphous RIF without regard to any agency's organization or geography. For these reasons, the Workforce Order and OPM's instruction directs agencies to violate OPM regulations.

d. The Workforce Order directs agencies to violate the regulatory requirements on how to classify employees for purposes of a RIF.

Congress required that OPM prescribe regulations for how competing employees would be released in a RIF which gives due effect to certain factors, such as tenure of employment, military preference, length of service, and efficiency of performance ratings. 5 U.S.C. § 3502. Consistent with the statute, regulations similarly require agencies to classify competing employees on a retention register on the basis of their tenure of employment, veteran preference, length of service, and performance in several different tenure groups. 5 C.F.R. § 351.501(a). *See NTEU v. OPM*, 76 M.S.P.R. 244, 247 (1997) ("[t]o effectuate this statutory mandate, OPM promulgated 5 C.F.R. §§ 351.501(a) and 502(a)" which state how competing employees are classified).

But the Workforce Order directs agencies to promptly engage in RIFs without regard to these required factors. For example, it tells agencies to prioritize separating employees who would "typically" be deemed nonessential during a lapse of appropriations instead of basing a RIF on factors such as tenure and performance. Workforce Order, sec. 3(c). *Cf. MSPB v. FLRA,* 913 F.2d 976, 977 (D.C. Cir. 1990) (in a RIF, "the agency must classify each employee within a given competitive level according to the employee's tenure, veteran preference, length of service, and job performance"). For these reasons, the Workforce Order—again—directs agencies to violate OPM regulations.

C. This Court Has Subject Matter Jurisdiction Over Plaintiffs' Claims.

Defendants may argue that this Court lacks jurisdiction to consider the Unions' claims under *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994) and its progeny. *Thunder Basin* held that federal district courts lack jurisdiction if Congress meant to channel review of a particular claim through an administrative process. As explained below, that is not the case here.

While discrete federal personnel actions do process through an administrative scheme, such as an employee appealing a firing to the Merit Systems Protection Board (MSPB),[6] that bears no resemblance to what the Unions are challenging here. The Unions are arguing that three broad Executive Branch actions, taken together, violate the separation of powers doctrines. The Unions' APA

[6] *See* 5 U.S.C. § 7701.

claim that the Executive Order directs agencies to violate the RIF statute and regulations—hundreds of thousands of times over—is similarly not a discrete challenge that the MSPB might be able to resolve or enjoin.[7]

Thunder Basin does not divest this Court of its jurisdiction to resolve the Unions' claim. Under *Thunder Basin*, this court should consider (1) whether "a finding of preclusion could foreclose all meaningful judicial review;" (2) whether the claims are "wholly collateral" to the relevant statutory review provisions; and (3) whether the claims are beyond the expertise of the agency. *Id.* at 212–13. These factors "are not 'three distinct inputs into a strict mathematical formula.'" *Fed. Law Enf't Officers Ass'n v. Ahuja*, 62 F.4th 551, 560 (D.C. Cir. 2023) (quoting *Jarkesy v. SEC*, 803 F.3d 9, 17 (D.C. Cir. 2015)). Instead, they are "guideposts for a holistic analysis." *Jarkesy*, 803 F.3d at 22. In this case, each of these guideposts weighs against preclusion.

1. The Unions Will Suffer Irremediable harm, Rendering Any Future Judicial Review Meaningless.

The first *Thunder Basin* prong is whether preclusion might foreclose all meaningful judicial review. The Supreme Court has explained that future judicial

[7] *Thunder Basin* is on shaky ground, in any event. One Justice has referred to the *Thunder Basin* test "as a test we have fabricated"—to ascertain Congress's "intent" when enacting an administrative scheme. *Axon Ent. v. FTC*, 598 U.S. 175, 205 (2023) (Gorsuch, J.) (concurring). It is, in the view of that Justice, "a judge-made, multi-factor balancing test" characterized by its "sheer incoherence." *Id.* at 206. *See also id.* at 196 (Thomas, J.) (concurring) (questioning *Thunder Basin* because it is constitutionally questionable for Congress to vest "administrative agencies with primary authority to adjudicate core private rights . . .").

review is decidedly *not* meaningful when a plaintiff alleges a "here-and-now injury" that is "impossible to remedy" after the fact. *Axon Enter.*, 598 U.S. at 178. In such cases, judicial review "would come too late to be meaningful." *Id.*[8] Here, any judicial review would be rendered meaningless by the significant harm that the Unions will suffer during the delays associated with channeling—harm that cannot be remedied after the fact.

a. Financial Harm

The Unions will be financially harmed because they will immediately and irrevocably lose substantial dues revenue from members who are fired because they are nonessential or probationary. Plaintiff NTEU alone, for example, has tens of thousands of dues-paying members who would be considered nonessential during a lapse of appropriations within IRS and HHS alone.[9] The Unions also have thousands of dues-paying members who are probationary employees. NTEU alone has close to 10,000 dues-paying probationary employees.[10]

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[8] Other federal courts of appeals have endorsed this interpretation of *Thunder Basin*'s judicial-review prong. *See Berkeley v. Mt. Valley Pipeline, LLC*, 896 F.3d 624, 631 (4th Cir. 2018) (finding no meaningful judicial review when plaintiffs "are subject to some additional and irremediable harm beyond the burdens associated with the dispute resolutions process"); *Tilton v. SEC*, 824 F.3d 276, 286 (2d Cir. 2016) (same).

[9] *See* Declaration of Daniel Kaspar (Ex. 1) at ¶ 9 (Feb. 14, 2025) (NTEU has more than 30,000 dues-paying members at the IRS would be considered nonessential); *id.* at ¶ 12 (several thousand dues-paying members at HHS would be deemed nonessential).

[10] *See* Declaration of Daniel Kaspar (Ex. 1) at ¶¶ 18-19 (Feb. 14, 2025) (NTEU has 9,675 dues paying probationary members at IRS and approximately 270 at HHS).

For NTEU, dues from members constitute the majority of NTEU's annual budget.[11] If all employees previously designated as nonessential during the lapse in appropriations were terminated, along with an unknown number of employees who work in agency components that might be suspended or closed at some point, NTEU will immediately lose millions of dollars of revenue.[12] The loss of these dues will adversely affect NTEU's ability to carry out its mission in many ways. For example, NTEU will have less money available for staff to assist employees with grievances; to file litigation on employees' behalf; to advocate for employees on Capitol Hill; and to negotiate collective bargaining agreements. The other Unions will suffer the same harm.[13]

This harm is irrevocable. Even if the Unions were to prevail in this litigation and terminated employees were rehired at some later point, there is no mechanism

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[11] *See* Declaration of Mark Gray (Ex. 2) at ¶ 4 (Feb. 14, 2025) (dues constitute almost 85% of NTEU's annual receipts).

[12] *See* Declaration of Mark Gray (Ex. 2) at ¶¶ 9, 11, 12 (Feb. 14, 2025) (NTEU would lose approximately $ 20 million just from the loss of IRS and HHS members deemed nonessential or who are probationary).

[13] *See* Declaration of Timothy Smith (Ex. 3) at ¶ 10 (Feb. 13, 2025) (termination of nonessential employees would substantially deprive the UAW and NIH Fellows United of dues revenue that is necessary to carry out its legally required representational work). *See* Declaration of Randy Erwin (Ex. 4) ¶ 11 (Feb. 13, 2025); *See* Declaration of Matthew S. Biggs (Ex. 5) ¶¶ 5-8 (Feb. 13, 2025) (IFPTE will be financially harmed if nonessential employees, including over one thousand of its dues-paying members, are terminated); Declaration of Craig Normal (Ex. 6) (Feb. 14, 2025) (termination of nonessential and probationary employees could reduce the level of servicing IAM could provide).

to force them to pay back dues for a period in which they did not have union representation.[14]

OPM's deferred resignation program adds to the Unions' financial harm. More than three percent of the workforce has opted into the deferred resignation program.[15] The Unions are substantially likely to suffer from the early retirement of dues-paying members.

b. Loss of Bargaining Power

The Unions' bargaining power will also be substantially and irrevocably diminished through their loss of bargaining unit employees as a result of the Executive actions described above.

The strength and influence of any union correlate directly with the size of its membership. NTEU, for example, is the nation's largest independent federal sector union and the second largest federal sector union overall. [16] NTEU regularly tells its employees, agencies, Congress, and the public that it represents approximately 150,000 employees in thirty-seven agencies across the government.[17]

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[14] *See* Declaration of Randy Erwin (Ex. 4) ¶ 11 (Feb. 13, 2025) (there is no mechanism to recoup dues from any period in which employees are not in the federal service).

[15] *See* Garrett Haake and Megan Lebowitz, "White House says about 75K federal workers accepted 'deferred resignation' offer," nbc.com (Feb. 12, 2025), https://www.nbcnews.com/politics/white-house/white-house-says-75000-accepted-federal-buyout-trump-rcna191971

[16] Declaration of Daniel Kaspar (Ex. 1) at ¶ 23 (Feb. 14, 2025).

[17] Declaration of Daniel Kaspar (Ex. 1) at ¶ 23 (Feb. 14, 2025).

The mass firing of nonessential, probationary, and other employees will substantially reduce the number of employees that NTEU represents.[18] This will diminish NTEU's influence in negotiating agreements with other agencies or lobbying Congress for benefits that help federal employees. The bargaining unit employees that NTEU represents will see that NTEU has a more limited capacity to advocate for them.[19] That loss of status will likewise affect how any federal agency management perceive and deal with NTEU going forward.[20]

OPM's deferred resignation program compounds the Unions' loss of bargaining power. Union members who have opted into the program will become, on September 30, former federal employees who will no longer be part of any of the bargaining units that the Unions represent.

"Employee interest in a union can wane quickly as working conditions remain apparently unaffected by the union or collective bargaining." *Int'l Union of Elec., Radio & Machine Workers v. NLRB*, 426 F.2d 1243, 1249 (D.C. Cir. 1970). If the Unions' membership losses arguably make then less effective in the eyes of their members, the members that the Unions keep in the wake of the Executive Order will question whether they should remain in any union in its weakened form. This

[18] *See* Declaration of Daniel Kaspar (Ex. 1) at ¶¶ 5-19 (Feb. 14, 2025).

[19] Declaration of Daniel Kaspar (Ex. 1) at ¶ 25 (Feb. 14, 2025).

[20] Declaration of Daniel Kaspar (Ex. 1) at ¶ 25 (Feb. 14, 2025); Declaration of Craig Norman (Ex. 6) at ¶ 8 (Feb. 14, 2025) (describing the impact of a cumulative loss of members on IAM's bargaining strength).

is why, in the federal labor context, "relief, if it is to be effective, must come quickly." *In re AFGE*, 790 F.2d 116, 117–18 (D.C. Cir. 1986) (R. Ginsburg, J.).

* * *

For these reasons, the Unions are suffering irremediable harm due to the Executive Branch actions challenged here. Each of these injuries is "impossible to remedy after the fact." *Axon*, 598 U.S. at 178. Accordingly, there would be no meaningful judicial review for the Unions' claims if they were forced to go through piecemeal and time-consuming administrative proceedings.

2. The Unions' Claims Are Wholly Collateral to the Administrative Scheme Because They Will Suffer Substantial Independent Harm if Forced to Proceed Through Administrative Proceedings.

Whether a claim is "wholly collateral" to the relevant administrative review scheme is closely related to whether meaningful judicial review is available. Indeed, these considerations are so connected that they are often "analyzed together." *See AFGE v. Trump*, 929 F.3d 748, 759 (D.C. Cir. 2019).

Just as the irremediable injuries listed above negate the possibility of meaningful judicial review through the administrative scheme, they also render the the Unions' claims wholly collateral to that scheme. As the D.C. Circuit has explained, preclusion is inappropriate where the plaintiff demonstrates "independent harm caused by the delay[s]" associated with the administrative process. *Jarkesy*, 803 F.3d at 27. *See also Bowen v. City of New York*, 476 U.S. 467, 483 (1986) (claim is collateral and need not be exhausted "when a party would be

'irreparably injured'" if exhaustion is required); *Aguilar v. ICE*, 510 F.3d 1, 12 (1st Cir. 2007) (*citing Bowen*, 476 U.S. at 483 (1976)).

Here, as discussed above, the Unions stand to suffer "independent harm caused by the delay" that will remain even if it eventually succeeds in a later judicial proceeding. *See Jarkesy*, 803 F.3d at 27.

3. Agency Expertise is No Longer Entitled to Any Weight in a *Thunder Basin* Analysis.

Thunder Basin's third prong—the degree to which administrative bodies such as the MSPB has any expertise that bears on this analysis—is effectively nullified in the new post-*Chevron* world. Courts must conduct their own statutory analysis without deference to agency interpretations. *See Loper Bright Ent. v. Raimondo*, 603 U.S. 369, 374 (2024) ("[E]ven when an ambiguity happens to implicate a technical matter, it does not follow that Congress has taken the power to authoritatively interpret the statute from the courts . . . .").

Even if the third prong were entitled to some weight, the Unions' showing of irremediable harm under the first two factors must overcome any countervailing influence from the third factor: potential expertise from the MSPB or other federal personnel agencies. *See Jarkesy*, 803 F.3d at 22 (*Thunder Basin* factors are "guideposts for a holistic analysis").

In sum, this Court has jurisdiction over the Unions' claims.

II. The Unions Will Suffer Irreparable Harm Absent Immediate Injunctive Relief.

A party seeking immediate injunctive relief must show that, without it, "the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered.'" *Sierra Club*, 990 F. Supp. 2d at 38 (quoting 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2948.1 (2d ed. 2013)). That prerequisite is satisfied here for the same reasons described in the subject matter jurisdiction analysis above.

As explained above, the Unions will immediately and irrevocably lose substantial dues revenue from members who are fired because they are nonessential or probationary. Plaintiff NTEU alone has tens of thousands of dues-paying members who would be considered nonessential during a lapse of appropriations within IRS and HHS alone.[21] And NTEU alone has close to 10,000 dues-paying members who are probationary employees.[22]

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[21] *See* Declaration of Daniel Kaspar (Ex. 1) at ¶ 9 (Feb. 14, 2025) (NTEU has more than 30,000 dues-paying members at the IRS would be considered nonessential); *id.* at ¶ 12 (several thousand dues-paying members at HHS would be deemed nonessential); Declaration of Randy Erwin (Ex. 4) ¶ 7 (Feb. 14, 2025) (NFFE has thousands of dues paying members who would be deemed nonessential); Declaration of Matthew S. Biggs (Ex. 5) ¶ 6 (Feb. 14, 2025) (more than one thousand of IFPTE's 7,000 dues-paying members would be considered nonessential).

[22] *See* Declaration of Daniel Kaspar (Ex. 1) at ¶¶ 18-19 (Feb. 14, 2025) (NTEU has 9,675 dues paying members at IRS and approximately 270 at HHS who are probationary); Declaration of Randy Erwin (Ex. 4) ¶ 8 (Feb. 14, 2025) (NFFE has thousands of probationary dues paying members); Declaration of Matthew S. Biggs (Ex. 5) ¶ 7 (Feb. 14, 2025) (IFPTE knows of around 100 probationers who are dues-paying members and expects to learn of more).

If all employees previously designated as nonessential during the lapse in appropriations were terminated, along with an unknown number of employees who work in agency components that might be suspended or closed at some point, Plaintiff NTEU alone will immediately lose millions of dollars of revenue.[23] This revenue is *forever lost*. There is no mechanism to force employees to pay dues for a period in which they did not have union representation.[24]

The loss of these dues will immediately affect NTEU's ability to carry out its mission in many ways. For example, NTEU will have less money available for staff to assist employees with grievances; to file litigation on employees' behalf; to advocate for employees on Capitol Hill; and to negotiate collective bargaining agreements. [25] The other Unions will suffer the same harm.[26]

OPM's deferred resignation program adds to the Unions' financial harm. More than three percent of the workforce has opted into the deferred resignation

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[23] *See* Declaration of Mark Gray (Ex. 2) at ¶¶ 9, 11, 12 (Feb. 13, 2025) (NTEU would lose approximately $ 20 million just at IRS and HHS from the loss of members deemed nonessential or who are probationary).

[24] Declaration of Randy Erwin (Ex. 4) ¶ 11.

[25] *See* Declaration of Daniel Kaspar (Ex. 1) at ¶¶ 21-22 (Feb. 14, 2025); Declaration of Mark Gray (Ex. 2) at ¶ 13 (Feb. 14, 2025).

[26] *See* Declaration of Randy Erwin (Ex. 4) ¶ 10 (Feb. 14, 2025) (NFFE's ability to carry out its mission would be severely curtailed if it were to lose dues-paying probationary and/or nonessential employees); Declaration of Matthew S. Biggs (Ex. 5) ¶ 9 (Feb. 14, 2025) (IFPTE would be unable to maintain current staff levels and thus levels of service to its membership).

program.[27] The Unions are substantially likely to suffer from the early retirement of dues-paying members.[28]

The Unions' bargaining power will also be substantially and irrevocably diminished through their loss of bargaining unit employees as a result of the Executive actions described above. The strength and influence of any union correlate directly with the size of its membership. The mass firing of nonessential, probationary, and other employees slashes the number of employees that the Unions represent. Fewer employees will diminish the Unions' influence in negotiating agreements with other agencies or lobbying Congress for benefits that help federal employees. Employees will see that the Unions have less capacity to advocate for them. That loss of status will likewise affect how any federal agency management perceive and deal with the plaintiffs going forward.[29]

OPM's deferred resignation program compounds the Unions' loss of bargaining power. Union members who have opted into the program will become, on September 30, former federal employees who will no longer be part of any of the bargaining units that the Unions represent.

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[27] *See* Garrett Haake and Megan Lebowitz, *White House Says About 75K Federal Workers Accepted "Deferred Resignation" Offer*, nbc.com (Feb. 12, 2025, 10:00PM), https://www.nbcnews.com/politics/white-house/white-house-says-75000-accepted-federal-buyout-trump-rcna191971.

[28] *See* Declaration of Randy Erwin (Ex. 4) ¶ 12 (Feb. 14, 2025) (NFFE members have opted into the deferred resignation program); Declaration of Matthew S. Biggs (Ex. 5) ¶ 11` (Feb. 14, 2025) (IFPTE members have opted into the deferred resignation program); Declaration of Craig Norman (Ex. 6) ¶ 7 (Feb. 13, 2025) (IAM members have opted into the deferred resignation program).

[29] *See* discussion *infra* at I.C.1.b.

III. The Balance of Equities Tips in NTEU's Favor, and the Public Interest Will Be Served by Immediate Injunctive Relief.

The last two emergency relief requirements "merge when, as here, the Government is the opposing party." *Singh v. Berger*, 56 F.4th 88, 107 (D.C. Cir. 2022). The balance of equities and the public interest support a grant of immediate injunctive relief.

Immediate injunctive relief would maintain the status quo. It would enjoin the mass firings of federal workers and the extension or replication of the deferred resignation program until this Court resolves the Unions' constitutional and statutory claims against the government defendants. That relief would keep NTEU and the other unions from the drastic and irremediable harm to their bargaining power and influence and to their revenue streams that is described above.

There is, moreover, a clear public interest in maintaining the constitutionally prescribed balance of power between the legislative and executive branches. "Liberty is always at stake when one or more of the branches seek to transgress the separation of powers." *Clinton*, 524 U.S. at 421 (Kennedy, J., concurring). Absent emergency relief, the Executive branch will be permitted to eradicate some twenty percent of the entire federal civilian workforce, preventing it from doing the critical work that Congress has assigned to it. An order granting the Unions' request for immediate injunctive relief is in the public interest and should issue.

CONCLUSION

For the foregoing reasons, Plaintiffs request that this Court grant the temporary and preliminary injunctive relief set out in its proposed order.

Respectfully submitted,

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February 14, 2025

Exhibit 1

DECLARATION OF DANIEL KASPAR

I, Daniel Kaspar, hereby declare as follows:

1. I currently serve as Director of Field Operations at the National Treasury Employees Union (NTEU). I have worked for NTEU since 2011.

2. As Director of Field Operations, I am responsible for overseeing NTEU's field offices across the nation. Each field office employs one National Counsel and approximately five to seven field representatives. Every NTEU chapter is assigned to a field office and field representative. Field representatives serve as chapters' and members' first line of contact with NTEU on a day-to-day basis. Their job duties include assisting with employee grievances, conducting training, contacting agencies about workplace issues, representing employees at disciplinary meetings and in hearings, and negotiating collective bargaining agreements.

3. By virtue of my job duties, I am familiar with the details of NTEU's relationships with its chapters, chapter leaders, members, and bargaining-unit employees. I am also familiar with staffing, chapter assignments, and work assignments for all NTEU field staff.

4. I am aware of President Trump's Executive Order, *Implementing the President's "Department of Government Efficiency" Workforce Optimization Initiative* (Feb. 11, 2025) (Workforce Order). The Order calls for "large-scale reductions in force" (RIFs) and directs agencies to prioritize in the RIFs "all agency diversity, equity, and inclusion initiatives; all agency initiatives, components, or operations that my Administration suspends or closes; and all components and

employees performing functions not mandated by statute or other law who are not typically designated as essential during a lapse in appropriations as provided in the Agency Contingency Plans on the Office of Management and Budget website."

5. The parts of the federal workforce that the Order directs to cut include tens of thousands of NTEU members.

6. NTEU represents all professional and nonprofessional employees of the Internal Revenue Service (IRS), with a few exceptions. IRS employees make up the largest share of NTEU's dues-paying members.

7. The IRS FY2025 Lapsed Appropriations Contingency Plan (IRS Plan) designates different numbers of employees who would continue to work during a shutdown depending on whether the shutdown occurs during tax Filing Season (January 1 through April 30) or Non-Filing season. Internal Revenue Service, Fiscal Year 2025 Lapsed Appropriations Contingency Plan (July 22, 2024), https://home.treasury.gov/system/files/266/IRS-FY24LapsePlan.pdf.

8. During Filing Season, 53,782 of the 96,952 IRS employees on board as of the date of the plan (55.5%) are considered nonessential. During Non-Filing season, that number rises to 67,428 (69.5%). *Id.*

9. Based on the Filing Season numbers in the IRS Plan, my experience in overseeing our efforts in the Field and collecting data and other information in anticipation of multiple shutdowns, and my knowledge of NTEU membership rates among IRS employees, my good-faith estimate of the number of dues-paying NTEU members at IRS who would be designated as nonessential and thus prioritized in a

RIF is around 31,220 employees. My good-faith estimate for Non-Filing Season is that around 39,141 dues-paying NTEU members would be designated as nonessential and thus prioritized in a RIF.

10. In the Department of Health and Human Services, NTEU represents employees in the following Operating Divisions and Staff Divisions, with a few exceptions: Office of the Secretary and Administration on Aging (Administration on Community Living (ACL), including General Schedule and Wage Grade Employees; Administration for Children and Families (ACF); Centers for Disease Control and Prevention, National Center for Health Statistics in the Washington, D.C. metropolitan area; Food and Drug Administration (FDA), nationwide; Health Resources and Services Administration; Indian Health Service, Engineering Services, including General Schedule Employees and Wage Grade Employees; and Substance Abuse and Mental Health Services Administration, nationwide.

11. The FY 2025 HHS Contingency Staffing Plan (HHS Plan) designates 40,887 of the 91,649 total onboard staff (45%) as nonessential. U.S. Department of Health and Human Services, FY 2025 HHS Contingency Staffing Plan, https://www.hhs.gov/about/budget/fy-2025-hhs-contingency-staffing-plan/index.html.

12. An attachment linked on the HHS Plan's webpage shows a breakdown of nonessential employees by Operating Division. Based on these numbers, my experience in overseeing our efforts in the Field and collecting data and other information in anticipation of multiple shutdowns, and my knowledge of NTEU

membership rates among HHS employees, my good-faith estimate of the number of dues-paying NTEU members at HHS who would be designated as nonessential and thus prioritized in a RIF is around 2,578 employees.

13. I am aware that on January 20, the Director of the Office of Personnel Management (OPM) issued a memorandum to Heads and Acting Heads of Departments and Agencies directing them to send lists of all employees on probationary periods—generally, all employees in the first year or two of their federal employment—to OPM. The memorandum also directed agencies to determine whether to retain those employees. According to news reports, OPM directed agencies to make those determinations by February 5 at noon.

14. Agencies have begun mass firings of probationary employees. For example, the Consumer Financial Protection Bureau (CFPB), where NTEU represents all bargaining-unit employees, sent its probationary employees termination notices on February 11.

15. In addition, I learned that the Food and Drug Administration (FDA), an Operating Division within HHS where NTEU represents most bargaining-unit employees, is preparing to terminate nearly all of its probationary employees.

16. I further learned that the Bureau of Engraving and Printing (BEP), another agency where NTEU represents employees, is preparing to fire probationers. Managers called some probationary employees and said that they would be terminated.

17. I also learned that at the Department of Energy, another agency where NTEU represents employees, termination notices are expected to be sent to probationary employees.

18. NTEU represents an estimated 15,000 probationary employees at the IRS. Based on NTEU membership rates among IRS employees, about 9,675 of those employees are dues-paying NTEU members.

19. NTEU represents over 1,000 probationary employees at HHS. Based on membership rates among HHS employees, around 270 of those employees are dues-paying NTEU members.

20. I am aware of OPM's "deferred resignation program," which encourages federal employees to terminate their employment effective September 30. NTEU members, including those at IRS and HHS, have opted into the program.

21. My colleague Mark Gray estimates that the mass firings of NTEU members who are nonessential and probationary employees, plus the resignation of others under OPM's deferred resignation program, will wipe out as much as half of NTEU's revenue. I agree with him that this is an existential threat, and if NTEU continues to operate, it will need to cut staff significantly.

22. NTEU's staff perform important services for employees. They represent bargaining-unit employees and members in grievances, arbitrations, and court cases; negotiate collective-bargaining agreements; and participate in countless daily meetings and discussions concerning workplace issues facing federal employees. Chapter leaders cannot perform all of these functions themselves

because they are already busy with other union matters and their federal job duties. So, substantial reductions in NTEU staff will mean substantial reductions in employee services.

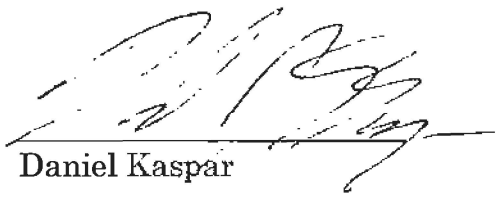
23. The loss of bargaining-unit employees, members, and revenue will also cause NTEU to lose bargaining power. The strength and influence of any union correlate directly with the size of its membership. NTEU is the nation's largest independent federal sector union and the second largest federal sector union overall. NTEU regularly tells its employees, agencies, Congress, and the public that it represents approximately 150,000 employees in thirty-seven agencies across the government.

24. Because the mass firings of nonessential and probationary employees, and the resignation of others under OPM's deferred resignation program, will substantially reduce the number of employees that NTEU represents, NTEU's influence in negotiating agreements with other agencies or lobbying Congress for benefits that help federal employees will be diminished.

25. The bargaining-unit employees that NTEU represents will see that NTEU has a more limited capacity to advocate for them. That loss of status will likewise affect how federal agency management at IRS, HHS, the CFPB, and other agencies perceive and deal with NTEU going forward.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 14, 2025.



Daniel Kaspar

Exhibit 2

DECLARATION OF MARK L. GRAY

I, Mark L. Gray, hereby declare as follows:

1. I currently serve as Director of Operations & Administration at the National Treasury Employees Union (NTEU). I have worked for NTEU from 1986 to 1996 and from 2013 through the present.

2. As Director of Operations and Administration, I am responsible for overseeing the day-to-day internal functioning of NTEU. This includes accounting and financial operations, information technology, and other operational matters. The department that I oversee maintains data concerning NTEU's dues-paying membership, such as the total number of members and the details of incoming dues payments from across the Union.

3. NTEU had approximately 91,000 dues-paying members as of October 2024.

4. In fiscal year 2024, NTEU took in approximately $39.5 million total in member dues, which represented about 84.5% of its total receipts for the year. In my experience, these figures are typical for at least the past ten years.

5. The Internal Revenue Service employs more dues-paying NTEU members than any other federal agency or department. My colleague Daniel Kaspar estimates that President Trump's recent Executive Order, *Implementing the President's "Department of Government Efficiency" Workforce Optimization Initiative* (Feb. 11, 2025) (Workforce Order) will result in the termination of approximately 31,220 NTEU members at IRS who are designated as nonessential

employees, based on Filing Season numbers. In other words, the Workforce Order will wipe out more than a third of NTEU's membership.

6. The outlook based on Non-Filing Season numbers is even more bleak: my colleague estimates that in Non-Filing Season, 39,141 dues-paying NTEU members would be designated nonessential and thus prioritized in a RIF. In that situation, the Workforce Order would wipe out approximately 43% of NTEU's membership.

7. Compared with other federal agencies, the Department of Health and Human Services employs the third-largest number of dues-paying NTEU members. My colleague Daniel Kaspar estimates that the Workforce Order will result in the termination of approximately 2,578 NTEU members at HHS who are designated as nonessential employees. This figure constitutes almost 3% of NTEU's membership.

8. The amount in dues that each NTEU member pays is a percentage of the member's base pay that varies depending on the member's grade and step in the applicable pay scale. For purposes of calculating the approximate amount in dues revenue that NTEU will lose because of the Workforce Order, however, $440 per member per year is a reasonable estimate. In fact, this is a low estimate, because it includes dues rates paid by members at the lower end of the General Schedule pay scale. The majority of NTEU members who work in the Department of Health and Human Services are not at the lower end of the GS pay scale.

9. I estimate that the termination of nonessential employees at IRS and HHS under the Workforce Order will cause NTEU to lose around $15 million—

around 38% of its annual dues revenue. NTEU will lose even more dues revenue when factoring in the termination of nonessential employees at the other thirty-five agencies where NTEU has members.

10. NTEU will lose millions more in dues revenue when factoring in the termination of NTEU members who are probationary employees and the resignation of NTEU members under the Office of Personnel Management's deferred resignation program. Even if the employees who resign under the program remain NTEU members after their resignations are effective on September 30, NTEU will lose money because retiree dues rates are significantly reduced.

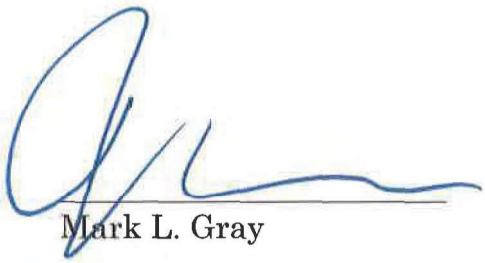
11. At the IRS alone, NTEU represents an estimated 15,000 probationary employees. Based on NTEU membership rates among IRS employees, about 9,675 of those employees are dues-paying NTEU members. Losing those members would eliminate over $5 million in annual dues revenue.

12. At HHS, NTEU represents over 1,000 probationary employees. Based on membership rates among HHS employees, around 270 of those employees are dues-paying NTEU members. Losing those members would eliminate approximately $140,400 in annual dues revenue.

13. Because the mass firings of nonessential employees and probationary employees and the resignation of other employees will wipe out as much as half of NTEU's dues revenue, the actions challenged in this case threaten NTEU's very existence. If NTEU can continue to operate at all, it will need to drastically cut staff and significantly reduce all of its activities, for example.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 14, 2025.



Mark L. Gray

Exhibit 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL TREASURY EMPLOYEES UNION, ET AL.,	)	
	)	Case No.
Plaintiffs,	)	
v.	)	
DONALD J. TRUMP, ET AL.,	)	
Defendants.	)	

DECLARATION OF TIMOTHY SMITH

I, Timothy Smith, declare as follows:

1. The facts described herein are based on my personal knowledge.

2. I am the Director of Region 8 of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW"). The UAW represents nearly 400,000 active members in a variety of industries in the United States and Canada. Those members belong to local unions chartered by the UAW. Those local unions, in turn, are organized into regions for administrative purposes.

3. UAW Local 2750 is one of the local unions in UAW Region 8. The UAW and Local 2750, which is also known as "NIH Fellows United," is certified under law to serve as the exclusive representative of approximately 5,000 research and clinical fellows who work at five campuses of the National Institutes of Health ("NIH") across the United States as well as in other NIH facilities.

4. The UAW and NIH Fellows United were first certified as the exclusive representative of this bargaining unit in December 2023, when an overwhelming majority of the bargaining unit voted in favor of the union.

5. Nearly all of the members of the NIH Fellows United bargaining unit (with the exception of some clinical fellows who provide patient care in NIH-run medical facilities) are considered non-essential employees.

6. Approximately ten percent (500 or so out of 5,000) of the NIH Fellows United bargaining unit are either probationary or trial employees under the regulations established by the Office of Personnel Management ("OPM").

7. As the certified representative of the NIH bargaining unit, the UAW and NIH Fellows United are legally responsible for evaluating, filing, and prosecuting grievances on behalf of employees, including in arbitration; evaluating and potentially filing unfair labor practice charges against NIH; and engaging in negotiations with NIH regarding changes to the working conditions for bargaining unit members. The UAW incur costs and expenses in connection with all of these activities, including costs and expenses pertaining to UAW staff salaries, arbitration, and legal services.

8. To fund those activities, NIH Fellows United collects dues from its members. A portion of the dues collected from NIH Fellows United members is remitted to the UAW to reimburse it for the expenses it incurs directly in connection with its representational and other activities.

9. Although NIH Fellows United is a relatively new union, it expects to collect somewhere between $10,000 and $40,000 dollars a month in membership dues to fund its activities once it is fully established.

10. The termination of all non-essential employees in the NIH Fellows United bargaining unit would substantially deprive the UAW and NIH Fellows United of all of the dues revenue that is necessary to carry out the legally required representational work on behalf of the NIH Fellows United bargaining unit and render NIH Fellows United unable to fulfill its mission.

11. The termination of all probationary and/or trial employees would also severely hamper the union's ability to do its legally required representational work by depriving it of a substantial amount of dues revenue that is necessary to fund its work.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on February 13, 2025

Tim Smith

Timothy Smith

Exhibit 4

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL TREASURY EMPLOYEES UNION , *et al.*, *Plaintiffs*, vs. DONALD J. TRUMP, *et al.*, *Defendants.*	Case No.: 25-420

DECLARATION OF RANDY ERWIN

I, Randy Erwin, declare as follows:

1. I am over the age of 18 and have personal knowledge of the facts in this declaration.

2. I am the National President of the National Federation of Federal Employees ("NFFE"). NFFE is a national labor organization and unincorporated membership organization headquartered in Washington, D.C.

3. NFFE represent more than 100,000 federal workers, approximately 10,000 of whom are dues-paying members, from agencies across the federal government.

4. On February 13, 2025 the U.S. Forest Service announced 3,475 probationary employees would be terminated while on probation in the days ahead. As of the date of this filing, 1400 probationary employees of the 3,475 targeted at the U.S. Forest Service had already been notified of their terminations. We have heard that some terminated probationary employees who live in government housing will also be without housing as a result of this Exccutive action.

5. NFFE represents our federal sector members through negotiating collective bargaining agreements and assisting employees with enforcing them. We assert contractual and statutory rights on behalf of our federal sector members by filing grievances, unfair labor practice charges, or other complaints through our negotiated grievance procedure or with various federal agencies, including the Federal Labor Relations Authority, the Merit Systems Protection Board, the Office of Special Counsel, and the Federal Labor Relations Authority. NFFE files litigation on employees' behalf in the courts. We also advocate on Capitol Hill and in the media on issues of importance to federal workers and to veterans.

6. NFFE's operations are primarily funded solely by members who pay dues to be members of the union. NFFE will be financially harmed because it will immediately lose dues revenue from members who are fired because they are nonessential or probationary. NFFE currently does not have a mechanism to maintain membership of union members who leave federal service.

7. NFFE has thousands of dues paying members who would be considered nonessential during a lapse of appropriations within the U.S. Forest Service, the VA, and DoD. The Forest Service has approximately 2,000 dues-paying members who would be considered nonessential. The VA has approximately 100 members who would be considered nonessential. DoD has approximately 900 dues-paying members who would be considered nonessential.

8. NFFE has thousands of dues-paying members who are probationary employees at the U.S. Forest Service, VA and DoD. NFFE's bargaining unit within the U.S. Forest Service consists of 18,080 employees, 5796 of whom are probationers, or approximately 32% of the unit. Approximately 900 dues paying members of the U.S. Forest Service are probationary. NFFE's bargaining unit within the VA consists of approximately 10,000 employees and 1500 are probationers, or approximately 15% of the unit. Of those, approximately 350 are probationers. NFFE's represents 1854 dues paying members at the DoD. Of those, approximately 200 are probationers.

9. NFFE will be financially harmed if all employees previously designated as nonessential during the lapse in appropriations were terminated, along with an unknown number of employees who work in agency components that might be suspended or closed at some point. In that event, NFFE would immediately lose hundreds of thousands of dollars of revenue.

10. NFFE's ability to carry out its mission will be severely curtailed if union members are no longer in federal service and do not pay dues to NFFE. For example, NFFE would not have the ability to maintain current staff levels who help with training union leaders, assisting with grievances, negotiating collective bargaining agreements, advocating for employees on Capitol hill, and filing litigation on behalf of the employee's we represent.

11. NFFE members pay dues voluntarily as federal employees. There is no mechanism for NFFE to collect dues for any period of time federal employees are not in federal service. For example, if employees were terminated during a RIF and rehired at some point, NFFE would have no ability to recoup back dues from an employee for that period of time.

12. I am aware of and can identify individual NFFE members who have opted into the OPM's deferred resignation program and will leave federal service by September 30, 2025. NFFE will lose dues revenue from those members who opted in because they will no longer be in the bargaining unit and in federal service after September 30, 2025.

13. We have heard from members who are concerned about NFFE losing strength and bargaining power because of the threat of diminished membership and smaller bargaining units. NFFE leverages it's size and the fact we represent over 100,000 federal employees when advocating in the media or to Congress and when bargaining with agencies. The Executive actions of the deferred resignation program and the terminations of probationary employees stand to reduce NFFE's size and capacity, thereby curbing our abilities to advocate for positive change for federal workers.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: February 14, 2025

Randy Erwin

Exhibit 5

	Case No. : 25-420
NATIONAL TREASURY EMPLOYEES UNION, *et al.*, *Plaintiffs*, vs. DONALD J. TRUMP, *et al.*, *Defendants*.	

DECLARATION OF MATTHEW S. BIGGS

I, Matthew S. Biggs, declare as follows:

1. I am over the age of 18 and have personal knowledge of the facts in this declaration.

2. I am the President of the International Federation of Professional and Technical Engineers ("IFPTE"). IFPTE is an international labor organization and unincorporated membership association headquartered in Washington, D.C.

3. IFPTE that represents approximately 34,000 federal employees, of which over 7,000 of which are dues-paying members from various agencies within the federal government.

4. As a labor union, IFPTE provides representation, information, and legislative advocacy for individual federal employees and represented units regarding terms and conditions of employment. This includes assistance of local affiliates with negotiating collective bargaining agreements, filing grievances and unfair labor practice charges, and other actions dealing with various federal agencies, including the Federal Labor Relations Authority, the Merit Systems Protection Board, and the Office of Special Counsel.

IFPTE also advocates to Congress and in the media on issues of importance to federal workers, their families, retirees, and to veterans.

5. IFPTE's operations are primarily funded by members who pay dues to become members of the union. IFPTE will be significantly financially harmed by losing dues paying members who are fired for the sole reason of being nonessential or probationary. IFPTE currently has no mechanism to maintain membership of union members who leave federal service.

6. IFPTE currently has over one thousand dues paying members who would be considered nonessential during a lapse of appropriations within the U.S. Army Corps of Engineers, the National Aeronautics and Space Administration, the Environmental Protection Agency, the National Oceanic and Atmospheric Administration.

7. IFPTE has dues paying members who are probationary employees working in Pearl Harbor Naval Shipyard; Naval Surface Warfare Center, Philadelphia Division; the National Aeronautics and Space Administration; and possibly other federal sector locals. Of IFPTE's approximately 7,000 dues paying members, we know of at least approximately one hundred probationers and expect to learn of more.

8. IFPTE will be financially harmed if all employees previously designated as nonessential during a lapse in appropriations are terminated in addition to a significant number of employees who work in agency components in the federal sector that, in the current climate, it is reasonable to believe might be suspended or closed at some point soon in time. In the event of mass terminations and/or layoffs, IFPTE would immediately lose tens of thousands of dollars in revenue, adding up to hundreds of thousands lost annually.

9. IFPTE's ability to carry out its mission on behalf of all of its members will be severely curtailed if these significant numbers of members are severed from the federal service en masse and as such no longer pay membership dues to IFPTE. For example, IFPTE would be unable to maintain current staff levels and thus levels of service to its remaining membership for grievance representation, collective bargaining agreement negotiations, advocacy to Congress, legal assistance including litigation and advice, and other representation.

10. Pursuant to the federal union structure, federal sector IFPTE members pay dues voluntarily and there is no mechanism for IFPTE to collect dues for any period of time that federal employees are not in the federal service. For example, if IFPTE employees were terminated due to a reduction-in-force and then rehired, IFPTE would lose the dues

for the period that the employee was not working in the federal service and would not have a way to recoup back dues.

11. I am aware of and can identify individual IFPTE members who have opted into the OPM's so-called deferred resignation program and will leave the federal service pursuant to the terms of that program by September 30, 2025. IFPTE will lose the dues revenue from those federal employee members who opted in as they will no longer be in the bargaining unit and in federal service after September 30, 2025.

12. I and IFPTE staff and leadership have heard from IFPTE members who are deeply concerned about IFPTE losing strength and bargaining power due to diminished membership numbers and smaller bargaining units. IFPTE leverages its membership strength within various agencies when advocating to Congress and to the public, and when our local affiliates bargain with federal agencies. The Executive actions of the deferred resignation program and the mass terminations of probationary employees are sure to reduce IFPTE's size and capacity and as such, to shrink our power and advocacy on behalf of federal workers.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: February 14, 2025

Matthew S. Biggs

Exhibit 6

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL TREASURY EMPLOYEES UNION, ET AL.,	)	
	)	Case No.
Plaintiffs,	)	
v.	)	
DONALD J. TRUMP, ET AL.,	)	
Defendants.	)	

DECLARATION OF CRAIG NORMAN

I, Craig Norman, declare as follows:

1. I am over the age of 18 and have personal knowledge of the facts in this declaration.

2. I am the Director of Government Employees for the International Association of Machinists and Aerospace Workers ("IAM"). IAM is an international labor organization and unincorporated membership organization headquartered in Upper Marlboro, Maryland. IAM is one the largest and most diverse labor unions in North America with nearly 600,000 active and retired members.

3. IAM represents approximately 15,000 federal workers in a variety of bargaining units. The majority of the IAM's representation in the federal sector is for workers in the Department of Defense and for workers in the Bureau of Printing and Engraving.

4. While the exact numbers are not immediately clear, some of these workers are considered nonessential if there were a lapse of appropriations. Additionally, roughly 10 percent are probationary employees. Should the nonessential and probationary employees be terminated, the IAM will be harmed because it will immediately lose both bargaining power for our remaining members and will lose dues revenue.

5. The IAM is legally responsible for negotiating collective bargaining agreements for the workers we represent and for enforcing those collective bargaining agreements through meetings with management, filing grievances, or pursuing complaints to a variety of federal agencies including the Federal Labor Relations Authority, the Merit Systems Protection Board, the Federal Labor Relations Authority and others. Additionally, the IAM provides training to our members at our training facility, including accredited course work; we engage in lobbying on behalf of the interests of our federal members; and we ensure constant communications with our membership on issues relevant to their employment through all forms of media.

6. The IAM expends significant resources to make sure that our federal members are properly represented as described above. These resources are funded through dues dollars. Should the nonessential and probationary employees be terminated, that would deprive the IAM of some of its funding, thereby hurting the remaining members and possibly reducing the level of servicing we could provide.

7. I am aware of, and could identify, members who have opted into the OPM's deferred resignation program and therefore who will leave federal service no later than September 30, 2025.

8. The cumulative loss of these members will have a devastating impact on the remaining members because the IAM will lose a certain amount of bargaining strength if it is coming to the table with a significantly reduced workforce. It is axiomatic in the labor movement that there is strength in numbers and as the numbers are reduced as described above, that strength is weakened.

I, Craig Norman, declare under penalty of perjury that the foregoing is true and correct.

2/14/2025

Date

Craig Norman

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL TREASURY EMPLOYEES UNION, 800 K Street N.W., Suite 1000 Washington, D.C. 20001, et al., Plaintiffs, v. DONALD J. TRUMP, President of the United States 1600 Pennsylvania Avenue N.W. Washington, D.C. 20035, et al., Defendants	)	Case No. 1:25-cv-0420

[PROPOSED] ORDER GRANTING TEMPORARY RESTRAINING ORDER

Upon consideration of Plaintiffs' motion for a temporary restraining order and accompanying brief, it is hereby

ORDERED that the motion is GRANTED; it is further

ORDERED that Defendants are enjoined from implementing section 3 of Executive Order No. 14210, Implementing the President's "Department of Government Efficiency" Workforce Optimization Initiative (Feb. 11, 2025); and it is further

ORDERED that the mass firing of nonessential, probationary, and other employees and OPM's deferred resignation program, collectively, are declared unlawful; and it is further

ORDERED that OPM is enjoined from extending, expanding, or replicating its deferred resignation program; and it is further

ORDERED that Defendants are enjoined from violating the RIF statute and regulations, including requirements related to the establishment of the competitive areas, an authorized reason for the RIF, legal classification of competing employees, and notice to affected employees and exclusive bargaining representatives.

Defendants are further **ORDERED** to file a status report within 24 hours of the issuance of this order, and every two weeks thereafter for 12 weeks, confirming compliance with this order.

SO ORDERED.

Dated: February __, 2025

_____
THE HON. PAUL L. FRIEDMAN
UNITED STATES DISTRICT JUDGE

NAMES OF PERSONS TO BE SERVED
WITH PROPOSED ORDER UPON ENTRY

Pursuant to Local Civil Rule 7(k), below are the names and addresses of persons entitled to be notified of entry of the above Proposed Order:

DONALD TRUMP, President of the United States of America,
1600 Pennsylvania Avenue NW
Washington, DC 20050

CHARLES EZELL,
Acting Director,
Office of Personnel Management
1900 E Street N.W.
Washington, D.C. 20415

DOUGLAS O'DONNELL,
Acting Commissioner, Internal Revenue Service
U.S. Department of Treasury
1500 Pennsylvania Avenue N.W.
Washington, D.C. 20220

DOROTHY FINK, M.D., Acting Secretary
U.S. Department of Health and
Human Services
200 Independence Avenue S.W.
Washington, D.C. 20201

RUSSELL VOUGHT, Acting Director,
Consumer Financial Protection Bureau,
1700 G Street N.W.
Washington, D.C. 20552

RANDY MOORE, Chief,
U.S. Forest Service
U.S. Department of Agriculture
1400 Independence Avenue S.W.
Washington, D.C. 20250,

DOUG COLLINS, Secretary
Department of Veterans Affairs
810 Vermont Avenue N.W.
Washington, D.C. 20420,

PETE HEGSETH, Secretary
Department of Defense
1000 Defense Pentagon
Washington, D.C. 20301-1000,

MAKENZIE LYSTRUP, M.D., Director,
Goddard Space Flight Center
National Aeronautics and Space Administration
8800 Greenbelt Road
Greenbelt, MD 20771

MATTHEW J. MEMOLI, M.D., Acting Director,
National Institutes of Health
9000 Rockville Pike
Bethesda, MD 20892