**No. 24A1174**

# IN THE Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,
*Applicants*,

v.

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, ET AL.,
*Respondents*.

RESPONDENTS' RESPONSE TO THE APPLICATION TO STAY THE ORDER ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY


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## PARTIES TO THE PROCEEDINGS AND RELATED PROCEEDINGS

Applicants are Donald J. Trump, President of the United States; the Office of Management and Budget; Russell Vought, Director of the Office of Management and Budget; the Office of Personnel Management; Charles Ezell, Acting Director of the Office of Personnel Management; the Department of Government Efficiency; Elon Musk; Amy Gleason, Acting Administrator of the Department of Government Efficiency; the Department of Agriculture; Brooke Rollins, Secretary of Agriculture; the Department of Commerce; Howard Lutnick, Secretary of Commerce; the Department of Defense; Pete Hegseth, Secretary of Defense; the Department of Energy; Chris Wright, Secretary of Energy; the Department of Health and Human Services; Robert F. Kennedy, Jr., Secretary of Health and Human Services; the Department of Homeland Security; Kristi Noem, Secretary of Homeland Security; the Department of Housing and Urban Development; Scott Turner, Secretary of Housing and Urban Development; the Department of Justice; Pam Bondi, Attorney General; the Department of the Interior; Doug Burgum, Secretary of the Interior; the Department of Labor; Lori Chavez-Deremer, Secretary of Labor; the Department of State; Marco Rubio, Secretary of State; the Department of the Treasury; Scott Bessent, Secretary of the Treasury; the Department of Transportation; Sean Duffy, Secretary of Transportation; the Department of Veterans Affairs; Doug Collins, Secretary of Veterans Affairs; AmeriCorps (a.k.a. the Corporation for National and Community Service); Jennifer Bastress Tahmasebi, Interim Agency Head of AmeriCorps; the Environmental Protection Agency; Lee Zeldin, Administrator of the Environmental Protection Agency; the General Services Administration; Stephen Ehikian, Acting Administrator of the General Services Administration; the National Labor Relations Board; Marvin Kaplan, Chairman of the National Labor Relations Board; William Cowen, General Counsel of the National Labor Relations Board; the National Science Foundation; Brian Stone, Acting Director of the National Science Foundation; the Peace

Corps; Allison Greene, Chief Executive Officer of the Peace Corps; the Small Business Administration; Kelly Loeffler, Administrator of the Small Business Administration; the Social Security Administration; and Frank Bisignano, Commissioner of the Social Security Administration.

Respondents are the American Federation of Government Employees, AFL-CIO (AFGE); American Federation of State County and Municipal Employees, AFL-CIO; Service Employees International Union, AFL-CIO (SEIU); AFGE Local 1122; AFGE Local 1236; AFGE Local 2110; AFGE Local 3172; SEIU Local 521; SEIU Local 1000; SEIU Local 1021; Alliance for Retired Americans; American Geophysical Union; American Public Health Association; Center for Taxpayer Rights; Coalition to Protect America's National Parks; Common Defense Civic Engagement; Main Street Alliance; Northeast Organic Farming Association, Inc.; VoteVets Action Fund Inc.; Western Watersheds Project; County of Santa Clara, California; City of Chicago, Illinois; Martin Luther King, Jr. County, Washington; Harris County, Texas; City of Baltimore, Maryland; and City and County of San Francisco, California.

The related proceedings below were:

**United States District Court for the Northern District of California**:

AFGE et al. v. Trump et al., No. 25-cv-3698 (May 9, 2025) (order granting TRO)

AFGE et al. v. Trump et al., No. 25-cv-3698 (May 22, 2025) (order granting preliminary injunction)

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

AFGE et al. v. Trump et al., No. 25-3030 (May 30, 2025) (dismissal of TRO appeal)

AFGE et al. v. Trump et al., No. 25-3293 (May 30, 2025) (denial of stay pending appeal of preliminary injunction)

## INTRODUCTION

This Court should reject the Government's request for emergency intervention to authorize the President to unilaterally dismantle agencies across the federal government without allowing the federal courts adequate opportunity to consider and rule on the serious separation of powers concerns raised by this assertion of authority. The Government's request contravenes the fundamental purpose of preliminary relief—to preserve the status quo while the courts resolve a case in an orderly manner. If the breakneck reorganization of the federal government ordered by the President is implemented before the merits of this case may be decided based on a full record, then statutorily required and authorized programs, offices, and functions across the federal government will be abolished, agencies will be radically downsized from what Congress authorized, critical government services will be lost, and hundreds of thousands of federal employees will lose their jobs. There will be no way to unscramble that egg: If the courts ultimately deem the President to have overstepped his authority and intruded upon that of Congress, as a practical matter there will be no way to go back in time to restore those agencies, functions, and services.

For more than 100 years, Presidents across the political spectrum have obtained authorization from Congress before undertaking reorganization of the federal government. Those Presidents have recognized that Congress creates the agencies and authorizes their functions and appropriations. As former Assistant Attorney General Antonin Scalia testified to Congress in 1977, there are only two ways to pursue reorganization: "the Congress must either delegate to the President the authority to reorganize the executive branch, subject to their undoing his work through the normal process of legislation, or else they must themselves adopt such reorganization through the constitutionally prescribed legislative process." *Providing Reorganization Authority to the President: Hearings on H.R. 3131, H.R. 3407, and H.R. 3442* before a Subcomm. of the H. Comm. on Gov't Ops., 95th Cong., 1st Sess., 58 (1977)

(statement of Antonin Scalia). Congress has done neither here.

During his first term, President Trump sought congressional authorization for his plans to "reorganize governmental functions and eliminate unnecessary agencies[,] . . . components of agencies, and agency programs," but Congress did not provide that authority.[1] This time, he instead chose to elide any congressional role, and launched an unprecedented campaign to radically reorganize, and thereby dismantle, large swaths of the federal government, calling this "large scale structural reform" the "Manhattan Project of our time."[2] Thus, rather than obtain renewed reorganization authority or otherwise cooperate with Congress through the regular legislative or budgetary process, the President issued a "Workforce Optimization" Executive Order, No. 14210, 90 Fed. Reg. 9669 (Feb. 11, 2025) ("EO"), which unilaterally orders the swift and dramatic downsizing of every federal agency and restructuring of the pieces that remain.

The Government asks this Court to accept the fiction that this EO merely requires a future planning process. But the undisputed record established that in March and April of this year, federal agencies chaotically began implementing Agency RIF and Reorganization Plans ("ARRPs") that the EO mandates—to the detriment of the agencies, their employees, and all those who rely on their services, including the Respondent organizations, their members, and Respondent local governments. That implementation included dismantling entire offices performing functions Congress had assigned to them, transferring functions across (not just within) agencies, and large-scale reductions in force ("RIFs") often comprising half or more of all agency employees. This was not mere planning or the "beginning of an

[1] Exec. Order No. 13781, 82 Fed. Reg. 13959 (Mar. 13, 2017); Office of Management and Budget Report: Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations (June 2018) at *4, 6, *available at*: https://www.whitehouse.gov/wp-content/uploads/2018/06/Government-Reform-and-Reorg-Plan.pdf.

[2] Statement by President-elect Trump announcing Department of Government Efficiency, The American Presidency Project (Nov. 12, 2024), *available at*: https://www.presidency.ucsb.edu/documents/statement-president-elect-donald-jtrump-announcing-that-elon-musk-and-vivek-ramaswamy.

iterative process of engagement," App. 20; this was execution of the President's directive.

The Government also suggests that the President's order is business as usual and requires only that agencies exercise their existing statutory personnel authority, but nothing could be further from the truth. Through this EO and an implementing Memorandum issued by the Office of Management and Budget ("OMB") and Office of Personnel Management ("OPM"), every federal agency has been given categorical directives that are inconsistent with law. These directives require agencies to eliminate the offices and functions "my Administration suspends or closes" as well as those that the President, OMB, and OPM deem to be "discretionary"; disregard the functions Congress intended the agencies to perform; and replace reasoned decision-making with arbitrary and categorical directives. *See infra* at 8-11, 20-23. And through their Memorandum, OMB and OPM amplified and accelerated the President's orders by imposing unworkable timeframes and assuming for themselves the power to approve or veto proposals by individual federal agencies, measured against the President's singular purpose of transforming the government rather than all the factors that should inform agency decision-making. As the Court of Appeals and District Court both concluded, the Government's contention that the President is simply taking care to see that agencies' existing statutory authority is effectuated "is at best disingenuous, and at worst flatly contradictory to the record." App. 79a; *see also* App. 46a-47a.

Contrary to the Government's portrayal, App. 6, Respondents do *not* concede that federal agencies could dismantle themselves in the manner required by this EO and OMB/OPM Memorandum if they did so on their own initiative, and not at the President's direction. The President has ordered the agencies to do something Congress has not delegated to *any* part of the executive branch, agencies included. Whatever one's view on the proper size and scale of government, that vision may not be imposed by unilateral executive order, without engaging in the dialogue and

cooperation with Congress that the Constitution requires and that Presidents have historically pursued. Granting a stay would permit the total implementation of this vision before the courts can give the careful consideration that these important constitutional issues merit, rendering irrelevant not just one branch of government, but two.

Rather than permitting this scheme to become a fait accompli before the courts can play their proper role, this Court should allow the status quo to remain in place while the case proceeds through the regular judicial process. That pause in implementation is far more consistent with history and existing law than allowing the fundamental reorganization of the federal government to proceed before judicial review may be had. The injunction does not prevent the President from taking proposals to Congress, engaging in the constitutionally required dialogue, and obtaining approval before implementing this dramatic reorganization. If both branches agree, the courts below and this Court may avoid confronting these constitutional issues entirely. For now, the Government has given this Court no valid basis to tilt the scales so far in the favor of unilateral executive action issue by greenlighting the dismantling of the federal government in a manner that will later be effectively impossible to undo.

## STATEMENT

### I. Federal Agency Organization and Authority

Pursuant to its constitutional authority, Congress establishes the existence, functions, structure, and size of federal agencies via authorization and appropriation legislation. U.S. Const., art. I, §§1, 7; *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 499 (2010). The President and Congress have various mechanisms to work together to effectuate their respective policy priorities with respect to that structure, size, and function. The two branches engage in ongoing dialogue and negotiation with respect to both regular legislation and the annual budgetary process,

culminating in legislation both branches approve. *E.g.*, 31 U.S.C. §§1104-1105. And the dialogue continues throughout the year, through the President's mid-year supplement and Congressional oversight. *E.g.*, *id.* §1106.

Congress has also, throughout history, at times delegated to the President specific authorization to reorganize the structure and size of the federal agencies. For at least 100 years, every President who sought to substantially alter the structure *of* and *between* federal agencies has obtained congressional authorization. App. 39a-43a; *see* Cong. Rsch. Serv., R44909, *Executive Branch Reorganization*, at 6 (Aug. 3, 2017); Paul J. Larkin, Jr. & John-Michael Seibler*, The President's Reorganization Authority*, Heritage Foundation Legal Memorandum No. 210, at 1-3 (July 12, 2017).[3] Such delegations generally include the "reorganization plan contents, the limitations on power, and the expedited parliamentary procedures."[4] *E.g.*, 5 U.S.C. §§901-903 (still codified). Notably, these authorizations historically have included instructions with respect to the impact on federal personnel, including RIFs. *E.g.*, Reorganization Act of 1939, §10(a), 53 Stat. 561, 563 ("Whenever the employment of any person is terminated by a reduction of personnel as a result of a reorganization . . .").[5]

Over the years, Congress has "amended, extended, narrowed, or reactivated" federal government reorganization authority at least sixteen times to grant Presidents of both parties structured authority to submit reorganization plans for congressional approval. S. Rep. No. 115-381, at 4 (2018) (discussing history). Presidents have employed such statutory authority for reorganizations ranging from

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[3] *See* https://www.heritage.org/political-process/report/the-presidents-reorganization-authority.

[4] Cong. Rsch. Serv., R42852, *Presidential Reorganization Authority: History, Recent Initiatives, and Options for Congress*, at 2 (Dec. 11, 2012); *id.* at n.11 (collecting prior authorizations) & Tbl. 1 ("Summary Information Regarding Reorganization Authority, by President").

[5] *See* Reorganization Act of 1977, §904, 91 Stat. 29, 31; Reorganization Act of 1949, §4, 63 Stat. 203, 204; Reorganization Act of 1945, §4, 59 Stat. 613, 614; First War Powers Act, §2, 55 Stat. 838 (1941); Economy Act of 1932, §§403-406, 47 Stat. 304; Departmental Reorganization Act, §2, 40 Stat. 556 (1918). *See also* 5 U.S.C. §904(3), (4) (requiring presidential reorganization plan to include provisions for the "disposition" of "personnel" impacted by reorganization, and addressing transfer or use of "unexpended balances" of appropriations impacted by reorganization).

"relatively minor reorganizations within individual agencies" to "the creation of large new organizations." Cong. Rsch. Serv., *supra* n.4, at 2, 6.[6] Congress has denied some requests for reorganization authority, as with Presidents Reagan in 1981, Bush in 2003, and Obama in 2012. *See id*. at 29, 32-34; S. 2129, 112th Cong. (2012); H.R. 4409, 112th Cong. (2012). And Congress has rejected some presidential reorganization proposals to eliminate, merge, and consolidate agencies. *See, e.g*., H.R. 1510, 115th Cong. (2017); S. 1116, 112th Cong. (2011); H.R. 714, 98th Cong. (1983).

The most recent Reorganization Act authority expired on December 31, 1984. Pub. L. No. 98-614, 98 Stat. 3192; *see* 5 U.S.C. §905(b). During his first term, President Trump sought, but did not obtain, authority from Congress for a plan to reorganize the federal government. App. 41a; *see* Exec. Order No. 13781, *supra* n.1; H.R. 6787, 115th Cong. (2017-2018); S. 3137, 115th Cong. (2018) (never enacted).[7] President Trump's specific reorganization proposals were largely not enacted.[8] President Trump has not obtained renewed authority in his second term either.[9]

Congress has also, at times, specifically authorized the executive branch to reduce the size of the federal workforce, either through reorganization acts or other legislation. *Supra* at 5; *see also* Federal Workforce Restructuring Act of 1994, 108

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[6] *E.g*., Reorganization Plan No. III of 1940 (redefining roles within Civil Aeronautics Authority); Reorganization Plan No. IV of 1940 (transferring interbuilding messenger functions at Post Office). Other times, Congress has consolidated functions and reorganized agencies through regular legislation. *See, e.g*., Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135. Congress has also sometimes delegated to the President limited authority, typically with expiration dates, to reorganize specific agencies. *E.g*., Pub. L. No. 105-277, div. G, subdiv. A, §§1601, 6601(e), 112 Stat. 2681-795 (1998) (USAID reorganization).

[7] *See* OMB, *Delivering Government Solutions in the 21st Century*, *supra* n.1, at 4 (conceding "significant changes will require legislative action").

[8] Doc. 100 at 34-36 (listing congressional hearings on President Trump's proposals); Cong. Rsch. Serv., *Trump Administration Reform and Reorganization Plan: Discussion of 35 "Government-Wide" Proposals*, at 1 (July 25, 2018). "Doc." hereinafter refers to the District Court docket.

[9] App. 41a-42a. In March of this year, Congress also chose not to enact President Trump's proposed cuts to federal agencies via budget reconciliation. *See, e.g*., Cato Institute, *DOGE Fell Short on Spending Cuts: Now Congress Must Lead* (Apr. 23, 2025), *available at*: https://www.cato.org/blog/doge-fell-short-spending-cuts-now-congress-must-lead; Politico, *White House plans—at last—to send some DOGE cuts to Hill* (May 28, 2025), *available at*: https://www.politico.com/news/2025/05/28/white-house-plans-at-last-to-send-some-doge-cuts-to-hill-00372274.

Stat. 111 (directing President to meet reduction targets for federal civilian workforce); Defense Authorization Amendments and Base Closure and Realignment Act, 102 Stat. 2623, 2627 (1988) (authorizing several rounds of closures of military installations that employed military and civilian personnel), *as amended by* 104 Stat. 1485, 1808-14 (1990), 108 Stat. 2626 (1994), and 115 Stat. 1342 (2004); Federal Employees' Pay Act of 1945, Pub. L. No. 79-106, §607(b), 59 Stat. 295 (repealed 1950) (granting budget director authority to set agency personnel ceilings and order staffing reductions). Congress has not granted such authority to President Trump.

To the agencies themselves, Congress has provided direction regarding their structure, function, and authority in their organic authorizing statutes, and agencies must act within those confines.[10] Congress has never delegated to agencies entirely open-ended authority to organize themselves.[11] Agencies may not, without congressional authorization, eliminate authorized programs or transfer functions to another agency.[12] Congress has at times specifically delegated to an agency head the authority to internally reorganize, including by imposing conditions on such actions.[13]

Congress has also never delegated to agencies entirely open-ended authority to reduce their workforce. It has authorized agencies to "employ such number of employees" that "Congress may appropriate for from year to year." 5 U.S.C. §3101. Congress has also enacted retention preference statutes that apply when a RIF is implemented, consistent with authorized functions and budgets. *Id.* §§3501-3504.

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[10] *E.g.*, *W. Virginia v. EPA*, 597 U.S. 697, 723 (2022) ("Agencies have only those powers given to them by Congress, and enabling legislation is generally not an open book to which the agency may add pages and change the plot line.") (cleaned up); *City of Arlington v. F.C.C.*, 569 U.S. 290, 297 (2013).

[11] There is an early "housekeeping" statute, by which Congress delegated authority to "prescribe regulations for the government of [the] department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property." 5 U.S.C. §301. This has long been understood not to permit substantive changes. *E.g.*, *Chrysler Corp. v. Brown*, 441 U.S. 281, 310 (1979).

[12] *Halverson v. Slater*, 129 F.3d 180 (D.C. Cir. 1997); *U.S. v. Giordano*, 416 U.S. 505 (1974).

[13] *E.g.*, 6 U.S.C. §452 (placing limitations on Department of Homeland Security reorganization).

## II. President Trump's Current Attempt to Transform the Government

On February 11, 2025, President Trump issued Executive Order No. 14210 requiring all federal agencies to "commence[] a critical transformation of the Federal bureaucracy." App. 1a §1. The accompanying "Fact Sheet" explained that the President "is committed to reducing the size and scope of the federal government," and "[t]he Order will significantly reduce the size of government."[14]

In service of this "transformation," the EO requires that each federal agency "*shall*" "promptly undertake preparations to initiate *large-scale reductions-in-force (RIFs)*" and "submit" a "reorganization plan[]" for what remains of the agency within 30 days. App. 1a-2a §§1, 3(c), (e) (emphases added).[15] It mandates that RIFs "*shall*" "prioritize[]" "[a]ll offices that perform functions not mandated by statute or other law," "all agency initiatives, components, or operations that *my Administration suspends or closes*," and "all components and employees performing functions" not required for government shutdown-level staffing. App. 2a §3(c) (emphases added); *see* App. 48a. As to reorganization, the EO similarly orders agencies to identify for OMB any "statutorily required entities" and to address "whether the agency or any of its subcomponents should be eliminated or consolidated." App. 2a §3(e). The EO permits (using "may") agency heads to exempt certain security positions only (and for OPM to "grant" further exemptions only if they serve the purpose of "workforce reduction"). App. 2a §4(b), (c).

On February 26, OMB and OPM issued a Memorandum implementing the EO, which confirmed that the President "directed" and "required" agencies to commence RIFs and reorganizations. App. 4a. The Memorandum also "instruct[ed]" each federal agency to "submit[]" a combined ARRP implementing the EO, for OMB and OPM's

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[14] White House, *Fact Sheet: President Donald J. Trump Works to Remake America's Federal Workforce* (Feb. 11, 2025), *available at*: https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-works-to-remake-americas-federal-workforce/.

[15] "It is generally clear that 'shall' imposes a mandatory duty." *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 172 (2016).

"review and approval." App. 4a, 6a-7a.[16] The Memorandum thus makes clear that RIFs are the reorganization's centerpiece, requiring the submission *within two weeks* (by March 13) of "Phase 1 ARRPs," which "*shall focus on initial agency cuts and reductions.*" App. 6a (emphasis added). Agencies were instructed to cut discretionary functions: "Pursuant to the President's direction . . . focus on the maximum elimination of functions that are not statutorily mandated . . . ." App. 5a.[17] Agencies were then required by April 14 to submit "Phase 2 ARRPs," which reorganize agencies around what remains after these initial RIFs and any subsequent closure of offices and programs and "subsequent large-scale RIFs." App. 7a-8a.[18]

Soon after these submission deadlines for OMB/OPM "approval," agencies across the federal government commenced implementation of reorganizations and RIFs according to the President's parameters. App. 12a, 18a-19a.[19] Respondents established, and the Government did not dispute, that OMB and OPM *rejected* some ARRPs for failure to eliminate enough positions, requiring agencies to impose greater cuts to programs and positions. Doc. 37-1 at 12; Doc. 101-1 at 5; App. 46a-47a.

Respondents assembled a substantial and unrebutted record of actions implementing the EO through in-progress and imminent massive RIFs and reorganizations, in what the Court of Appeals termed an "unprecedented attempted

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[16] The Memorandum prohibited "agencies or components that provide direct services to citizens" from implementing "any proposed ARRPs" until OMB/OPM made specified certifications. App. 9a.

[17] *See also id.* ("Achieve… [a] significant reduction in the number of full-time equivalent (FTE) positions by eliminating positions that are not required"); ("[S]eek reductions in components and positions that are non-critical"); ("[S]tatutes should be interpreted to cover only what functions they explicitly require"). The Memorandum also required agencies to work with the Department of Government Efficiency ("DOGE") in designing the RIFs, to "include positions not typically designated as essential during a lapse in appropriations," and to "refer to the functions that are excepted from the [2019 lapse plans] as the starting point for making this determination." App. 5a.

[18] The Memorandum included a "Sample RIF Timeline" requiring agencies to submit areas to RIF and "[d]raft RIF notices" within 30 days, and to "[i]ssue official RIF notices" within 60 days (shortened to 30 with an OPM waiver). App. 10a. Respondents submitted uncontested former agency official declarations explaining the impossibility of preparing plans that properly account for agency requirements in such a condensed time frame. Doc. 37-1 at 39; Docs. 37-60 to 62.

[19] Notwithstanding ongoing implementation, the Government has refused to disclose ARRPs to employees, their unions, the public, or Congress, App. 17a, and has resisted revealing them to the federal courts, *see* 9th Cir. Case No. 25-3034 (now dismissed).

restructuring of the federal government and its operations." App. 66a-67a. Those RIFs "contemplate dramatic and debilitating cuts to Congressional agencies" that are "'inextricably intertwined with broad agency reorganization'" and raise "serious questions" as to whether "those agencies will be essentially eliminated or, if not eliminated, prevented from fulfilling their statutory duties." App. 81a-82a (quoting District Court).

For example, the Department of Health and Human Services ("HHS") announced and began implementing a "transformation" pursuant to the EO, including by cutting 10,000 positions (with more to come) at the Centers for Disease Control and Prevention ("CDC"), Food and Drug Administration ("FDA"), and National Institutes of Health, and eliminating entire programs, such as the CDC office that monitors lead exposure in children and (effectively) the National Institute for Occupational Safety and Health (93% of staff cut). App. 67a; Doc. 37-1 at 4-5, 19.[20] Reductions of similar or even greater scale are impending at other agencies: The Department of Energy "has proposed cuts of up to 50% of [the] agency's workforce, including cuts of 54% to science and innovation programs and 61% to energy infrastructure and deployment." App. 67a. "The General Services Administration (GSA) has announced plans to terminate nearly half its staff" after "already ma[king] significant cuts, leaving no employees to maintain fire protection systems, manage indoor air quality, or supervise asbestos inspections in government buildings." *Id.* Treasury plans to cut 40% of Internal Revenue Service ("IRS") positions. App. 18a. The Small Business Administration ("SBA") "will reduce its workforce by 43%." App. 19a. The Veterans' Administration ("VA") will eliminate 80,000 jobs serving veterans.

[20] HHS later admitted these cuts hit many programs mandated by statute and were sloppily done at White House direction, resulting in the need to reverse 20% of the RIFs. Doc. 37-1 at 4-5 (citing The Guardian, *RFK Jr says 20% of Doge's health agency job cuts were mistakes* (Apr. 4, 2025) (emphasis added), *available at*: https://www.theguardian.com/us-news/2025/apr/04/rfk-jr-doge-cuts).

App. 18a, 67a.[21]

Agencies across the government are eliminating functions the Administration determines not to be "required" even if those functions are authorized and funded by Congress. App. 12a, 18a-19a.[22] The President is issuing orders abolishing offices and then requiring that their staff be terminated pursuant to this EO.[23] And the reorganization is transferring functions and offices *between* agencies.[24]

The Court of Appeals and District Court correctly rejected the Government's suggestion that the EO and Memorandum are "merely providing guidance" regarding RIFs, App. 46a, finding that the record evidence "'tells a very different story: that the agencies are acting at the direction of the President and his team.'" App. 80a (quoting App. 46a).

### III. Ongoing and Imminent Irreparable Harm to Respondents

As the Court of Appeals described, Respondents' 68 unrebutted declarations paint "a startling picture" of "very substantial" actual and impending injuries caused by this dismantling of each defendant agency. App. 93a. The lower courts found two categories of harm: injuries to federal employee members of Respondent unions and other organizations, and reductions and elimination of agency functions that harm

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[21] *See also* App. 67a (AmeriCorps: RIF of 85% of staff per EO); Doc. 37-1 at 17 (EPA: up to 65% of staff to be cut per EO); Doc.41-1 ¶15, Ex. C (Housing and Urban Development: RIFs of up to 50% of staff in "[c]ompliance with [EO]"); Doc. 37-1 at 21-22 (Interior: "major reorganization" under EO); Doc. 70-2 Exs. A-C (Labor: eliminating entire office); Doc. 37-1 at 24 (National Science Foundation: cutting half of staff under "orders from the White House"); Doc. 101-3 ¶14 (Peace Corps: at least 25% cuts); Doc. 37-1 at 25-26 (Social Security Administration ("SSA"): plans per EO include "abolishment of organizations and positions" and RIFs); *id.* at 26-27 (State: consolidation and 15% staff reduction per EO); Doc. 37-1 at 15 (Agriculture ("USDA"): cuts of up to 15%); *id*. at 16 (NOAA: at least 20% cuts).

[22] *E.g.*, Doc. 37-1 at 4-5, 19-20 (several HHS programs eliminated, including CDC Center for Injury Prevention and Control, *see* 42 U.S.C. ch. 6A, subch. II, pt. J; Low-Income Home Energy Assistance Program, *see* 42 U.S.C. ch. 94, subch. II; Coal Workers' Health Surveillance Program, *see* 30 U.S.C. §843; 42 C.F.R. §37.2); *id.* at 12-13 (AmeriCorps, *see* 42 U.S.C. §§12501, 12651); Doc. 70-1 ¶¶6-8 (EPA Office of Research and Development eliminated, *see* 7 U.S.C. §5921(f); 15 U.S.C. §8962); Doc. 101-11 ¶¶4-5 (EPA Energy Star efficiency program eliminated, *see* 42 U.S.C. §6294a).

[23] Doc. 70-2 ¶¶4, 7, Exs. C, D (RIF of Labor contract compliance office personnel after executive order purportedly eliminated office, *see* 29 U.S.C. §793(b); 38 U.S.C. §4212).

[24] *E.g.*, Doc. 70-1 ¶¶3-4 & Ex. A (USDA plans include consolidating functions with seven other agencies); Doc. 37-26 ¶¶42-43 (Education student aid office will move to SBA); Doc. 37-1 at 13, 26-27 (USAID functions transferred to State).

Respondent cities and counties, non-profit organizations, and their members. The evidence established such harms in every corner of the country from the widespread ongoing and imminent implementation of ARRPs. Given that the Government continues to shield the contents of the ARRPs that have been approved and were soon to be implemented, this evidence presents but the tip of the iceberg of impending injury.

Union Respondents collectively represent nearly a million federal employees nationwide who are directly impacted by the reorganization of the defendant agencies. Supp.App. 56a-61a. Those employees face termination, loss of health benefits, and (for those employees who remain) worsened working conditions, all caused by the decisions to eliminate offices, programs, and functions and reorganize what remains. App. 93a-94a; Doc. 37-1 at 13 & n.24. From scientists to firefighters to economists to park rangers to administrative staff who arrange travel for food inspectors and make appointments for veterans, these employees make the federal government function. The collective experience and institutional knowledge that will be lost if the injunction is stayed cannot be readily replaced with new hires or contract workers.

The local government Respondents documented in detail their reliance on functioning federal agencies to provide the services and expertise that local governments cannot, from monitoring the weather to emergency response to testing imports and protecting public health. Doc. 37-1 at 14-21, 23, 25-27 (local government Respondents Harris County, Texas; Chicago, Illinois; Baltimore, Maryland; King County, Washington; San Francisco, California; and County of Santa Clara, California). The record was replete with examples of injuries to localities that have resulted or will result from cuts both within and outside their boundaries. *Id.*

The non-profit organization Respondents—which include labor unions representing county, state, and private sector employees—represent additional millions of members across the nation who depend on federal offices that are being closed and services that are being eliminated or reduced. These organizations—whose members

include veterans, small business owners, farmers, scientists, public health officials, conservationists, clinics providing tax assistance to low-income Americans, and state and local public employees—have extensively documented severe harms from the ongoing elimination and degradation of vital government services on which they rely, from many different agencies. App. 25a-26a; Doc. 37-1 at 14-29; Doc. 101-1 at 8-9.

The Court of Appeals agreed with the District Court's findings that the evidentiary record established that the agencies' "large-scale reductions in force" have already had, and would continue to have, a "substantial" impact "reaching far beyond the walls of the executive agencies." App. 94a. "Pulling a small handful of examples from the record . . . the current executive re-organization facilitates the proliferation of food-borne disease, . . . contributes to hazardous environmental conditions, . . . hinders efforts to prevent and monitor infectious disease, . . . eviscerates disaster loan services for local businesses, . . . and drastically reduces the provision of healthcare and other services to our nation's veterans." *Id.* (citing record evidence).

The scale of these reductions—ranging from 15% to 85%—makes the probationary employee terminations at issue in *Office of Personnel Management v. American Federation of Government Employees*, No. 24A904, pale by comparison. For example, the VA previously dismissed 2,700 probationary employees, but now intends to terminate *80,000 positions*. Doc. 37-38 at 2.

At the time the TRO issued, the EO's implementation was ongoing, allowing Respondents to document harms already inflicted across agencies and throughout the country. For example, HHS's reorganization has gutted the agency's programs and functions including testing to address lead exposure in cities and counties; monitoring and prevention of infectious diseases; research and funding to prevent overdose, suicide, drowning, vehicle crashes, and other injuries; support for Head Start programs; mine safety inspections; and research into reducing cancer risks for firefighters. App. 94a; Doc. 37-1 at 19-21. This has had serious, adverse impacts on the American Public

Health Association's 23,000 public health professional members nationwide, labor unions and their members (who are employed in Head Start programs and face job losses), and Respondent local governments that rely heavily on, for example, CDC laboratories and expertise to control disease outbreaks. Doc. 37-1 at 19-21.[25]

Despite the Government's nondisclosure of its plans, record evidence about imminent planned actions also demonstrated extensive disruption and harm that would have resulted without an injunction. For instance, the drastic 80,000 reduction in VA personnel would severely hinder veterans' access to health care and other benefits, irreparably harming non-profits Common Defense and VoteVets and the hundreds of thousands of veterans they represent nationally (as well as their families), and imposing heavy burdens on Respondent local governments' hospitals and support services. App. 94a; Doc. 37-1 at 28-29; Doc. 37-44. SSA's reductions would dramatically increase wait times and impede the provision of critical benefits to claimants nationwide, including to Alliance for Retired Americans' 4.4 million members throughout the country. Doc. 37-1 at 26; Doc. 37-39 at 1. Respondents presented evidence of similar imminent harm associated with the planned reorganization of each of the enjoined agencies. Doc. 37-1 at 13-29; Supp.App. 56a-61a.

These harms are by no means speculative. Respondents documented, based on their prior experiences, that similar degradation of services and resulting injuries occurred during previous instances of agency understaffing of a much smaller scale. *See, e.g.*, Doc. 37-11 ¶25 & Ex. K (prior SSA staff attrition increased callers' wait times and led to delays in disability decisions); Doc. 37-22 ¶¶9-11 (describing delays in processing state unemployment during prior shutdowns). That experience supports the conclusion that these substantially larger reorganizations and RIFs will lead to greater harms. Evidence regarding the CDC's late March RIFs included

[25] Similarly, the immediate placement of 85% of AmeriCorps staff on leave left the agency unable to fulfill key functions, harming local governments that relied on AmeriCorps members to deliver services to vulnerable populations. Doc. 37-12 ¶¶26, 29-31; Doc. 41-6 ¶18-20; *see also supra* at 10 (GSA).

testimony from a twenty-plus year employee that previous government "shutdowns were nowhere near as disruptive to the services at the CDC as the current Restructuring Plan and RIF have been." Doc. 37-21 ¶36.[26]

The Government presented no evidence to dispute these significant harms. And it stated expressly that it "d[id] not make or rely on any factual representations" and argued that "no factual development is necessary." Doc. 117 at 3.

**STANDARD**

"A stay is an intrusion into the ordinary processes of administration and judicial review, and accordingly is not a matter of right." *Nken v. Holder*, 556 U.S. 418, 427 (2009) (cleaned up). It is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Murthy v. Missouri*, 144 S.Ct. 7, 8 (2023) (Alito, J., dissenting from grant of stay) (quotations omitted).

A stay applicant must establish (1) "a strong showing that [it] is likely to succeed on the merits," (2) that it "will be irreparably injured absent a stay," (3) that the balance of the equities, including whether "the stay will substantially injure the other parties," favors it, and (4) that a stay is consistent with "the public interest." *Nken*, 556 U.S. at 434.[27] The moving party "bears the burden of showing that the circumstances justify an exercise of [this Court's] discretion." *Id.* at 433-34.[28]

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[26] *See also* Doc. 37-14 ¶35 (prior shutdowns halted GSA's ability to address federal buildings' air quality, and "reorganization and large-scale RIFs taking place now will make health and safety issues at federal facilities considerably worse than during the prior shutdowns"); Doc. 37-20 ¶26 & Ex. J (prior hiring freeze effects on State's ability to carry out key programs and functions, and to protect people and facilities); Doc. 37-41 ¶¶6, 12 (impacts of prior staffing reductions at national parks).

[27] The first factor requires both a "reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari," and "a fair prospect that a majority of the Court will vote to reverse the judgment below." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010); *see also Does 1-3 v. Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring in the denial of application for injunctive relief).

[28] That burden is "especially heavy" when, as here, "th[e] matter is pending before the Court of Appeals," which "denied [a] motion for a stay." *Packwood v. Senate Select Cte. On Ethics*, 510 U.S. 1319, 1320 (1994) (Rehnquist, C.J., in chambers). And the Court's "[r]espect for the assessment of the Court of Appeals is especially warranted when"—as here—"that court is proceeding to adjudication on the merits with due expedition." *Doe v. Gonzales*, 546 U.S. 1301, 1308 (2005) (Ginsburg, J., in chambers). The same day the Government appealed the preliminary injunction, the Court of Appeals issued an order scheduling the opening brief to be filed by June 20 and answering brief by July 18, 2025.

## ARGUMENT

### I. The Government Has Not Shown It Will Likely Prevail on the Merits

#### A. The lower courts correctly concluded that the EO likely exceeds the President's constitutional and statutory authority and violates separation of powers

The Constitution is predicated on the idea that Executive power is not unlimited: "The 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). Where, as here, Congress neither reauthorized reorganization authority nor otherwise delegated authority to the President to alter the federal agency structure, organization, or staffing levels that it established, his power is "at its lowest ebb." *Id.* at 637 (Jackson, J., concurring).

There is no real dispute that the President lacks authority to engage in a government-wide reorganization of federal agencies without congressional authorization. *E.g.*, Larkin & Seibler, *supra* at 3 ("[T]he President does not have constitutional authority to reorganize the executive branch on his own.").[29] Nor can there be any real dispute that this EO does direct reorganization of the federal government—imposing a swift "transformation" of *all* federal agencies by eliminating programs and functions, transferring functions between agencies, and ordering agencies to restructure through large-scale RIFs that eliminate all but those functions and

[29] *See also Hearings on H.R. 3131, H.R. 3407, and H.R. 3442*, *supra* p.1, at 56 (statement of Antonin Scalia) ("The present organization of the executive branch is largely a matter of statutory law. Laws are changed by new laws."); *id*. at 79 (statement of Professor Laurence H. Tribe) ("Nothing more obviously resembles lawmaking than the power to substantively restructure the Government and alter the way in which all of its functions are performed."); John W. York & Rachel Greszler, A Model for Executive Reorganization, Heritage Foundation Legal Memorandum No. 4782, at 1-2 (Nov. 3, 2017) ("[S]weeping reorganization of the federal bureaucracy requires the active participation of Congress."), *available at*: https://www.heritage.org/political-process/report/model-executive-reorganization); *Limitations on Presidential Power to Create a New Exec. Branch Entity to Receive & Administer Funds Under Foreign Aid Legis.*, 9 Op. O.L.C. 76, 78 (1985) (recognizing "need for reorganization legislation in order to restructure or consolidate agencies within the Executive Branch"); *President's Authority to Promulgate a Reorganization Plan Involving the Equal Employment Opportunity Commission*, 1 Op. O.L.C. 248, 250 (1977) ("reorganization plan may not transgress the limitations set forth" in reorganization legislation).

positions the Administration deems "required" by statute. *Supra* at 8-11; App. 2a, 67a-68a, 79a. The "lack of historical precedent" for unilateral Presidential assertion of reorganization authority is a "telling indication of the severe constitutional problem" with the government's claim of sweeping presidential authority. *Free Enter. Fund*, 561 U.S. at 505 (quotations omitted); *see also N.L.R.B. v. Noel Canning*, 573 U.S. 513, 524 (2014) ("[L]ong settled and established practice is a consideration of great weight in a proper interpretation of constitutional provisions regulating the relationship between Congress and the President." (quotations omitted)).

The Government portrays this case as solely about agencies' authority to conduct RIFs, and thereby seeks to disentangle these RIFs from the reorganization of the federal government ("a RIF is not a reorganization," App. 26). But Respondents are not the ones that connected *these* RIFs with reorganization of the government—that was done by the President and his implementing agencies. The EO's stated purpose, which applies equally to its sections mandating RIFs and requiring the simultaneous creation and submission of a reorganization plan within 30 days, is to "commence[] a critical transformation of the Federal bureaucracy." App. 4a. The President contemporaneously explained that the EO would require "large-scale reductions in force and determine which agency components (or agencies themselves) may be eliminated or combined." Doc. 100 at 5 (White House Fact Sheet (Feb. 11, 2025)). OMB and OPM then required each federal agency to implement the EO by combining their proposals into the same *Agency RIF and Reorganization Plan,* which utilize the RIFs as a tool to effectuate reorganization. *Supra* at 8-9. In other words, *these* RIFs serve the purpose of the Executive's reorganization, which could not be accomplished without them. So while RIFs do not always effectuate a reorganization, the RIFs ordered by this EO indisputably do. *Supra* at 8-10; App. 79a, 81a-82a.

As such, the actions the EO and Memorandum require fall squarely within the expired 5 U.S.C. §903 reorganization authority—which defined "reorganization" to

include changes both between *and* within agencies (including "the abolition of all or a part of the functions of an agency" and "the consolidation or coordination of part of an agency or the functions thereof with another part of the same agency," *id.* (a)(2), (4)). Notably, this most recent delegation also made clear that the President requires congressional authority to reorganize "discretionary" functions, by providing authority to the President *only* for such proposals, and prohibiting proposals to reorganize mandatory functions. *Id.* (a)(2) ("except that no enforcement function or statutory program shall be abolished by the plan"); *see also* App. 84a-85a.[30]

Even if this case were only about RIFs, moreover, the President's Article II power does not extend to mass terminations of rank-and-file civil service employees. *See Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 218 (2020); *Morrison v. Olson*, 487 U.S. 654, 673-75 (1988); *United States v. Perkins*, 116 U.S. 483, 485 (1886); *Free Enter. Fund,* 561 U.S. at 507 ("Nothing in our opinion, therefore, should be read to cast doubt on the use of what is colloquially known as the civil service system within independent agencies."); *Hilton v. Sullivan*, 334 U.S. 323, 332 (1948) ("seniority rights" during RIF "depend entirely upon congressional acts" and implementing regulations).[31]

As the Court has emphasized: "To Congress under its legislative power is given the establishment of offices . . . [and] the determination of their functions and

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[30] 5 U.S.C. §§901, 903(a). Under that authority, Congress required the President to detail how any proposed changes would comport with agencies' statutory requirements and funding levels. *Id.* §903(b). But the Government's theory, that the President requires no congressional authorization to order agencies to terminate non-statutorily-mandated functions, would render superfluous the oft-renewed reorganization authority, and the work of Presidents past to obtain and use it. *See* App. 13a, 39a-44a; *see also e.g.*, President Franklin Roosevelt, *Message to Congress on the Reorganization Act* (Apr. 25, 1939), *available at*: https://www.presidency.ucsb.edu/node/209555; Cong. Rsch. Serv., R42852 at 20 ("During this four-year period, President Truman submitted 41 reorganization plans to Congress."); *id.* at 25 ("Between the first reauthorization of the 1949 act, at the beginning of the Dwight D. Eisenhower Administration in 1953, and its final expiration in 1973, during the second term of President Richard M. Nixon, 52 reorganization plans were submitted to Congress.").

[31] Indeed, the Government recently told this Court that the President would be harmed by the inability to remove agency heads, because "*[a]gency heads*" (not the President) "*control hiring and firing decisions for subordinates*." *Bessent v. Dellinger*, No. 24A790 (U.S.) (Feb. 16, 2025 Application to Vacate and Request for Administrative Stay), at *27 (emphases added)).

jurisdiction." *Myers v. United States*, 272 U.S. 52, 129 (1926); *see Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., OSHA*, 595 U.S. 109, 117 (2022) (federal agencies are "creatures of statute"); *Free Enter. Fund,* 561 U.S. at 500 ("Congress has plenary control over the salary, duties, and even existence of executive offices."). The Government does not argue that Article II grants the President his own such authority, and concedes that Congress has not granted this President this authority by statute.[32] The lower courts were correct that neither the Constitution nor any statute gives to the President the authority assumed in this EO. App. 38a, 78a.

The Government therefore relies on the President's general authority, pursuant to his Article II duty to take care that Congress's laws are faithfully executed, to supervise agencies' exercise of their *own* statutory authority. App. 21-29. The President's "supervisory" Article II power cannot, of course, accrete to the President the authority to change or ignore the laws that govern those agencies any more than the agencies can change or ignore those laws themselves. *Youngstown,* 343 U.S. at 587 ("[T]he President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker."); *Clinton v. City of New York*, 524 U.S. 417, 438 (1998) ("[N]o provision in the Constitution [] authorizes the President to enact, to amend, or to repeal statutes.").[33] The Government thus concedes that the President's supervisory authority extends no further than agency statutes. App. 21-29.

The lower courts were also correct in concluding that Respondents are likely

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[32] The Government gestures at the President's delegated authority to create "admission" regulations for the civil service (including "the fitness of applicants as to age, health, character, knowledge, and ability for the employment sought") in 5 U.S.C. §3301, but the plain language does not authorize eliminating offices, functions, or positions; nor did the President invoke this authority. App. 1a.

[33] Respondents take no issue with the basic principles, cited by the Government, that the President is "responsible for the actions of the Executive Branch" (*United States v. Arthrex, Inc.*, 594 U.S. 1, 11, (2021) (cited at App. 23), and exercises administrative and supervisory authority, as part of the President's duty to "take care" the laws created by Congress are faithfully executed (*Seila Law*, 591 U.S. at 203) (cited at App. 22). The problem with the Government's Article II argument is that this EO does not execute existing law; it changes it, as explained herein. *See Youngstown*, 343 U.S. at 588 (holding Executive Order unconstitutional because "[t]he President's order does not direct that a congressional policy be executed in a manner prescribed by Congress—it directs that a presidential policy be executed in a manner prescribed by the President").

to prevail because nothing in the agencies' authorizing statutes (or the APA, which plainly governs agency action here) permits a reorganization of this size and scope. The Government's argument that the actions the EO and Memorandum require fall within agencies' existing statutory authority fails for at least the following reasons.

a. Without congressional authorization, agencies cannot transfer functions to *other* agencies, including to OMB, OPM, or DOGE. *Supra* at 7; *United States v. Giordano*, 416 U.S. 505 (1974); *Halverson v. Slater*, 129 F.3d 180 (D.C. Cir. 1997). Yet the record is uncontroverted that functions and programs *are* being transferred between agencies (Doc. 70 at 3 n.3; Doc 101-1 at 7; *see* Doc 37-1 at 12-29; *supra* at 11), *and* that the President has transferred all agencies' authority to make organization and personnel decisions to OMB and OPM, which along with DOGE have overridden agencies' decisions (Doc. 120 at 2 & n.2 (OMB, OPM, and/or DOGE rejected at least *four agencies' ARRPs* for insufficient cuts); App. 46a-47a). The Government defends this transfer of agency authority based on the President's authority to supervise agencies and to delegate his own authority to OMB and OPM. App. 28. But the President's supervisory authority has never been understood, as the Government now contends, to permit transferring functions delegated by Congress *between* agencies (defying 100 years of history discussed above). *Supra* at 7-10. Neither agencies nor the President can rewrite the statutes governing OMB and OPM, *infra* at 27-28, as well as the agencies' authorizing statutes, without congressional authorization.

b. Next, the EO and Memorandum require agencies to commence RIFs that cut all programs or functions that the President orders be cut, and then to reorganize themselves around those RIFs: "all agency initiatives, components, or operations *that my Administration suspends or closes*." *Supra* at 8. This is a categorical order, given without regard to agency requirements or consideration of relevant factors as to *either* the decision to "suspend" or "close" such operations or the resulting RIF. But agencies are required to engage in reasoned decision-making and provide a "reasoned

explanation" for their actions; they may not defy or abuse their own statutory authority, regardless of whether they are acting at the President's direction. *See Dep't of Com. v. New York*, 588 U.S. 752, 781, 785 (2019) (recognizing agency decisions are often "prompted by an Administration's priorities" or "presence of Presidential power," and holding nevertheless the agency must provide "reasoned explanation"); *Citizens to Pres. Overton Park v. Volpe*, 401 U.S. 402, 411 (1971) (discretion in implementing program does not include freedom to ignore reasoned decision-making).

The EO's categorical directive *necessarily* precludes reasoned decision-making, and requires agencies to disregard their own governing authorities (including the APA), by mandating the closure of programs and functions regardless of whether they are statutorily authorized and funded by Congress, for the sole purpose of workforce reduction.[34] App. 82a-83a. Indeed, the EO and Memorandum give no reason or purpose for these actions *other* than reducing the size of government. *Supra* at 17; *cf. New York v. Trump*, 133 F.4th 51, 68 (1st Cir. 2025) (denying stay of injunction halting OMB and agency implementation of President's "funding freeze" Executive Order, where evidence demonstrated "funding freezes were categorical in nature, rather than being based on 'individualized assessments of their statutory authorities and relevant grant terms.'"); *see* App. 49a-50a (finding that "agencies have interpreted the directives from the President and OMB, OPM, and DOGE to require these cuts"). When the President relies on agency authority to carry out his own policy

[34] The Government has never disputed that the programs, functions, and positions that the EO and Memorandum require agencies to eliminate have all been authorized and fully appropriated by Congress. It singles out the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) (which was dismantled by President Trump), to argue that the courts below were wrong about the elimination of statutory programs, contending that OFCCP was created and eliminated by Executive Order. App. 27 n.3. But OFCCP's own website lists its statutory functions: "Requirements under Section 503 of the Rehabilitation Act, 29 U.S.C. 793, and the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), 38 U.S.C. 4212, both enforced by OFCCP, are statutory and remain in effect." https://www.dol.gov/agencies/ofccp. Those statutes require government contractors to employ qualified veterans and disabled individuals, and direct the Department to enforce those mandates. 38 U.S.C. §4212(b); 29 U.S.C. §793(b); *see* 41 CFR §60-300, Subpart D (specifying OFCCP's role in VEVRAA enforcement and complaint procedures); 41 CFR §60-742.5 (regulations for processing employment discrimination complaints filed with OFCCP). It was not speculative for the lower courts to determine that cutting 90% OFCCP staff would disrupt those statutory functions. *See* App. 82a.

initiatives—including workforce reduction—he cannot lawfully order agencies to ignore the laws that constrain and inform agency function, and jettison reasoned agency decision-making. *E.g., Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395-96 (2024) (APA requires agencies to engage in "reasoned decisionmaking"); *Dep't of Com.*, 588 U.S. at 785 (same); *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16 (2020) (same); *Michigan v. E.P.A.,* 576 U.S. 743, 750 (2015) (same).

c. The EO and Memorandum impose a second and equally unlawful categorical order by requiring agencies to eliminate to the "maximum extent" any functions and positions that are "discretionary" and therefore authorized but not "required" by statute. *Supra* at 9 (EO, App. 2a: "All offices that perform functions not mandated by statute or other law shall be prioritized in the RIFs"; Memorandum, App. 5a: "Pursuant to the President's direction, agencies should focus on the maximum elimination of functions that are not statutorily mandated").[35]

This across-the-board directive again removes the decision (to eliminate discretionary functions and positions) from reasoned agency decision-making that properly accounts for relevant factors. Of necessity, when Congress has assigned powers and responsibilities to federal agencies, it has always included a broad measure of discretionary functions beyond those specifically mandated or named by Congress in those statutes. *See generally Loper Bright*, 603 U.S. at 394 ("In a case involving an agency, of course, the statute's meaning may well be that the agency is authorized to exercise a degree of discretion. *Congress has often enacted such statutes*.") (emphasis added). Some statutes "empower an agency to prescribe rules to fill up the details of a statutory scheme"; others "expressly delegate to an agency the authority to give

[35] Tellingly, the EO and Memorandum instruct agencies to use government shutdown level staffing as the starting point for these RIFs. *Supra* at 8. Government shutdown levels of staffing, *by definition*, cannot support agency functions, and this instruction therefore necessarily defies statutory requirements. *E.g.*, Dep't of Commerce, Plan for Orderly Shutdown Due to Lapse of Congressional Appropriations (Sept. 27, 2023), *available at*: https://www.commerce.gov/sites/default/files/2023-09/DOC-Lapse-Plan-2023.pdf; *see* 31 U.S.C. §1341.

meaning to a particular statutory term"; and others "regulate subject to the limits imposed by a term or phrase that leaves agencies with flexibility." *Id.* at 394-95 (quotations and citations omitted). Congress sets the boundaries of that authority, including the factors the agency may consider when deciding how—and whether—to exercise it. That Congress has given to a federal agency the discretion to fill in the details as to how a statute is to be implemented does not mean that Congress views all such functions (and those who perform them) as *optional*. Otherwise, agencies (whether acting at the direction of the President or otherwise) could sweepingly re-write their authorizing agency statutes to narrow agency function *only* to those "required" by statute, eliminating those Congress has authorized and funded. Agencies cannot effectively re-write the statutes that govern them in such a manner.

d. The Government also misconstrues agencies' statutory authority to conduct RIFs. The Government contends that this authority derives from 5 U.S.C. §3502. App. 22, 24. But section 3502 on its face merely requires agencies to use a particular order of retention when conducting RIFs, and does not purport to provide or define the underlying RIF authority. 5 U.S.C. §3502; 5 C.F.R. Pt. 351.[36] The same is true of the historical statutes and case law the Government cites: they all pertain to retention preference. *E.g.*, Ch. 287, §3, 19 Stat. 143, 169 (Aug. 15, 1876); *see* Veterans' Preference Act of 1944, Pub. L. No. 78-359, §12, 58 Stat. 390 (predecessor of 5 U.S.C. §3502); *Hilton*, 334 U.S. at 338 (addressing veteran preference). When Congress has authorized workforce reduction, it has done so through specific legislation. *Supra* at 6-7.

Agencies' authority to conduct internal RIFs can only be reasonably understood as derived from—and thus limited by—their general discretion to establish positions to carry out their congressionally assigned and appropriated functions,

[36] OPM's implementing regulations cannot grant greater RIF authority than the statute. *See Loper Bright*, 603 U.S. at 391-92. Further indication that Section 3502 should not be interpreted to grant the President any particular RIF authority is its provision assigning a single specific task to the President (shortening the notice period upon written request by agency head, 5 U.S.C. §3502(e))—which shows that when Congress wanted to delegate Section 3502 authority to the President, it did so explicitly.

consistent with the general "housekeeping" and "authority to employ" statutes. *E.g.*, 5 U.S.C. §§301, 3101.[37] Thus, prior administrations have addressed large-scale workforce reduction as part of a dialogue with Congress—not, as the Government inaccurately asserts, through unilaterally ordered government-wide RIFs. *See* App. 3, 8-9; *supra* n.5; App. 80a. The cited 1993 action, App. 3, 9, 27, directed reduction through attrition and buyouts, not RIFs, and President Clinton obtained congressional authorization for the plans. Federal Workforce Restructuring Act of 1994, Pub. L. No. 103-226, 108 Stat. 111 (1994).[38] Likewise, from the outset of presidential reorganization authority, Congress has expressly addressed the RIF authority and personnel action corresponding to the needs of a reorganization. *Supra* at 5.

Section 3502 cannot reasonably be read to implicitly give agencies (or the President) authority to do what the EO requires: eliminate programs and functions without any real consideration of need or purpose, and rewrite statutes to jettison authorized functions and maintain only those *expressly* required. *Supra* n.17; *see Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001) (Congress does not "hide elephants in mouseholes"). Simply put, that Congress intended RIFs in some circumstances does not mean agencies are therefore authorized to conduct RIFs in *any* circumstances.

*Nixon v. Fitzgerald*, 457 U.S. 731 (1982), also does not support the Government's proposed logical leap (that *any* RIF authority means unlimited RIF authority). App. 3, 22-23. *Fitzgerald* interpreted an Air Force housekeeping statute (but the

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[37] *See, e.g.*, *Chrysler Corp.*, 441 U.S.at 310-11. Tellingly, the Government's "foremost" argument to the Court of Appeals was that the housekeeping statute (5 U.S.C. §301) authorized agencies to organize "as they see fit." Supp. Emergency Mot. for Stay Pending Appeal, No. 25-3293 (9th Cir. May 23, 2025), Doc. 4.1 at 13. The Government wisely drops that argument, because *some* ministerial internal organization authority does not mean *all* reorganization or RIFs are authorized. Faced with that argument's limitations, the Government cites no actual underlying source of authority for RIFs at all.

[38] Exec. Order No. 12839, §1, 58 Fed. Reg. 8515 (Feb. 10, 1993) (to achieve personnel targets, positions "shall be vacated through attrition or early out programs"); House Rep. 103-386, 1994 U.S.C.C.A.N. 49, 52 (Nov. 19, 1993) (OMB "bulletin specified that neither it nor the Executive Order [No. 12839] . . . required agencies to undergo reductions-in-force.").

Government does not now rely on such statutes, *supra* n.37). Further, the quoted passage (App. 2-3) states: "It is clearly is within the President's constitutional and statutory authority to prescribe the manner in which *the Secretary will conduct the business of the Air Force*." *Id*. at 757 (citing 10 U.S.C. §8012(b), now codified at 10 U.S.C. §9013(g) (emphasis added)). The President's (greater) constitutional authority over military departments (which are not subject to this EO) is not at issue here. *See* 5 U.S.C. §102 (defining military departments); *id.* §105 (defining agencies to exclude military departments). And as the Court of Appeals noted: "Indeed, if *Fitzgerald* did straightforwardly confer such reorganizational authority to the President, it is difficult to understand why President Trump sought that authority from Congress in 2018" (or, likewise, any President before him across a century). App. 86a-87a.

e. Finally, the Government repeatedly asserts that the EO and Memorandum instruct agencies to comply with the law in implementing the EO. App. 20-23. But this reliance on savings clause language does not save this EO or the Memorandum. App. 89a ("Any language in the Executive Order or Memorandum purporting to limit their directives to what is statutorily authorized is belied by other language in these documents."). The EO cannot sustain a reading in which its "specific provision[s]" would be "swallowed by the general one." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012). The *carte blanche* directive the President imposed through this EO sets agencies on a collision course with Congress's direction, at a minimum because the EO forecloses agencies' reasoned decision-making; impermissibly expands OMB and OPM's authority; orders agencies to cut required programs; and eliminates all agency functions that the President and his agents decide are discretionary, without any regard to congressional authorization.

* * *

The lower courts' determination that a pause in implementation of this EO is warranted preserves the ability of the judicial branch to reestablish the proper

balance of authority between Congress and the executive branch. App. 39a-42a, 80a-87a. That balance reflects the "ongoing institutional relationship as the 'opposite and rival' political branches established by the Constitution" that are still fated to work together. *Trump v. Mazars USA, LLP*, 591 U.S. 848, 866 (2020) (quoting The Federalist No. 51, at 349)). As discussed, both the President and Congress have roles to play in the structure and maintenance of executive agencies and the federal workforce. *See* Elena Kagan, *Presidential Administration*, 114 Harv. L. Rev. 2245, 2347 (2001) ("[P]residential control and legislative control of administration do not present an either/or choice."). The President had several options to effectuate his goals—the regular legislative process, the budget process, or reauthorization of reorganization authority. But unilateral, *independent* action is not among them. *See Youngstown*, 343 U.S. at 635 (Jackson, J., concurring) ("While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity."); *Buckley v. Valeo*, 424 U.S. 1, 121-22 (1976) ("[T]he Constitution by no means contemplates total separation of each of these three essential branches of Government. . . . [A] hermetic sealing off of the three branches of Government from one another would preclude the establishment of a Nation capable of governing itself."); *United States v. Nixon*, 418 U.S. 683, 707 (1974) ("[T]he separate powers were not intended to operate with absolute independence.").

The precise scope of and limits on the President's proper exercise of Article II authority to direct agencies to exercise their own delegated statutory authority where Congress has pointedly not delegated such authority to the President is a question for another day: in certain cases, "[w]e have no need to fix a line . . . . It is enough for today that wherever that line may be, this [action] is surely beyond it." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 585 (2012). Given the complexity, novelty, and importance of these constitutional questions, the Court should not, by granting a

stay, act "on a short fuse without benefit of full briefing and oral argument" in a case that is "the first to address the questions presented." *Does 1-3*, 142 S. Ct. at 18 (Barrett, J., concurring in denial of application for injunctive relief).

### B. OMB and OPM have also likely exceeded their authority and violated the APA

The District Court and Court of Appeals also correctly held that Respondents are likely to prevail on claims that OMB and OPM's actions directing federal agencies to create and implement ARRPs on incredibly truncated timeframes, and to obtain approval from OMB and OPM for those plans, exceeded their authority and violate the APA. App. 43a-46a, 52a-54a, 87a-93a.

1. No statute authorizes OMB and OPM's actions. App. 87a.[39] OMB's authorized functions do not include wielding final decision-making authority over other agencies' reorganization and RIF plans. *See* 31 U.S.C. §§501-507; App. 45a, 87a. The Government cites 31 U.S.C. §503, which authorizes OMB to "establish general management policies for executive agencies" and to "[f]acilitate actions by the Congress and the executive branch to improve the management of Federal Government operations." 31 U.S.C. §503(b) and (b)(4); *see* App. 23. But that provision does not authorize OMB to require agencies to reorganize or RIF employees (or to do so in particular timeframes or scale or scope), or to make substantive decisions for other agencies on matters Congress did *not* delegate to OMB.

OPM does not have authority to make RIF or reorganization decisions either. Congress delegated to OPM the creation of retention order rules, not the authority to determine whether, what, or when to RIF. 5 U.S.C. §3502; *see also* 5 C.F.R. §351.201 ("Each agency is responsible for determining the categories within which positions are required, where they are to be located, and when they are to be filled, abolished, or vacated"); *contra* App. 23. Congress gave employment authority to the federal

[39] The District Court also correctly concluded that DOGE has *no* statutory authority, including to direct agency program or spending cuts. App. 44a-46a.

agencies, not to OPM, 5 U.S.C. §3101, and nothing in OPM's general authorities supplants that.[40] No statute or the regulation gives OPM general decision-making authority over "the termination of employees from, or the restructuring of" other federal agencies outside of OPM." App. 44a-45a.

The Government seeks to reargue the facts to claim OMB/OPM merely provided interagency "guidance." App. 23-24, 28. But that argument disregards the plain language of the EO and Memorandum, the District Court's factual findings, and the uncontroverted evidence. App. 46a-49a, 87a-88a; *supra* at 8-9. The Government cannot hide from the District Court's findings based on this record, particularly when the Government refused to rely on any facts. *Supra* at 15.[41]

Finally, the Memorandum cites no source of authority for OPM and OMB's imposition of requirements on the agencies other than the EO itself, a justification the Government embraces. App. 28. But because sections 3(c) and 3(e) of the EO are unlawful, OMB and OPM have no derivative lawful authority to implement these unconstitutional directives.

2. Because OMB and OPM acted without authority, their actions also exceed statutory authority under the APA. App. 54a, 92a-93a; 5 U.S.C. §706(2)(A), (C). Further, the Memorandum imposes rules that should have been subject to notice-and-comment prior to implementation. App. 28-29; *see Perez v. Mortg. Bankers Ass'n*,

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[40] The Government miscites all of OPM's statutory authority. App. 24. Section 3502 is not general authority; it is directed to rules "which give due effect to" the retention preference statute. *Id.* (authorizing "such regulations as may be necessary to carry out this subsection"). Section 1302 is not general authority with respect to "retention"; it directs OPM to "implement the *Congressional policy that preference shall be given to preference eligibles* . . . in appointment, reinstatement, reemployment, and retention." *Id.* (emphasis added). Assisting with general administrative rules for the civil service plainly does not extend to directing agencies to reorganize or RIF. 5 U.S.C. §§1101-1105, 1301.

[41] The Government hypothesizes that perhaps the agencies revised their proposed plans to cut more positions and functions than they initially recommended, not because OMB and OPM (unlawfully) disapproved their plans and directed them to do so, but because they "concur in the assessment that those plans fail to satisfy the President's objectives." App. 28. But the District Court did not err in making factual findings based on the evidence before it, as opposed to speculation. Moreover, the APA, discussed *infra*, requires the Government to identify *facts*, not conjecture, underlying its actions. *Dep't of Com.*, 588 U.S. at 780 (describing the "settled proposition[]" that "[i]n order to permit meaningful judicial review, an agency must disclose the basis of its action") (quotations omitted); *see also id.* at 785 ("Accepting contrived reasons would defeat the purpose of the enterprise.").

575 U.S. 92, 95-96 (2015).[42] And although the District Court deferred ruling on this issue, OMB and OPM also engaged in arbitrary and capricious action, by imposing unworkable timeframes and mandating RIFs and reorganization for the sole purpose of workforce reduction at the expense of reasoned agency decision-making.

3. These APA violations are reviewable. The lower courts properly concluded that the Memorandum is a final agency action under the APA. App. 52a-53a, 90a-92a; *contra* App. 20-21. The Government's counter-argument that these documents merely provide guidance is wrong, for reasons previously discussed. *Supra* at 8-9; App. 91a-92a; *see Appalachian Power Co. v. E.P.A.*, 208 F.3d 1015, 1023 (D.C. Cir. 2000) (self-styled agency "guidance" was final action because "it requires, it orders, it dictates" certain actions and the evidence showed it was being enforced); *Nat. Res. Def. Council v. E.P.A.*, 643 F.3d 311, 320 (D.C. Cir. 2011) (similar).

As discussed, OMB and OPM have assigned to themselves and thereby usurped statutory delegations of decision-making to agencies. *Supra* at 27. The Memorandum thus plainly alters the legal regime and "mark[s] the consummation of [OMB's and OPM's] decisionmaking process" on that question. *U.S. Army Corps of Eng'rs v. Hawkes Co.*, 578 U.S. 590, 597 (2016) (agency determination that was binding on other agencies was final agency action).

OMB and OPM's "approvals" of agencies' ARRPs are also reviewable final agency actions—and tellingly, the Government does not argue otherwise. *See* App. 20-21. OMB/OPM's approvals of ARRPs are "a necessary triggering step in the agencies' current RIF and reorganization processes." App. 92a (quoting District Court). Those approvals are not "merely tentative or interlocutory," but are meant to be implemented. *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (biological opinion

[42] The Government cannot save OMB/OPM from their procedural APA violations by claiming this is merely a "guidance," for reasons previously explained, or by invoking the "personnel" exception to APA notice-and-comment requirements in Section 553(a)(2) (App. 28-29), because that exception expressly *does not apply* to government-wide rules promulgated by OPM. *See* 5 U.S.C. §1105.

was final when it "authoriz[ed]" the "action agency" to "take the endangered species if (but only if) it complies with the prescribed conditions"). And because Respondents challenge "specific" and "particular" actions by OMB and OPM (the Memorandum and ARRP approvals), this is not an impermissible "programmatic" attack. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 891 (1990).

### C. Congress did not by implication remove federal jurisdiction over Respondents' constitutional and APA claims

The Court of Appeals and District Court correctly held that Congress has not implicitly removed subject matter jurisdiction over Respondents' claims. App. 28a-37a, 71a-77a; *see Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 383 (2012) ("[J]urisdiction conferred by 28 U.S.C. §1331 should hold firm against 'mere implication flowing from subsequent legislation.'"); *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976) (describing "virtually unflagging obligation of the federal courts to exercise the jurisdiction given them").

The Government argues that no plaintiff can bring the claims in this case to federal court, because Congress either (1) implicitly sent those claims to administrative agencies (for federal employee representative Respondent unions), citing *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994); or (2) implicitly foreclosed these claims *entirely* (for Respondent cities and counties, non-profit organizations, and unions representing non-federal employees), citing *United States v. Fausto*, 484 U.S. 439, 447-49 (1988). Neither is correct.

First, as an initial matter, this Court has never endorsed the Government's sweeping argument that, because Congress created administrative agencies to handle *some* employees' claims involving their federal employment, *all* claims challenging the legality of orders or decisions impacting federal employees are implicitly excluded from federal court. To the contrary, this Court recently cautioned, "a statutory review scheme [that precludes district court jurisdiction] does not

necessarily extend to every claim concerning agency action." *Axon Enters., Inc. v. FTC*, 598 U.S. 175, 185 (2023). The Government's authorities all address employees' claims against their employing agencies regarding specific employment actions. *See Elgin v. Dep't of the Treasury*, 567 U.S. 1, 10 (2012); *Fausto*, 484 U.S. at 440-42. And as the Court of Appeals observed, "[i]t is telling that in nearly every case cited by Defendants in which a court channeled a constitutional or statutory claim through the CSRA, the plaintiffs raised at least one claim properly within the unquestioned jurisdiction of the MSPB or FLRA." App. 73a.

Second, all Respondents bring claims that differ from those the statutory schemes are authorized to address (and are thus not attempting to evade the appropriate process for such claims). App. 73a; *contra* App. 16-17. Neither the Civil Service Reform Act ("CSRA") nor Federal Labor-Management Relations Statute ("FSLMRS") established a "comprehensive system for reviewing" presidential and other executive actions reorganizing agencies, eliminating offices or functions, or OMB/OPM decisions mandating and approving such plans. Instead, the CSRA established a mechanism for review of particular personnel actions by the Merit Systems Protection Board ("MSPB"), including whether such actions are compliant with the civil service laws.[43] *Cf. Fausto*, 484 U.S. at 455 (CSRA "establishe[s] a comprehensive system for reviewing *personnel action*") (emphasis added); *Elgin*, 567 U.S. at 10 (applying channeling doctrine to "*covered* employees appealing *covered* agency actions") (emphasis added). And the Federal Labor Relations Authority ("FLRA") does not hear any and all legal claims brought by federal unions; it resolves specific unfair labor practices and bargaining disputes with contracting agencies, and cannot hear disputes arising from "government-wide" action or rules, per 5 U.S.C. §7117(a)(1). *See*

[43] *See* 5 U.S.C. §7701(a) (MSPB appeals limited to "employee" or "applicant" claims challenging agency actions); *id.* §7703(a)(1) (appeal rights similarly limited); *id.* §7103(a)(1) (FLRA: grievances by "individual, labor organization," against agency); *id.* §7118(a)(1) (FLRA: unfair labor practice by labor organization or agency); *id.* §7123(a) (FLRA: appeal rights similarly limited); *id.* §7117(a)(1) (FLRA: excluding "[g]overnment-wide" action).

*NTEU and Dep't of Treasury*, 60 F.L.R.A. 782, 783 (2005). The Government does not contend that these agencies can hear constitutional and APA claims against the President, OMB, OPM, or DOGE, because they cannot. App 16-20; App. 73a.

The Government tries to shoehorn Respondents' claims into channeling doctrine by mischaracterizing them as challenging only specific RIF decisions. But the shoe does not fit. The EO, Memorandum, and agency ARRPs are not covered employment actions. *Cf., e.g.*, *Feds for Med. Freedom v. Biden*, 63 F.4th 366, 375 (5th Cir. 2023) (en banc), *judgment vac'd as moot*, 144 S. Ct. 480 (2023) (holding that challenge by employee organizations, including union, to government-wide federal employee vaccination mandate was not channeled to MSPB or FLRA). Congress did not intend for these claims to be adjudicated by agencies that cannot hear them. *See*, *e.g.*, *Axon*, 598 U.S. at 195 ("[A]gency adjudications are generally ill suited to address structural constitutional challenges."); *Free Enter. Fund*, 561 U.S. at 490.

Third, with respect to Respondents' APA claims, far more textual indication of congressional intent is needed before interpreting the CSRA or FSLMRS to implicitly override the "command" of APA review. App. 76a; *Dep't of Com.,* 588 U.S. at 771-72. Time and again, this Court has held that APA exceptions to judicial review must be read "'quite narrowly.'" *Regents*, 591 U.S. at 17 (quoting *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 586 U.S. 9, 23 (2018)); *Dep't of Com.*, 588 U.S. at 771-72; *Hawkes Co.,* 578 U.S. at 601-02. Notably, the Congress that enacted the CSRA and FSLMRS referenced the APA at least three times (5 U.S.C. §§1103, 1105, 7134) and for this reason as well cannot be said to have silently foreclosed the bedrock principle of APA review. *See Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018) ("A party seeking to suggest that two statutes cannot be harmonized, and that one displaces the other, bears the heavy burden of showing a clearly expressed congressional intention that such a result should follow." (citation omitted)).

Fourth, under *Thunder Basin*, for the reasons explained, there can be no

administrative or judicial review, let alone "meaningful" review, of these claims. 510 U.S. at 207-13; App. 72a-73a, 76a. Besides, there could be no meaningful review when, as here, after a prolonged administrative process, employees "would return to an empty agency with no infrastructure to support a resumption of their work." App. 34a (quotations omitted); App. 76a-77a. And even if these agencies could hear claims against the President, this Court's decision in *Trump v. Wilcox*, 145 S. Ct. 1415, 1415 (2025), holding the President likely to prevail on a constitutional challenge to for-cause removal restrictions on members of independent agencies including the MSPB (which would by logical extension also apply to the FLRA), renders meaningless the review of claims against the President who has the power to fire the adjudicator at will.

As far as the other *Thunder Basin* factors, Respondents' APA and "separation-of-powers claim[s]" are based on the President's and his implementing agencies' lack of authority, arbitrary and capricious actions, and failure to comply with required procedures—issues that are "wholly collateral" to the statute's review provisions. *Axon*, 598 U.S. at 186, 191; *see also Feds for Med. Freedom*, 63 F.4th at 369; App. 74a. And the constitutional and administrative law issues that Respondents raise fall far outside the agencies' expertise. *Loper Bright*, 603 U.S. at 399; *Axon*, 598 U.S. at 190-96; *Free Enter. Fund*, 561 U.S. at 490; *Carr v. Saul*, 593 U.S. 83, 92 (2021); App. 75a.

Finally, the Government's argument that Congress silently foreclosed the local government and non-profit organization Respondents (as well as unions representing non-federal employees) from *ever* obtaining adjudication of their constitutional and APA claims, by *any* body, is wrong. App. 77a. The Government relies on *Fausto*, but *Fausto* does not foreclose every third-party claim involving government-wide action simply because it has an impact on federal employment. 484 U.S. at 445. *Fausto* addressed the question whether Congress intended the "withholding of remedy" to particular employees who were identified expressly in the CSRA to foreclose

additional relief using the Back Pay Act service. *Id.* at 443, 448 ("It seems to us evident . . . that the absence of provision for these employees to obtain judicial review is not an uninformative consequence of the limited scope of this statute, but rather manifestation of a considered judgment."). Nothing in *Fausto* suggests Congress intended to foreclose claims by plaintiffs *not* expressly identified in the statute.[44]

*Block v. Community Nutrition Institute*, 467 U.S. 340 (1984), which precluded consumers from challenging regulatory milk pricing market orders, where the regulatory regime permitted only milk handlers and producers to participate, allowed consumers to participate only by notice and comment, and precluded injunctions, is likewise inapposite. App. 20. As this Court more recently explained, "the mere fact that some acts are made reviewable should not suffice to support an implication of exclusion as to others. The right to review is too important to be excluded on such slender and indeterminate evidence of legislative intent." *Bowen v. Mich. Acad. of Fam. Physicians*, 476 U.S. 667, 674 (1986) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 141 (1967)) (brackets removed). In fact, even when an agency adjudication scheme established by Congress provides a path to eventual judicial review, this Court has refused to deem APA review impliedly precluded, and the holding the Government seeks here conflicts with this doctrine. App. 76a. "[I]f the express provision of judicial review in one section of a long and complicated statute were alone enough to overcome the APA's presumption of reviewability for all final agency action, it would not be much of a presumption at all." *Sackett v. E.P.A.*, 566 U.S. 120, 129 (2012); *accord Hawkes,* 578 U.S. at 601-02. Implied doctrines cannot be so divorced from statutory text (which sets forth procedures the Government admits these Respondents cannot invoke, App. 19-20). *E.g.*, *Loper Bright*, 603 U.S. at 391-92.

[44] The Government also cites *Graham v. Ashcroft*, 358 F.3d 931, 935 (D.C. Cir. 2004) (App. 20), but that case, like *Fausto*, involved an employee suing an employing agency and reached the inapposite conclusion that "the adverse personnel action in this case—a letter of censure—fails to qualify as a major adverse personnel action under Section 7512" and was therefore not reviewable. *Id.*

In sum, federal courts have jurisdiction to hear these claims. This case is not, as the Government portrays, a collection of individual employee challenges to RIFs dressed up in separation-of-powers theories. The Government has it backwards: "[Respondents] are not challenging those employment decisions with respect to individual employees. Rather, they are challenging [the Government's] constitutional and statutory authority to direct the federal agencies to take such actions in the first place." App. 73a. Challenges to the President's EO, and the agency actions implementing that EO, belong in federal court. *Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

**II. The District Court's Preliminary Injunction Is Not Overbroad**

The scope of the preliminary injunction order is appropriately tailored to the harms that the District Court found would result from allowing the government-wide reorganization and dismantlement of federal agencies to proceed—it is "sized to fit the problems presented by th[is] case, no more and no less." App. 57a.

An injunction may be as broad as "necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1970). The unrebutted evidence established nationwide harm caused by the ongoing reductions-in-force in and restructuring of each of the enjoined agencies. *See supra* at 11-15; App. 57a-58a; Docs. 37-3 to 37-59, Doc. 96-1, Docs. 101-3 to 101-10 (68 declarations from 27 Respondents); *see also* Supp.App. 56a-61a. Specifically, the court found hundreds of thousands of federal employees represented by Respondent unions facing harm from terminations from jobs in federal offices and programs at each of the enjoined agencies in locations across the country—as well as, the record showed, heightened workloads and worsening of conditions for those employees who remain. App. 23a-25a, 55a; *see also* App. 93a-94a. And the elimination of agency programs, offices, and functions (and resulting RIFs) would cause delays and losses of critical services on which the Respondent local governments and Respondent non-profit organizations (including unions representing private, county, and state employees) and their members depend, throughout

the country, in a manner that could not be remedied by a narrower injunction. App. 25a-27a, 55a; Doc. 37-1 at 12-29; Doc. 70 at 14 & n.29; Doc. 101-1 at 22-23 & nn.14-16; Doc. 120 at 9-10. Given the existing and imminent injuries to Respondents and their members throughout the country,[45] the injunction would not have been appropriately limited by geography. The size and scope of Respondents' showing of harm was not contested below. Doc 117 at 3 (Government stating it did not "make or rely on any factual representations").

There is also no practical way to remedy the loss and deterioration of government services only for Respondents and their members in a manner that does not also benefit others. The Government asserts that an injunction that provides any relief to non-parties exceeds the power of Article III courts. App. 29. But this Court has long recognized that injunctions may properly benefit nonparties when "necessary to redress the [harm to the] complaining parties," *Califano*, 442 U.S. at 702, and the District Court correctly concluded it would be "impracticable and unworkable" to attempt to grant piecemeal relief enjoining the unlawful reorganization of agencies only to the extent it affects Respondents. App. 57a. For example, the impending nationwide cuts to Commerce's National Weather Service could not be paused in a way that would benefit *only* Respondent cities and counties (which depend on the Service for real-time weather data and expertise, Doc. 37-1 at 16) but not others who similarly need reliable weather information. Pausing reductions in VA, SSA and IRS staff to help preserve access to benefits and services for Respondents' members, *id.* at 25-26, 28-29; Doc. 120 at 9-10; Doc. 37-42 ¶¶20-36, cannot be achieved without protecting services for others as well. For that reason, the appropriate injunctive relief was to

[45] Respondent unions and nearly all the Respondent non-profit organizations have members nationwide. Doc. 101-1 at 23 n.16; Doc. 120 at 9-10. And Respondent cities and counties' injuries derive not only or even mainly from termination of federal employees employed within their geographic boundaries, but from the loss of federal employees, programs, and services throughout the country. Doc. 101-1 at 23 n.16. (evidence from Harris County, San Francisco, King County, Santa Clara County, Chicago, and Baltimore). The District Court only enjoined only the agencies for which Respondents showed actual or imminent injury. App. 57a-58a.

enjoin the unlawful reorganization of agencies where imminent harm had been shown. *Accord Allen v. Milligan*, 599 U.S. 1, 17 (2023) (affirming preliminary injunction of redistricting plan); *Nebraska v. Biden*, 52 F.4th 1044, 1048 (8th Cir. 2022), *affirmed and remanded on other grounds*, 600 U.S. 477 (2023) (declining to limit preliminary injunction of student loan forgiveness program to plaintiff states); *Citizens for Abatement of Aircraft Noise, Inc. v. Metro. Washington Airports Auth.*, 917 F.2d 48, 52, 57 (D.C. Cir. 1990), *aff'd* 501 U.S. 252 (1991) (remanding for issuance of an injunction barring any future action by an unconstitutionally constituted board in case brought by non-profit and two individuals).

The interdependence of agency functions and employees implicated by this EO and these ARRPs further highlights the impracticability of piecemeal relief. FDA food inspectors cannot perform their essential safety inspection functions if the administrative staff who arrange their travel or the lab employees who test their samples are ousted, Doc. 37-17 ¶¶12, 15,[46] and restoration of service providers at the VA will do little good if the employees who ensure accurate medical records, procure necessary equipment, make appointments, and ensure the cleanliness, safety, and operation of facilities are terminated, Doc. 37-5 ¶19; Doc. 37-9 ¶17.[47]

The District Court asked the Government multiple times how the court could formulate an injunction limiting relief to the named plaintiffs, but the Government had no answer, Supp.App. 6a:22-7a:24, 8a:11-17, 8a:18-22, because it simply is not possible to craft a piecemeal injunction that would forestall the injuries to

[46] *See also, e.g.*, Doc. 37-19 ¶22 (work of EPA staff who respond to environmental disasters will be "hamstr[u]ng" by cuts to administrative support staff who arrange transportation, scheduling, and medical monitoring); Doc. 41-4 ¶31 (all administrative support staff at the National Institute for Occupational Safety and Health have been terminated, preventing researchers from conducting workplace investigations); Doc. 37-31 ¶15 (planned cuts to staff who handle travel and other logistical tasks for Food Safety and Inspection Service inspectors).

[47] Of course, rescinding individual employees' RIF notices would do little good if ongoing implementation of the unconstitutional EO meant there is no office or functioning agency to which employees can return. *See also, e.g.*, Doc. 37-27 ¶31 (showing interdependence of different positions at agency); Doc. 37-31 ¶¶15-20 (similar).

Respondents from the gutting of services, elimination of programs and functions, and mass layoffs—but not injuries to others. *See J.D. v. Azar*, 925 F.3d 1291, 1335 (D.C. Cir. 2019) (while district court should narrowly tailor injunction to remedy harm shown, "courts enjoining unconstitutional government policies" are not required "to fashion narrower, ostensibly permissible polices from whole cloth").

The injunction's scope is also the appropriate remedy under the APA, 5 U.S.C. §§705, 706(2); *see also Regents*, 591 U.S. at 9 (holding that agency rescission of a national immigration program "must be vacated"); *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 830-31 (2024) (Kavanaugh, J., concurring) ("[T]his Court has affirmed countless decisions that vacated agency actions . . . rather than merely providing injunctive relief that enjoined enforcement of the rules against the specific plaintiffs.") (collecting cases). The District Court's injunction was appropriate to remedy the harms to Respondents.

## III. The Government Does Not Show the Required Irreparable Injury

Among the "most critical" stay factors is "whether [a stay] applicant will be irreparably injured absent a stay." *Nken*, 556 U.S. at 434 (quotations omitted); *see also Murthy*, 144 S. Ct. at 9 (Alito, J., dissenting from stay) ("the Government must *prove* that irreparable harm is likel[y].") (quotations omitted; emphasis added). That showing of injury may not be based on "bald assertion[s]." *Mullaney v. Anderson*, 342 U.S. 415, 418 (1952).

The Government presented no "evidence showing the anticipated financial impact" of an injunction below. App. 60a; *see also* App. 69a-71a, 56a-57a; *supra* at 15. It now asserts the injunction will delay or disrupt "[d]ozens" of unspecified "RIF actions" affecting an unknown and unspecified number of employees. App. 32. But as the Court of Appeals pointed out, "[i]t has now been over a month since Plaintiffs first filed their complaint," and "Defendants have yet to show the district court—or us—a single piece of evidence in support of its allegation of irreparable injury . . . ." App.

69a; App. 70a. The Government has provided no evidence for any court to examine these factual assertions—as to which and how many employees it would separate if these reorganization decisions, including RIFs, were not enjoined; which agencies and offices those employees work for; and what functions those employees perform—preventing any determination as to whether those functions are revenue-neutral or actually revenue-generating. *See also* App. 70a ("'Mere injuries, however substantial, in terms of money, time and energy necessarily expanded . . . are not enough' to show irreparable injury.") (quoting *Sampson v. Murray*, 415 U.S. 61, 90 (1974)).

The Government's primary contention here—that the injunction interferes with the President's authority to manage the federal government's workforce, App. 31-32—merely reargues the merits. It ignores that the funds for the functions, programs, and offices at issue were already authorized and appropriated. As this Court has repeatedly cautioned, "[a]mong Congress's most important authorities is its control of the purse," which is "a most useful and salutary check upon profusion and extravagance." *Biden v. Nebraska*, 600 U.S. 477, 505 (2023) (quotations omitted); *see also* App. 56a. If the Government is of the belief that the agencies are "*unnecessarily wasting* appropriated funds," App. 33 (emphasis in original), it may employ measures to avoid such waste as long as it respects the statutory and constitutional limits on the authority of the President, OMB, OPM, and DOGE.[48] Requiring the executive branch to operate within those bounds is not cognizable injury. *See* App. 70a-71a ("We do not find that federal agencies suffer significant, let alone irreparable, injury when they simply follow what has already been prescribed by the legislature.").[49]

[48] The Government's objection to the injunction's provision regarding the involvement of OMB or OPM in agency-decision-making, App. 33-34, ignores the District Court's findings that these agencies (along with DOGE) exceeded their statutory authority by asserting authority to review and approve ARRPs, and by *directing* other agencies to eliminate certain programs and functions and requiring deeper cuts. *E.g.*, App. 45a-49a, 53a-54a.

[49] The Government again relies on *Sampson*, 415 U.S. at 91-92, but that case involved an injunction that required reinstatement of an employee who had previously been separated. *Id.* at 75. No such reinstatement is required by the non-stayed portion of this preliminary injunction. The Government's

## IV. The Equities and Public Interest Overwhelmingly Disfavor a Stay

Because the Government is a party, the public interest and balance of equities factors merge. *Nken*, 556 U.S. at 435. The District Court found that the record established Respondents would be irreparably injured without an injunction, and that these factors favored an injunction. App. 57a, 93a-94a.

The Government declined to challenge this evidence or to present contrary evidence. Instead, it argues that this harm may be remedied by back pay and reinstating employees to (now empty) agencies (ignoring the decisions eliminating programs, offices and functions). App. 34-35. But the District Court found otherwise. App. 26a-27a, 93a-94a. As the Court of Appeals pointed out, back pay "does not reinstate entire agency offices and functions," and "does nothing to address the breadth and severity of harm" caused by the loss of government services. App. 95a; *id.* (back pay "cannot account for harms resulting from loss of income in the interim or for gaps in health- and childcare that accompany job loss"); *compare Sampson*, 415 U.S. at 92 n.68 (addressing injury to a single employee, and stating "we do not wish to be understood as foreclosing relief in the genuinely extraordinary situation"). Further, the public has an interest in ensuring that "statutes enacted by [their] representatives" are not imperiled by illegal government action. *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (quotations omitted). The equities and public interest tip decisively against a stay.

## CONCLUSION

The application for a stay should be denied.

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other cases are no more on point: *Department of Education v. California* involved an injunction requiring the reactivation of grants that had been terminated a month before the case was filed. 145 S. Ct. 966, 968-969 (2025) (per curiam); App. to Vacate Order, Case No. 24A910 (Mar. 26, 2025). Moreover, there, the Court noted that the plaintiffs could recover lost funds at a later date, and "ha[d] the financial wherewithal to keep their programs running" in the meantime, so any "irreparable harm would [have] be[en] of their own making." *Dep't of Educ.*, 145 S. Ct. at 969. In *Heckler v. Turner*, 468 U.S. 1305, 1307-08 (1984) (Rehnquist, J., in chambers), the Court stayed an injunction that would have required benefit payouts under an interpretation that Congress had clarified, by statute, was erroneous.

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