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.

REPLY IN SUPPORT OF APPLICATION TO STAY THE ORDER ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

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For a month and counting, a single district court in California has prevented an enormous swath of executive-branch agencies, including 11 Cabinet departments, from exercising their statutory authorities, pursuant to the President's lawful instructions, to reduce and simplify the size and structure of the federal workforce. On May 9 and again on May 22, the district court enjoined applicants from implementing an Executive Order and OPM-OMB Memorandum that, in pursuit of enhanced government efficiency, direct and guide agencies in preparing reductions in force (RIFs) and organizational restructuring. The court entered that universal order, and the Ninth Circuit declined to enter a stay pending appeal, principally because those courts viewed the Executive Order as exceeding the President's authority over the Branch he leads. As the government has explained, that reasoning is fundamentally mistaken. Agencies have well-established authority to carry out RIFs and reorganizations subject to various statutory constraints, see, *e.g.*, 5 U.S.C. 301, 3502, and the President, as the sole constitutional repository of the executive power, see *Seila Law*

LLC v. *Consumer Fin. Prot. Bureau*, 591 U.S. 197, 203 (2020); *Trump* v. *United States*, 603 U.S. 593, 607-609 (2024), has well-established power to supervise and direct agencies in the discharge of those statutory authorities.

In their opposition to the stay application, respondents concede these "basic principles" and all but abandon any defense of the lower courts' rationale. Opp. 19 n.33 (recognizing the President's constitutional authority over his executive-branch subordinates); see Opp. 23 (recognizing "[a]gencies' authority to conduct internal RIFs"). They instead attack reimagined versions of the Executive Order and Memo, claiming that the President, OPM, and OMB have ordered agencies to execute reorganizations and RIFs that inevitably will not comply with their statutory authorities and will be *ultra vires* absent new legislation. Respondents' last-minute pivot only confirms applicants' likelihood of success on the merits.

Neither respondents nor the lower courts have identified any agency plans or actions that would actually violate any statutory requirements, as Judge Callahan noted in her dissent below. Appl. App. (App.) 105a (observing that "the district court failed to analyze and to make findings whether the RIFs likely have resulted or will result in statutory violations"). The reasons why are obvious: Both the Executive Order and Memo direct agencies to comply with all applicable law in streamlining their workforces. See App. 2a, 5a. And respondents brought a premature, government-wide challenge before most agencies had even finalized their RIF and reorganization plans. Indeed, if any of those plans were to end up violating any statutory requirements, that would be *contrary to* the Executive Order and Memo, not *because of* them. There is no basis in law or equity to prohibit most of the federal government from implementing a lawful presidential directive based on speculative fears that some agencies might do so unlawfully and inconsistently with the directive itself.

Moreover, respondents' belated focus on whether the agencies' RIF and reorganization plans will end up violating statutory requirements further confirms that their claims are jurisdictionally barred. Congress deliberately designed an exclusive administrative-review scheme for challenges to an agency's personnel actions. Now that respondents have made their claims dependent on whether the agencies' future personnel actions will violate the statutory authorities governing those agencies, it is even clearer that they cannot evade the scheme merely by also arguing that the anticipated violations were somehow precipitated by the Executive Order and Memo. Nor do respondents have any persuasive explanation why they should be allowed to run directly to federal court based on indirect and speculative injuries flowing from the termination of federal employees when those employees themselves unquestionably must pursue challenges to their separations through the exclusive review process Congress established.

For those and other reasons discussed further below, applicants are likely to succeed in obtaining reversal of the district court's injunction. And there is no meaningful dispute that, if so, the balance of equities in the interim cuts strongly in favor of a stay, given the serious and irreparable harms caused by an injunction interfering with the federal government's efforts to eliminate waste and inefficiency in its workforce. In fact, respondents' contrary arguments on the equities mostly presume that the government is wrong on the merits. Insofar as they independently object that the government should not be able to implement a program with such sweeping consequences before appellate review concludes, they ignore that this Court in recent months has repeatedly granted stays in similar circumstances, including in cases where challengers asserted burdens that were at least as significant as respondents' here. This Court should do so again here.

A. Respondents' Legal Challenges To The Executive Order And OPM-OMB Memo Lack Merit

Applicants are likely to succeed on the merits on multiple straightforward grounds, which are addressed below in roughly the same order as in respondents' opposition. To start, the Executive Order and Memo are plainly lawful, see Appl. 21-29, and respondents fail to show otherwise.

1. As explained in the application (at 26-27), the district court's preliminary injunction—as well as the court of appeals' refusal to issue a stay pending appeal—rests on the extraordinary notion that the President lacks constitutional authority to direct agencies to carry out RIFs and reorganizations that lie within their statutory authority. See App. 50a ("even if agencies consider all their organic statutory mandates, the executive branch still cannot reorganize at this scale without authority from Congress"); App. 81a-82a (similar). That is why the courts below took the equally errant view that the prospect of executive-branch "agencies acting at the *direction* of the President and his team" was itself "evidence" of "unlawful action." App. 46a; see App. 80a.

Although respondents' opposition (at 11) briefly gestures at the same flawed reasoning, they largely decline to defend the lower courts' approach. Respondents at last accept the "basic principles * * * that the President is 'responsible for the actions of the Executive Branch'" and has the constitutional power to exercise "supervisory authority" over executive-branch agencies in the exercise of their statutory powers. Opp. 19 n.33 (quoting *United States* v. *Arthrex, Inc.*, 594 U.S. 1, 11 (2021)); see Appl. 22-23.[1] As set forth in the application, that should sound the death knell for respond-

[1] Respondents at most contend (Opp. 23 n.36) that Congress's specific grant of authority to the President to shorten RIF notice periods at an agency's request, 5 U.S.C. 3502(e), implies he may not direct agency RIFs in the first place. Unlike the

ents' case: If agencies can conduct RIFs and reorganizations within statutory limits (they may), and the President can supervise and direct agencies (he may), then there is nothing plausibly unlawful about an Executive Order directing lawful RIFs and reorganizations and an OPM-OMB Memo guiding agencies in their implementation of that Order. App. 103a (Callahan, J., dissenting) ("the President has the right to direct agencies, and OMB and OPM to guide them, to exercise their statutory authority to lawfully conduct RIFs").

Respondents are therefore left to assail the Executive Order and Memo on various additional grounds. None of these new theories—most of which were not even adopted by the lower courts—has a sound basis in law or fact.

2. Respondents' central contention at this stage, which they repeat throughout their opposition (*e.g.*, at 1-2, 5-7, 9, 12, 18, 20, 27), is that the Executive Order directs agencies to "reorganize" the Executive Branch in violation of some never-identified federal laws. That contention has no merit.

Start with the Executive Order's text, with which respondents scarcely engage. Two clauses of the Order's RIFs provision, Section 3(c), explicitly exempt agency functions that are "mandated by statute or other law" from prioritization in contemplated RIFs, and another clause further requires that preparations to initiate RIFs be undertaken "consistent with applicable law." App. 2a. As for the subsection of the Order that specifically addresses reorganizations, Section 3(e), it does no more than require agencies to prepare reports that "identif[y] any statutes that establish the agency, or subcomponents of the agency, as statutorily required entities" and that "discuss

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ability to shorten a statutory period, however, the President does not need additional statutory authority to direct agencies how to exercise their own statutory authorities. The President has the now-undisputed constitutional authority to superintend how they execute the law on his behalf.

whether the agency or any of its subcomponents should be eliminated or consolidated." *Ibid.* The Order says nothing at all about which agency "initiatives, components, or operations" the Administration will "suspend[] or close[]." *Ibid.* And the Memo is similarly attentive to compliance with statutory requirements. See, *e.g.*, App. 5a ("Agencies should review their statutory authority and ensure that their plans and actions are consistent with such authority.").[2]

None of this can be reconciled with respondents' fears that the President, abetted by OPM and OMB, has actually ordered agencies to proceed with eliminating subcomponents or functions that Congress has required them to maintain. It is simply not possible to fairly read either the Executive Order or Memo as compelling agency RIFs and restructurings that violate statutory mandates. And if anything, courts should make every effort to read the Order and Memo to direct and guide lawful rather than unlawful action, particularly given the presumption of regularity. See *Building & Constr. Trades Dep't, AFL-CIO* v. *Allbaugh*, 295 F.3d 28, 33 (D.C. Cir. 2002), cert. denied, 537 U.S. 1171 (2003); see also *FDA* v. *Wages & White Lion Invs., L.L.C.*, 145 S. Ct. 898, 922 (2025).

Undeterred, respondents insist (Opp. 16-17, 19-25) that agencies will inevitably implement the Executive Order through RIFs and reorganizations that violate statutory law. As a threshold matter, even if that were true, it would not be a basis for preemptively enjoining implementation of the Executive Order itself. And in all events, respondents' pessimistic predictions are unfounded. The lower courts con-

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[2] Respondents badly misread (Opp. 22 n.35) the Executive Order and Memo as "instruct[ing] agencies to use government shutdown level staffing as the starting point for these RIFs" and as thereby "necessarily def[ying] statutory requirements." Respondents ignore both documents' unitary phrasing, which plainly refers to RIFs in components that both "are not typically designated as essential during a lapse in appropriations" *and* "are not mandated by statute" or other law. App. 2a, 6a.

spicuously declined to find any actual or impending violations of statutory law. See Appl. 26-27; App. 105a (Callahan, J., dissenting) (observing that "the district court failed to analyze and to make findings whether the RIFs likely have resulted or will result in statutory violations"). For good reason. It is far-fetched, for example, to suggest, as respondents do, that plans to close "47 Social Security Administration field offices" risk violating congressional directives when there are more than *1200* such offices nationwide. App. 67a; see Opp. 14, 36; Soc. Sec. Admin., *Organizational Structure of the Social Security Administration*, https://www.ssa.gov/org/ (visited June 9, 2025).

Instead, rather than showing that agencies will not comply with their statutory duties, respondents' real complaint is that agencies may *devote less manpower* to doing so. See Opp. 21 n.34 (claiming that cutting 90 percent of staff in the Department of Labor's Office of Federal Contract Compliance Programs will "disrupt" statutory functions). But an agency's statutory authority to perform a specific function—such as enforcing government-contracting laws—generally does not require performing that function at any particular level. Indeed, it is a core exercise of Article II power for the Executive to make discretionary judgments about how much or how little to enforce various laws in light of priorities and resources. See *United States* v. *Texas*, 599 U.S. 670, 678-680 (2023); *Heckler* v. *Chaney*, 470 U.S. 821, 831-832 (1985). So it does not in any way violate Congress's Article I prerogatives for the Executive to terminate employees who used to perform enforcement activities that are being deprioritized. To the contrary, it violates the Executive's Article II prerogatives for courts to prevent agency RIFs in order to force this Administration to maintain the same levels of enforcement activity as the last Administration (or to keep employees on the pay-

roll despite their having no actual work to do given new enforcement priorities).[3]

Along the same lines, respondents repeatedly refer (Opp. 16-18, 20-23) to agency plans to restructure their components, as if such actions are *ipso facto* unlawful absent specific congressional authorization. But federal agencies are constantly exercising their existing housekeeping and other statutory reorganization authorities to restructure themselves within the constraints established by Congress. See 5 U.S.C. 301; see also, *e.g.*, 28 U.S.C. 509, 510 (vesting most functions of the Department of Justice in the Attorney General and authorizing him to delegate that authority to other officers and employees within the Department); 6 U.S.C. 452 (authorizing future reorganizations within the Department of Homeland Security). Notices of such actions litter the *Federal Register* year after year. *E.g.*, *Establishment of the Space Bureau and the Office of International Affairs and Reorganization of the Consumer and Governmental Affairs Bureau and the Office of the Managing Director*, 88 Fed. Reg. 21,424 (Apr. 10, 2023) (restructuring Federal Communications Commission bureaus); *Establishment of the Office of Environmental Justice*, 87 Fed. Reg. 33,174 (June 1, 2022) (creating new office within Department of Health and Human Services). No authority calls into question the legality of those workaday measures, which respondents do not differentiate from the agency decisions that they deem unlawful here.

Nor is there anything legally wrong, as respondents repeatedly suggest (Opp. 5, 11, 20), with transferring functions "*between*" agencies, so long as the agencies en-

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[3] Respondents' recurrent contention (Opp. 3, 20-22, 25) that the Executive Order displaces agencies' "reasoned decisionmaking" suffers from the same problems described above. Given the Order's mandate to comply with applicable law, App. 2a, as well as the open-ended nature of its directives, *ibid.*, the Order cannot plausibly be read to *foreclose* any required analysis by the agencies in adopting RIFs.

joy overlapping statutory authorities, as many do. For instance, no statute bars the Department of Justice and the Federal Trade Commission from rearranging their areas of responsibility for antitrust enforcement. See, *e.g.*, *Memorandum of Agreement Between the Federal Trade Commission and the Antitrust Division of the United States Department of Justice Concerning Clearance Procedures for Investigations* (Mar. 5, 2002), https://perma.cc/S3SK-RMUZ. Respondents allude to planned interagency transfers of functions without providing detail or doing anything to substantiate their implication that such transfers would be unlawful. See Opp. 20; see also, *e.g.*, D. Ct. Doc. 70, at 3 n.3 (May 8, 2025) (citing allegations that the Department of Agriculture's "plans potentially include consolidating functions with up to seven other agencies across government, including housing and firefighting").

In short, respondents' portrayal of the Executive Order and Memo as mandating illegal reorganizations has no grounding in established fact or even plausible allegations. The history of Presidents seeking and Congress enacting (or refusing to enact) special reorganization laws, which respondents and the courts below have dwelled on at length, see Opp. 5-7, 17-18 & n.30; App. 39a-42a, 84a-86a, establishes only that *some* agency reorganizations require specific statutory authority. For example, the President could not unilaterally "merge the Departments of Education * * * and Labor," as was proposed in connection with a prior request for statutory reorganization authority that respondents highlight. OMB, *Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations* 23 (June 2018); see Opp. 2 & n.1, 6 & n.8, 25. But the history of federal reorganization laws says nothing about the legality of any particular reorganizations or RIFs that would be undertaken to implement the Executive Order and Memo at issue in this case, and respondents have not otherwise established that such actions would in fact

violate the text of laws Congress has enacted.

Indeed, it would have been impossible for respondents to attempt to make such a showing at this time. They chose to bring a government-wide, pre-enforcement action before most agencies had even finalized their RIF and reorganization plans—indeed, stopping agencies from developing those plans across the board, as a programmatic matter, was the objective of their suit. But that flaw in their litigation approach has been exacerbated by their newfound focus, necessitated by the defects in their original legal theory, on the question whether the plans will violate agencies' statutory authorities. The lower courts did not purport to resolve that question in respondents' favor, because it would be rank speculation at best.

3. Respondents' remaining challenges to the Executive Order and Memo are similarly faulty. Respondents depict the Order (Opp. 17) as historically unprecedented, but their attempted distinctions of similar prior measures, like President Clinton's 1993 executive order (Opp. 24), lack substance. As previously explained (Appl. 27 n.4), there is no legal basis for distinguishing the President's authority to direct reductions in agency workforces based on regular attrition versus involuntary separation or other methods. See *McCurry* v. *Browner*, Appeal No. 01955693, 1997 WL 271209, at *2 (EEOC May 15, 1997) (describing the Clinton order as "requiring reductions in force in federal agencies"). And it is untrue that President Clinton's order depended on authority provided by the Federal Workforce Restructuring Act of 1994, Pub. L. No. 103-226, 108 Stat. 111, which was enacted more than a year after the order and simply provided *additional* authority to facilitate agency reductions in force through incentive payments, § 3(b)(1), 108 Stat. 113; see 5 U.S.C. 5597(b). Nor do respondents fare any better (Opp. 24-25) than the lower courts in trying to confine *Nixon* v. *Fitzgerald*, 457 U.S. 731, 757 (1982), to the military context. See Appl. 25

n.2.

Respondents also quibble (Opp. 23) about the precise source of "agencies' statutory authority to conduct RIFs." The reason federal statutes regulating how agencies carry out RIFs, see 5 U.S.C. 3502—versions of which have been on the books for well over a century—do not expressly authorize RIFs is that they reflect Congress's longstanding acknowledgment, consistent with the Executive's longstanding practice, that the statutory grant of power for executive agencies to hire employees inherently carries with it the power to separate employees when their jobs are no longer necessary, just like any other employer can do. Cf. *Ramspeck* v. *Federal Trial Examiners Conf.*, 345 U.S. 128, 143 (1953). OPM's decades-old RIF regulations, 5 C.F.R. Pt. 351, similarly reflect agencies' authority to carry out RIFs. And in the end, respondents appear to contend only (Opp. 20, 24) that federal agencies lack the authority to carry out RIFs and reorganizations that violate some undefined standard of having too "large-scale" a "size and scope" (which has no support in any legal authority) or that independently violate statutory law (which the Executive Order here specifically directs agencies to obey, App. 2a).

Respondents' challenges directed specifically toward OPM and OMB's Memo are likewise unsound. In denying the existence of OPM's authority in this area (Opp. 28-29), they misread the statute authorizing OPM to "prescribe regulations for the release of competing employees in a reduction in force," 5 U.S.C. 3502(a), as limited to setting forth only the order of employee retention in a RIF. And respondents never question the validity of OPM's regulations, 5 C.F.R. Pt. 351, which have long and consistently understood OPM's authority over agency RIFs more broadly. In particular, respondents completely ignore the regulation that authorizes OPM to issue "guidance and instructions for the planning, preparation, conduct, and review of re-

ductions in force," "examine an agency's preparations for reduction in force at any stage," and "require appropriate corrective action" when necessary. 5 C.F.R. 351.205. The Memo accordingly falls comfortably within OPM's and OMB's statutory authorities. See Appl. 24. In all events, as even respondents appear to acknowledge (Opp. 28), the President can require executive agencies to follow guidance from OPM and OMB in complying with his own executive orders. See *Allbaugh*, 295 F.3d at 32. And respondents cannot seriously suggest that OPM and OMB acted without the President's imprimatur in issuing and applying the Memo to other executive agencies, given that the President stands behind the Memo, as the government's briefs in this Court confirm.

In any event, respondents also fail to show that the Memo is "final agency action" subject to APA review, 5 U.S.C. 704. As previously explained (Appl. 20), the Memo is an internal executive-branch planning document that initiated a process of deliberation between OPM, OMB, and agencies over RIF and reorganization plans, and thus does not qualify as final agency action. Respondents double down (Opp. 29-30) on their and the lower courts' misguided conception of "final agency action" as any agency action that can be described as a conclusive step in some larger process, but that is not the law. See *Bennett* v. *Spear*, 520 U.S. 154, 178 (1997); App. 101a n.2 (Callahan, J., dissenting). And they again suggest (Opp. 29) that the Memo qualifies for APA review because OPM and OMB issued it to "assign[] to themselves and thereby usurp[] statutory delegations of decision-making to agencies." Yet the Memo does no such thing—by directing agencies to submit RIF plans for OPM and OMB approval, App. 6a-7a, it requires only the kind of interagency consultation and exchange that is commonplace in the field of federal personnel management. See *National Treasury Emps. Union* v. *Devine*, 733 F.2d 114, 120 (D.C. Cir. 1984). Nothing

in the Memo purports to authorize OPM and OMB to commandeer agency decision-making by, for example, directly ordering agency RIFs that the agency itself chooses not to implement, or by prohibiting agencies from proceeding with RIFs that OPM and OMB have not "approved." The district court's "factual findings" emphasized by respondents (Opp. 28) are not to the contrary. At most, the court found that agencies were following OPM and OMB's views on how to implement the Executive Order, see App. 46a-47a, not that agencies believed (much less correctly) that they had somehow been stripped of their legal authority to make the ultimate decisions.

Finally, respondents fail to defend the breathtaking overbreadth of the district court's injunction, which covers 19 federal departments and agencies, bars them from taking a vast array of actions to implement the Executive Order and Memo or involving OPM and OMB in their planning processes, and does so even with respect to aspects of RIFs or reorganizations that do not injure respondents themselves at all. Like the district court (App. 57a), respondents erroneously insist (Opp. 37-38) that it was *applicants'* burden to do the necessary tailoring and justify a narrower, non-universal injunction. Contra *Gill* v. *Whitford*, 585 U.S. 48, 66 (2018); *Califano* v. *Yamasaki*, 442 U.S. 682, 702 (1979). And respondents' contention (Opp. 36-37) that "the appropriate injunctive relief was to enjoin the unlawful reorganization of agencies" begs the question, which neither court below even tried to answer, whether any unlawful reorganization was imminent at any of the defendant agencies; the notion that such activities were about to be undertaken at all the various enjoined agencies, requiring the sweeping relief that the district court entered, lacks any support. The injunction's unjustified and extreme breadth provides further reason to issue a stay.

B. The Civil Service Reform Act Administrative Review Scheme Precludes District-Court Jurisdiction In This Case

Applicants are independently likely to succeed in establishing that the district court lacked jurisdiction over respondents' claims. Appl. 15-21. As explained, Congress precluded such jurisdiction over claims of this nature in the Civil Service Reform Act (CSRA), 5 U.S.C. 2301 *et seq.*, and the subsidiary Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101 *et seq.* See 5 U.S.C. 7701(a); 5 C.F.R. 351.901 (providing for review of RIF actions before the Merit Systems Protection Board (MSPB)). Respondents' response to that threshold problem merely rehashes the same flawed theories endorsed by the lower courts—and those flaws are even more apparent now that respondents have made their claims dependent on proving that agencies' ultimate RIF and reorganization plans will be unlawful.

As respondents see it (Opp. 30-32), the CSRA does not preclude jurisdiction here because they are not suing over any "specific employment actions," but rather are challenging, on broader "constitutional and APA" grounds, an Executive Order and Memo that merely "impact[] federal employees." That is wrong twice over. To begin, as the D.C. Circuit has held, there is no exception to CSRA channeling for federal-employment claims that broadly target executive-branch orders and policies as opposed to discrete adverse actions. See *American Fed'n of Gov't Emps., AFL-CIO* v. *Trump*, 929 F.3d 748, 761 (2019) (applying the same preclusion principle to claims challenging executive orders involving labor-management relations and employee grievances); Appl. 17 (collecting additional authority). Moreover, respondents' claims are necessarily challenging specific employment actions. After all, it is those actions, not the Executive Order or the Memo in the abstract, that are the (indirect) source of the alleged harms supporting their standing. See, *e.g.*, Opp. 40 (discussing respond-

ents' asserted harms from terminations); see also App. 97a (Callahan, J., dissenting) ("Plaintiffs' claims * * * effectively challenge the prospective termination of federal employees in the aggregate"). Respondents' challenge to the Executive Order and Memo is merely a "vehicle" for preventing the specific employment actions from occurring. *Elgin* v. *Department of the Treasury*, 567 U.S. 1, 22 (2012). All the more so now, where their challenge to the Executive Order and Memo is premised on the future employment actions themselves violating the agencies' statutory authorities.

Tellingly, respondents do not dispute that if the RIFs had been allowed to actually occur, a federal employee's challenge to her separation from the service as part of the RIFs (including RIFs that allegedly violate "the civil service laws," Opp. 31) would be channeled into the CSRA scheme and lie outside the jurisdiction of the district courts. See Opp. 32. At the same time, respondents maintain (Opp. 33-34) that third parties who are only indirectly and speculatively harmed by that federal employee's separation can preemptively bring a district-court action, notwithstanding the CSRA, claiming that executive orders and policies precipitating RIFs are unlawful and seeking to prevent the RIFs from ever occurring. That understanding of the statutory scheme is facially meritless.

Respondents' other jurisdictional arguments also falter. They emphasize (Opp. 32) textual references to the APA in the CSRA, but those provisions just selectively incorporate certain APA provisions. See, *e.g.*, 5 U.S.C. 1103(b)(1). That reinforces the default applicability of the review and remedies specified in the CSRA—and the problem with respondents' treatment of the two regimes as interchangeable at their option. Respondents' contention (Opp. 33) that "there could be no meaningful review" of their claims within the CSRA scheme ignores the MSPB and Federal Circuit's long history of reviewing RIF-related employee claims. See, *e.g.*, *Knight* v. *Department of*

Def., 332 F.3d 1362, 1364 (Fed. Cir. 2003). Nor are respondents correct (Opp. 33) that administrative adjudication by MSPB members who are removable at will, followed by judicial review by Article III appellate judges, would somehow be "meaningless." There are many administrative tribunals in the Executive Branch that adjudicate claims or defenses against the Executive even though the tribunal members lack removal protections and thus are removable by the Executive. See, *e.g.*, 8 C.F.R. 1003.1(a)(1) (Board of Immigration Appeals); *Kalaris* v. *Donovan*, 697 F.2d 376 (D.C. Cir.) (Department of Labor Benefits Review Board), cert. denied, 462 U.S. 1119 (1983). Indeed, the APA itself authorizes agency heads to conduct administrative adjudications themselves, see 5 U.S.C. 556(b)(1), 557(b), which conclusively demonstrates that Congress believes agency adjudications can be meaningful even when the agency adjudicators lack removal protection.

C. The Remaining Stay Factors Strongly Support A Stay Of The District Court's Preliminary Injunction

Respondents do not dispute (see Opp. 15 n.27) that the questions presented by the stay application—including the Executive Branch's authority to manage its workforce and the scope of CSRA preclusion—would warrant certiorari if the Ninth Circuit affirmed the preliminary injunction. See Appl. 30-31. Nor can respondents credibly dispute that the district court's preliminary injunction is inflicting ongoing irreparable harm upon the government—both by broadly disabling a vast swath of the Executive Branch from managing its own affairs and, more concretely, by costing the government and U.S. taxpayers millions of dollars in unnecessary agency expenditures, as RIFs and other needed restructuring actions are held in abeyance.

Respondents' efforts to spin the balance of harms in their favor are unavailing. They fault the government (Opp. 39-40) for not making a formal evidentiary submis-

sion on the economic harms inflicted by the district court's injunction, but respondents themselves, in seeking and obtaining the preliminary injunction below, put forward evidence of the significant RIFs planned throughout numerous agencies. See App. 23a-24a, 55a. The financial harms to any employer in barring it from proceeding with layoffs are obvious and inevitable, just like the harms to a grant-maker from compelling it to pay out likely unrecoverable sums of money. Cf. *Department of Educ.* v. *California*, 145 S. Ct. 966, 968-969 (2025) (per curiam); *Heckler* v. *Lopez*, 463 U.S. 1328, 1329-1330 (1983) (Rehnquist, J., in chambers). Although respondents further accuse applicants (Opp. 39) of collapsing the merits and irreparable-injury inquiries, that criticism more aptly describes respondents' submission (*ibid.*) that applicants face no harm because "[r]equiring the executive branch to operate within [statutory] bounds is not cognizable injury." In so arguing, respondents tacitly concede that the government *does* have irreparable harm if it shows a likelihood of success on the merits, as it has. Respondents do not and cannot seriously suggest that the balance of equities favors them even if they are likely to lose on the merits.

Meanwhile, respondents' own assertions of irreparable harm are no more compelling than they were in the courts below. Respondents dismiss the availability of back pay and reinstatement as employee remedies based on hyperbolic and paradoxical speculation (echoed by the courts below) about employees returning to work at "empty" agencies. Opp. 40; see App. 34a, 76a. And as explained (Appl. 34-35), there is no merit or discernible limiting principle to respondents' notion that broad categories of tangentially affected third parties should be deemed to suffer irreparable harm from governmental personnel actions warranting injunctive relief.

Ultimately, respondents' argument on the equities is simply that the RIFs and reorganizations contemplated by the Executive Order and Memo will have significant

consequences, and thus they should remain enjoined until the appeal of the preliminary injunction is resolved. But this Court has recently and repeatedly issued stays of district-court injunctions in cases where the challengers asserted burdens that were at least as significant as respondents' here. See, *e.g.*, *OPM* v. *American Fed'n of Gov't Emps.*, No. 24A904 (Apr. 8, 2025) (staying order requiring reinstatement of probationary employees); *Noem* v. *Doe*, No. 24A1079 (May 30, 2025) (staying order enjoining the Department of Homeland Security's revocation of parole for hundreds of thousands of aliens); *Noem* v. *National TPS All.*, No. 24A1059 (May 19, 2025) (staying most of order enjoining the Department of Homeland Security's termination of temporary-protected-status designations related to Venezuelan nationals). The Court should do the same here, where the burdens on the Executive are far more sweeping from this government-wide injunction interfering with executive-branch personnel practices.

The predictable result of the district court's injunction has been confusion and paralysis throughout the Executive Branch's personnel-management apparatus. As long as the injunction remains in force, all the enjoined agencies' efforts to restructure and streamline their workforces will be subject to challenge—even if the links between those agency actions and the Executive Order and Memo are tenuous or nonexistent. Agencies are being prevented (and have been since the district court issued its temporary restraining order a month ago) from taking needed steps to make the federal government and workforce more efficient. Absent intervention from this Court, that intolerable state of affairs promises to endure for months. The Court's traditional criteria strongly support a stay of the preliminary injunction, and such a stay is urgently needed.

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For the foregoing reasons and those stated in the government's application, this Court should stay the district court's preliminary injunction.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

JUNE 2025