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20 UNITED STATES DISTRICT COURT
 21 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 22 SAN FRANCISCO DIVISION

23 AMERICAN FEDERATION OF
 24 GOVERNMENT EMPLOYEES, AFL-CIO;
 25 AMERICAN FEDERATION OF STATE
 26 COUNTY AND MUNICIPAL EMPLOYEES,
 27 AFL-CIO; AFGE LOCAL 1216; and UNITED
 28 NURSES ASSOCIATIONS OF
 CALIFORNIA/UNION OF HEALTH CARE
 PROFESSIONALS, AFSCME, AFL-CIO,

Plaintiffs,

v.

UNITED STATES OFFICE OF PERSONNEL
 MANAGEMENT and CHARLES EZELL, in
 his official capacity as Acting Director of the
 U.S. Office of Personnel Management,

Defendants.

Case No.

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

1 Plaintiffs American Federation of Government Employees, AFL-CIO (“AFGE”), American
2 Federation of State County and Municipal Employees, AFL-CIO (“AFSCME”), AFGE Local 1216,
3 and United Nurses Associations of California/Union of Health Care Professionals, AFSCME, AFL-
4 CIO (“UNAC/UHCP”) (collectively, “Plaintiffs”), file this complaint seeking to enjoin the
5 terminations of tens of thousands of federal employees in contravention of federal constitutional and
6 statutory law, against Defendants the United States Office of Personnel Management (“OPM”) and
7 Acting OPM Director Charles Ezell, and hereby plead as follows:

8 **INTRODUCTION**

9 1. On February 13, 2025, Defendant OPM and its newly appointed Acting Director,
10 Defendant Charles Ezell, ordered federal agencies across the country to terminate tens of thousands
11 of federal employees by sending them standardized notices of termination, drafted by OPM, that
12 falsely state that the terminations are for performance reasons.

13 2. Probationary employees are employees of the competitive service in their first year of
14 employment, and employees of the excepted service in their first two years of employment (hereafter
15 collectively “probationary employees”). Probationary employees may include experienced federal
16 employees who have recently become employed in a new position or a new agency.

17 3. OPM’s directive that federal agencies terminate these employees en masse, on
18 pretextual grounds, seeks to further the newly elected Presidential Administration’s policy goals of
19 dramatically curtailing the size and spending of the federal government. But Congress, not OPM,
20 controls and authorizes federal employment and related spending by the federal administrative
21 agencies, and Congress has determined that each agency is responsible for managing its own
22 employees. OPM lacks the constitutional, statutory, or regulatory authority to order federal agencies
23 to terminate employees in this fashion that Congress has authorized those agencies to hire and
24 manage, and certainly has no authority to require agencies to perpetrate a massive fraud on the
25 federal workforce by lying about federal workers’ “performance,” to detriment of those workers, their
26 families, and all those in the public and private sectors who rely upon those workers for important
27 services.

1 4. OPM is an agency with no statutory authority to make termination decisions for
2 federal employees (other than for OPM’s own employees). Notwithstanding this lack of legal
3 authority, OPM ordered federal agencies throughout the nation, including in this District, to wipe out
4 their ranks of probationary employees without any regard to applicable statutes, including the
5 Administrative Procedure Act (“APA”) and statutes governing federal employment and the respective
6 roles of OPM and the agencies.

7 5. OPM also ordered the agencies to use a template e-mail to terminate these workers,
8 provided by OPM, that falsely inform employees that their terminations are for performance reasons
9 rather than as part of a government-wide policy to reduce headcount that was authorized by no law.

10 6. The federal agencies that followed OPM’s directive did not otherwise have plans to
11 terminate the entirety of their probationary workforce, who were employed in authorized positions to
12 perform services that in each agency’s judgment were needed to perform their statutorily mandated
13 role. In fact, some agencies have confirmed to their employees that they did not want to terminate
14 their probationary employees but were directed to do so by OPM. And they have confirmed that the
15 notices of termination mandated by OPM were false, because the agencies were *not* firing the
16 workers for performance reasons.

17 7. As of the filing of this Complaint, tens of thousands of probationary employees across
18 dozens of federal agencies have already been terminated in the summary, assembly-line fashion
19 directed by OPM. Each day, more such employees receive notice of the termination of their federal
20 employment. The terminations have been conducted summarily, without any advance notice to the
21 affected employees, throwing their lives, their families’ lives, and the entire federal government into
22 chaos.

23 8. OPM, the federal agency charged with implementing this nation’s employment laws,
24 in one fell swoop has perpetrated one of the most massive employment frauds in the history of this
25 country, telling tens of thousands of workers that they are being fired for performance reasons, when
26 they most certainly were not.

27 9. OPM’s program is an unlawful *ultra vires* action outside the scope of any statutory or
28 Constitutional authority. OPM’s program also violates the APA’s prohibitions of unlawful, arbitrary

1 and capricious, and procedurally improper agency action (including because this government-wide
2 action was taken without notice and comment rule-making). Where, as here, a federal agency has
3 engaged in unlawful action contrary to the APA, the courts “shall ...hold unlawful and set aside” that
4 action. 5 U.S.C. § 702(2).

5 10. The APA, was designed to “serve as the fundamental charter of the administrative
6 state.” *Kisor v. Wilkie*, 588 U.S. 558, 580 (2019) (plurality opinion) (internal quotation marks
7 omitted). As the Supreme Court recently explained, “Congress in 1946 enacted the APA ‘as a check
8 upon administrators whose zeal might otherwise have carried them to excesses not contemplated in
9 legislation creating their offices.’” *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 391 (2024)
10 (quoting *United States v. Morton Salt Co.*, 338 U.S. 632, 644 (1950)). OPM’s actions disrupt the
11 constitutional balance of power and violate numerous federal statutes, running roughshod over
12 fundamental protections against unlawful and arbitrary federal action.

13 11. The Court should immediately enjoin OPM and all those acting in concert with it to
14 cease implementation of its unlawful order requiring these mass pretextual terminations of
15 probationary federal employees and to rescind the unlawful terminations that already have occurred.

16 JURISDICTION AND VENUE

17 12. This Court has jurisdiction pursuant to 28 U.S.C. § 1331.

18 13. Venue is appropriate in this district under 28 U.S.C. § 1391(e). Plaintiffs AFGE and
19 AFGE Local 1216 represent probationary and trial-period federal employees whose place of
20 employment is within the Northern District of California, and who have been terminated, or are
21 subject to termination, because of OPM’s illegal program.

22 14. Intradistrict assignment is appropriate in the San Francisco/Oakland division of this
23 Court.

24 PARTIES

25 15. Plaintiff AFGE, AFL-CIO, is a labor organization and unincorporated association
26 headquartered at 80 F Street N.W., Washington, D.C. 20001. AFGE, the largest union of federal
27 employees, represents approximately 800,000 federal civilian employees through its affiliated
28 councils and locals in every state in the United States, including employees of numerous agencies of

1 the federal government, including the Department of Veterans Affairs (“VA”), Department of
2 Education, National Institutes of Health, Small Business Administration, and others. AFGE
3 represents employees of the VA who are employed in San Francisco, Oakland, San Bruno, Eureka,
4 Ukiah, Clearlake, and Martinez, California.

5 16. Plaintiff AFSCME, AFL-CIO, is a labor organization and unincorporated association
6 headquartered at 1625 L Street, N.W., Washington, D.C. 20036. AFSCME is the largest trade union
7 of public employees in the United States, with 1.4 million members organized into approximately
8 3,400 local unions, 58 councils and affiliates in 46 states, the District of Columbia and Puerto Rico.
9 AFSCME unions represent federal civilian employees in numerous agencies and departments across
10 the federal government, including the Federal Aviation Administration, the Department of
11 Agriculture, the Peace Corps, Americorps, and the Veterans Administration.

12 17. Plaintiff AFGE Local 1216 is a labor organization and unincorporated association
13 headquartered at 4150 Clement Street, San Francisco, California 94121. AFGE Local 1216
14 represents hundreds of VA employees who are employed in San Francisco, California.

15 18. Plaintiff United Nurses Association of California/United Health Care Professionals,
16 AFSCME, AFL-CIO (“UNAC”), is a labor organization and an unincorporated association
17 headquartered at 955 Overland Ct., Suite 150, San Dimas, California 91773. UNAC represents
18 employees of the VA who are employed at Pettis Memorial Hospital in Loma Linda, California.

19 19. Plaintiffs bring the claims in this complaint on their own behalf and on behalf of their
20 members.

21 20. Defendant Office of Personnel Management (“OPM”) is a federal agency
22 headquartered in Washington, D.C. OPM is a federal agency within the meaning of the
23 Administrative Procedure Act (“APA”), 5 U.S.C. § 551(1).

24 21. Defendant Charles Ezell has been the Acting Director of OPM since January 20, 2025.
25 He is sued in his official capacity.

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27 //

28 //

FACTUAL ALLEGATIONS

I. Statutes and Regulations Governing Termination of Federal Employment

A. Congressional Authorization to Federal Agencies and OPM

22. Congress created the federal agencies that employ federal workers through an exercise of its Article I legislative power. The executive agencies of the federal government are identified in various statutes, including 5 U.S.C. § 101 (listing agencies).

23. Each agency has its own authorizing statutes that govern its administration, including statutory provisions that authorize one or more individuals to act as the head of the agency. *See e.g.*, 10 U.S.C. §§ 111, 113 (Defense); 12 U.S.C. § 5491 (CFPB); 16 U.S.C. § 551 (Agriculture/Forest Service); 26 U.S.C. §§ 7801, 7803 (IRS); 38 U.S.C. §§ 301, 303 (VA); 42 U.S.C. §§ 202, 203 (HHS); 42 U.S.C §§ 281, 282 (NIH); 42 U.S.C. §§3411, 3412 (Education); 42 U.S.C. § 7131 (Energy); 51 U.S.C. § 20111 (NASA).

24. Congress has also authorized, in these agency-specific establishing statutes, each agency head to exercise powers of management over that agency and its employees, including the hiring and firing of employees, consistent with any generally applicable laws. For example:

- 26 U.S.C. §§ 7803, 7804 (IRS: “the Commissioner of Internal Revenue is authorized to employ such number of persons as the Commissioner deems proper for the administration and enforcement of the internal revenue laws, and the Commissioner shall issue all necessary directions, instructions, orders, and rules applicable to such persons.”);
- 42 U.S.C. §§ 7231, 7253 (Energy: “In the performance of his functions the Secretary is authorized to appoint and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out such functions. Except as otherwise provided in this section, such officers and employees shall be appointed in accordance with the civil service laws ...”; “the Secretary is authorized to establish, alter, consolidate or discontinue such organizational units or components within the Department as he may deem to be necessary or appropriate.”);
- 20 U.S.C. § 3461 (Education: “The Secretary is authorized to appoint and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out the functions of the Secretary and the Department. Except as otherwise provided by law, such officers and employees shall be appointed in accordance with the civil service laws ...”);

- 1 • 42 U.S.C. § 203 (HHS: “The Secretary is authorized ... to establish within them such
2 divisions, sections, and other units as he may find necessary; and from time to time abolish,
3 transfer, and consolidate divisions, sections, and other units and assign their functions and
4 personnel in such manner as he may find necessary for efficient operation of the Service.”);
- 5 • 12 U.S.C. § 5492 (CFPB: “The Bureau is authorized to establish the general policies of the
6 Bureau with respect to all executive and administrative functions, including—...(7) the
7 appointment and supervision of personnel employed by the Bureau; (8) the distribution of
8 business among personnel appointed and supervised by the Director and among
9 administrative units of the Bureau”);
- 10 • *See also, e.g.*, 16 U.S.C. §§ 551, 554a, e (Agriculture; management and employment in Forest
11 Service); 38 U.S.C. §§ 303, 510 (VA: Secretary; “control, direction, and management of the
12 Department”; “authority to reorganize offices”); 10 U.S. C. § 113 (DOD: Secretary;
13 “authority, direction, and control over the Department of Defense”); 42 U.S.C. § 282 (NIH:
14 Director, management authority); 51 U.S.C. §§ 20111, 20113 (NASA: Administrator “shall
15 have authority and control over all personnel and activities thereof.”).

16 25. In addition to the specific authority granted to each agency head by these authorizing
17 statutes, Congress also enacted a “General authority to employ” that applies to all federal agencies:

18 Each Executive agency, military department, and the government of the District of Columbia
19 may employ such number of employees of the various classes recognized by chapter 51 of
20 this title as Congress may appropriate for from year to year.

21 5 U.S.C. § 3101.

22 26. Besides this specific authority regarding employment decisions, Congress also
23 delegated general authority to each federal agency head to adopt regulations “for the government of
24 his department, the conduct of its employees, the distribution and performance of its business...” 5
25 U.S.C. § 301; *see also* 5 U.S.C. § 302 (authorizing agency heads to delegate their authority to
26 subordinate employees).

27 27. Congress also enacted the Civil Service Reform Act of 1978 (“CSRA”) to establish
28 uniform standards for agencies and civil service employment across the federal government. 5
U.S.C. § 2101 (defining “civil service”); § 2015 (defining “employee”). The provisions of the CSRA
include statutes governing agency termination of employees for cause based on performance (5
U.S.C. § 4303(a); 5 U.S.C. § 7513(a)), and agency layoffs (“reductions in force, or “RIFs”) (5 U.S.C.
§ 3502).

1 28. Congress also established the OPM by statute. 5 U.S.C. § 1101. Congress did *not*
2 authorize the OPM to hire or fire any federal employees employed by any agency other than OPM
3 itself. 5 U.S.C. §§ 1102, 1103. Rather, OPM’s role, as established by Congress, is to act as the
4 human resources agency for the federal government, including by creating and publishing
5 government-wide rules in compliance with the APA. 5 U.S.C. §§ 1103, 1105. OPM’s authority with
6 respect to the termination of employees of other agencies and departments is limited to providing
7 technical assistance and writing regulations. 5 U.S.C. §§ 4304, 4305, 7514.

8 29. As the Acting Solicitor General recently confirmed in a petition to the U.S. Supreme
9 Court on behalf of the President and other federal officials, “[a]gency heads control hiring and firing
10 decisions for subordinates—here, an agency of over 100 people who perform important investigative
11 and enforcement functions affecting the entire federal workforce.” Thus, in support of its request to
12 vacate a district court temporary restraining order reinstating the head of the Office of Special
13 Counsel, the federal government argued that the President’s inability to remove the head of the
14 agency deprived him of the power to control agency’s employees—because *only the agency head* is
15 authorized to hire and fire an agency’s employees.¹

16 **B. Probationary and Trial-Period Employees in Federal Service**

17 30. Approximately 200,000 probationary employees are employed in agencies throughout
18 the federal government nationwide.² Of these, approximately 15,000 are employed in California,
19 providing services that range from fire prevention to veterans’ care.

20 31. OPM’s mass termination program has swept up two categories of federal employees,
21 whose employment is governed by statute and regulation: probationary employees in the
22 “competitive” service, and employees within their first two years of employment in the “excepted”
23 service. Plaintiffs refer herein to all such employees as “probationary employees.”
24

25 _____
26 ¹ Application to Vacate the Order Issued by the United States District Court for the District of Columbia
27 and Request for an Immediate Administrative Stay, *Bessent v. Dellinger*,
<https://www.documentcloud.org/documents/25536868-dellinger-scotus-emergency-filing/?mode=document> at
27 (filed U.S. Supreme Court Feb. 16, 2025).

28 ² [https://www.businessinsider.com/trump-administration-fired-probationary-federal-workers-veterans-
affairs-agencies-2025-2](https://www.businessinsider.com/trump-administration-fired-probationary-federal-workers-veterans-affairs-agencies-2025-2)

1 32. Probationary employees in the competitive service are, with some exceptions, those
2 who have been employed for less than one year. 5 U.S.C. § 7511(a)(1)(A)(ii); 5 C.F.R. § 315.801.
3 Employees are appointed as “career” or “career-conditional employees” subject to completing the
4 probationary period. 5 C.F.R. § 315.201(a).

5 33. The probationary period provides the opportunity for the federal agency to assess the
6 individual performance of the employee. Under governing OPM regulations, an agency “shall utilize
7 the probationary period as fully as possible to determine the fitness of the employee and shall
8 terminate his or her services during this period if the employee fails to demonstrate fully his or her
9 qualifications for continued employment.” 5 C.F.R. § 315.803(a).

10 34. Most employees in the excepted service are also subject to a statutory trial period of
11 two years, which, like the probationary period in the competitive service, is intended to permit the
12 agency to evaluate the employee’s performance and fitness for long-term employment. 5 U.S.C. §
13 7511(a)(1)(C)(ii).

14 **C. Regulations Governing the Termination of Probationary Employees**

15 35. Federal agencies may lawfully terminate probationary employees based on the
16 agency’s assessment of the employee’s performance during the probationary period, pursuant to
17 5 C.F.R. § 315.804(a), which is entitled: “Termination of probationers for unsatisfactory performance
18 or conduct.”

19 36. Under that regulation, “when an agency decides to terminate an employee serving a
20 probationary or trial period because his work performance or conduct during this period fails to
21 demonstrate his fitness or his qualifications for continued employment, it shall terminate his services
22 by notifying him in writing as to why he is being separated and the effective date of the action.” 5
23 C.F.R. § 315.804(a). “The information in the notice as to why the employee is being terminated
24 shall, as a minimum, consist of the agency’s conclusions as to the inadequacies of his performance or
25 conduct.” *Id.* Trial-period employees in the excepted service have the same notice rights when
26 removed from their positions for performance reasons. 5 C.F.R. § 316.304.

27 37. Federal agencies may also lawfully terminate a probationary employee “for reasons
28 based in whole or in part in conditions arising before his appointment.” 5 C.F.R. § 515.805.

1 **D. Statutes and Regulations Governing the Termination of Employees as Part of a**
2 **RIF**

3 38. Federal agencies may also terminate probationary employees as part of an agency RIF.
4 An agency may conduct a RIF “to reduce the size of its workforce.” *Tiltti v. Weise*, 155 F.3d 596, 601
5 (2d Cir. 1998). “RIFs are not aimed at removing particular individuals; rather, they are directed
6 solely at positions.” *Grier v. Dep’t of Health & Hum. Servs.*, 750 F.2d 944, 945 (Fed. Cir. 1984).

7 39. Agencies must follow specific statutory directives in conducting a RIF, including
8 detailed requirements for retention preferences, considerations for veterans, and the consideration of
9 tenure of employment and length of service. 5 U.S.C. § 3502(a)(1), (3). Congress delegated to OPM
10 the authority to promulgate regulations that agencies must follow in implementing RIFs. 5 U.S.C. §
11 3502(a).

12 40. Pursuant to that statutory authorization, and through notice-and-comment rulemaking,
13 OPM has issued detailed regulations setting forth the procedures by which RIFs must be conducted.
14 *See* 5 C.F.R. Part 351. These RIF regulations apply whenever an agency determines that it is
15 necessary to release employees “because of lack of work; shortage of funds; insufficient personnel
16 ceiling; reorganization; the exercise of reemployment rights or restoration rights; or reclassification
17 of an employee’s position due to erosion of duties” 5 C.F.R. § 351.201(a)(2).

18 41. All agencies of the federal government are required to comply with the RIF
19 regulations whenever an agency “determines that a reduction force is necessary.” 5 C.F.R. § 351.204;
20 *see also* 5 C.F.R. § 351.201(c) (“Each agency is responsible for assuring that the provisions in this
21 part are uniformly and consistently applied in any one reduction in force.”).

22 42. The RIF regulations apply to employees in the competitive and excepted services. 5
23 C.F.R. § 351.202(a), (b). Probationary employees are expressly protected by the RIF regulations. 5
24 C.F.R. §§ 351.501(b)(2), 351.502(b)(2). Probationary employees are included in “group II” of three
25 groups of employees, and may only be released, in order of retention, after the release of “group III”
26 employees, a group that includes employees under various temporary, term, and other provisional
27 appointments. 5 C.F.R. § 351.501(b).

1 43. Before conducting a RIF, a federal agency must establish “competitive areas in which
2 employees compete for retention.” 5 C.F.R. § 351.402. Thus, RIFs are not conducted based on
3 agency-wide seniority. Many probationary employees are veterans or would otherwise be entitled to
4 preference in the event of a RIF.

5 44. The RIF regulations require that employees receive notice of at least 60 days before
6 being released from employment, or at least 30 days from when the RIF is caused by circumstances
7 that were not reasonably foreseeable. 5 C.F.R. § 351.801(a), (b).

8 45. The governing statute and the RIF regulations also require that states and local
9 governments be notified in advance of RIFs of 50 or more employees in an affected geographic area
10 so they can be prepared to assist affected employees. 5 U.S.C. § 3502; 5 C.F.R. § 351.803.

11 **II. OPM’s Unlawful February 13, 2025 Order to Fire Probationary Employees Across the**
12 **Nation**

13 46. Before the first day of the new Presidential Administration, OPM had never taken the
14 position that it had the authority to direct other agencies to terminate employees. As of early January
15 2025, the Acting OPM Director was Rob Shriver. On January 16, 2025, he issued a press release, and
16 gave an interview discussing OPM’s work with agencies throughout the federal government on issues
17 ranging from “skills-based federal hiring”; the “retirement claims backlog”; a “new health insurance
18 program for Postal workers”; and, significantly, “*how agencies recruit and retain early-career*
19 *employees.*” (Emphasis added).³ No mention was made of any federal government plan to terminate
20 the employment of probationary employees at any agency, or across the nation.

21 47. Before January 20, 2025, OPM had made no public statement regarding any program
22 to terminate probationary employees. Neither had any agency in the federal government made any
23 public statement regarding any desire to terminate probationary employees. No union or group of
24 federal employees had been provided any notice of any program or decision to terminate
25 probationary employees. On information and belief, before January 20, 2025, OPM had no plans to
26 order federal agencies to terminate their probationary employees, and no agency had such a plan.

27 _____
28 ³ <https://federalnewsnetwork.com/workforce/2025/01/after-years-of-work-opm-is-hitting-on-all-cylinders-acting-director-says/>.

1 48. Before January 20, 2025, no OPM Director had ever taken the position that OPM had
2 the legal authority to direct agencies to terminate the employment of employees of other federal
3 agencies.

4 49. On January 20, 2025, the first day of the incoming Presidential Administration,
5 President Donald J. Trump appointed Charles Ezell to serve as Acting OPM Director.

6 50. The same day, Acting OPM Director Ezell distributed a memo to “Heads and Acting
7 Heads of Departments and Agencies” regarding “Guidance on Probationary Periods, Administrative
8 Leave and Details.” In this memo, Acting Director Ezell directed department and agency heads to
9 submit to OPM, no later than January 24, 2025, a report listing all “employees on probationary
10 periods, who have served less than a year in a competitive service appointment, or who have served
11 less than two years in an excepted service appointment.”⁴ The memorandum directed agencies to
12 “promptly determine whether these employees should be retained at the agency.”⁵

13 51. OPM required agencies to adhere to a *200-character limit* in any explanation provided
14 as to why any individual employee should be retained by the agency.⁶

15 52. On February 11, 2025, President Trump issued Executive Order 14210, entitled
16 “Implementing the President’s ‘Department of Government Efficiency’ Workforce Optimization
17 Initiative.”⁷ The Executive Order instructed that “Agency Heads shall promptly undertake
18 preparations to initiate large-scale reductions in force (RIFs).”⁸

19 53. OPM did not wait for agencies to plan for or initiate any RIF.
20
21
22
23

24 ⁴ [https://www.opm.gov/media/yh3bv2fs/guidance-on-probationary-periods-administrative-leave-and-
details-1-20-2025-final.pdf](https://www.opm.gov/media/yh3bv2fs/guidance-on-probationary-periods-administrative-leave-and-details-1-20-2025-final.pdf)

25 ⁵ *Id.*

26 ⁶ [https://federalnewsnetwork.com/workforce/2025/02/opm-asks-agencies-to-justify-keeping-probationary-
employees/](https://federalnewsnetwork.com/workforce/2025/02/opm-asks-agencies-to-justify-keeping-probationary-employees/)

27 ⁷ [https://www.whitehouse.gov/presidential-actions/2025/02/implementing-the-presidents-department-of-
government-efficiency-workforce-optimization-initiative/](https://www.whitehouse.gov/presidential-actions/2025/02/implementing-the-presidents-department-of-government-efficiency-workforce-optimization-initiative/)

28 ⁸ *Id.*

1 54. On February 13, 2025, OPM officials met with agency leaders across the federal
2 government and directed them to begin firing their probationary employees without following RIF
3 procedures.⁹

4 55. CBS News has reported that: “**The decision on probationary workers**, who
5 generally have less than a year on the job, **came from the Office of Personnel Management**, which
6 serves as a human resources department for the federal government. The notification was confirmed
7 by a person familiar with the matter, who spoke on condition of anonymity because they weren't
8 authorized to discuss it publicly.” (Boldface added.)¹⁰

9 56. On information and belief, as of February 13, 2025, prior to the order from OPM, no
10 federal agency intended to terminate its probationary employees en masse, and no agency intended to
11 terminate probationary employees (other than on an individualized basis for actual performance or
12 conduct reasons) without complying with RIF procedures.

13 57. Agencies across the federal government began acting on OPM’s February 13 directive
14 immediately through chaotic mass terminations of their probationary employees.¹¹

15 58. Tens of thousands of probationary employees have already been subjected to mass
16 terminations, with no advance notice, by agencies across the federal government, including
17 employees at the following agencies:

18 U.S. Forest Service¹²
19 Department of Veterans Affairs¹³
20 Department of Education¹⁴
21 National Science Foundation¹⁵

22 ⁹ <https://thehill.com/homenews/administration/5144113-federal-probationary-employees-fired/>

23 ¹⁰ <https://www.cbsnews.com/news/federal-layoffs-probationary-workers-warnings-bigger-cuts-on-way/>

24 ¹¹ https://www.washingtonpost.com/politics/2025/02/14/trump-firing-probation-workforce-buyouts-layoffs-doge/f816fbea-eb23-11ef-969b-cfbefac1eb3_story.html

25 ¹² <https://www.reuters.com/world/us/mass-firings-federal-workers-begin-trump-musk-purge-us-government-2025-02-13/>; <https://www.sfgate.com/california-parks/article/joshua-tree-yosemite-locals-protest-mass-layoffs-20174425>; <https://www.nytimes.com/2025/02/18/climate/trump-layoffs-park-and-forest-service-workers.html>

26 ¹³ *Id.*; <https://www.washingtonpost.com/nation/2025/02/17/trump-fires-federal-workers-performance/>

27 ¹⁴ <https://www.reuters.com/world/us/mass-firings-federal-workers-begin-trump-musk-purge-us-government-2025-02-13/>

28 ¹⁵ <https://www.wired.com/story/national-science-foundation-february-2025-firings/>;
<https://www.nytimes.com/2025/02/18/us/politics/national-science-foundation-firings.html>.

1 General Services Administration¹⁶
 Small Business Administration¹⁷
 2 Consumer Financial Protection Bureau¹⁸
 Department of Energy¹⁹
 3 National Nuclear Security Administration²⁰
 Housing and Urban Development²¹
 4 Center for Disease Control²²
 National Park Service²³
 5 National Institutes of Health²⁴
 Environmental Protection Agency²⁵
 6 Bureau of Reclamation²⁶
 Department of Interior²⁷
 7 Bonneville Power Association²⁸
 US Department of Agriculture²⁹
 8 Bureau of Land Management³⁰
 US Fish and Wildlife³¹
 9 Cybersecurity and Infrastructure Security Agency³²
 US Citizenship and Immigration Services³³
 10 Federal Emergency Management Agency³⁴
 Federal Aviation Administration³⁵

12 ¹⁶ <https://www.reuters.com/world/us/mass-firings-federal-workers-begin-trump-musk-purge-us-government-2025-02-13/>

13 ¹⁷ <https://www.businessinsider.com/federal-workers-fired-not-fired-then-terminated-sba-2025-2>

14 ¹⁸ <https://www.reuters.com/world/us/mass-firings-federal-workers-begin-trump-musk-purge-us-government-2025-02-13/>

15 ¹⁹ <https://www.eenews.net/articles/doe-to-lay-off-probationary-staff-today/>

16 ²⁰ <https://www.npr.org/2025/02/13/nx-s1-5296928/layoffs-trump-doge-education-energy>

17 ²¹ <https://www.nbcnews.com/politics/white-house/trump-administration-federal-agencies-fire-probationary-employees-rcna192149>

18 ²² <https://apnews.com/article/trump-firing-probation-workforce-buyouts-layoffs-doge-159a6de411622c2eb651016b1e99da37>

19 ²³ <https://www.nytimes.com/2025/02/18/us/politics/national-science-foundation-firings.html> (1000 NPS employees)

20 ²⁴ <https://www.nbcwashington.com/news/president-trump-politics/taking-away-years-of-experience-nih-probationary-employees-fired-friday/3845749/>

21 ²⁵ <https://abcnews.go.com/US/agencies-federal-workers-fired/story?id=118901289>

22 ²⁶ <https://www.nytimes.com/2025/02/18/us/politics/national-science-foundation-firings.html>

23 ²⁷ *Id.* (1300 Interior Dept employees fired over holiday weekend).

24 ²⁸ <https://www.opb.org/article/2025/02/19/bonneville-power-administration-reverses-30-job-cuts-continues-with-plans-to-eliminate-430-positions/>

25 ²⁹ <https://www.npr.org/2025/02/18/nx-s1-5300150/among-the-federal-workers-fired-usda-workers-who-keep-food-safe-and-crops-growing>

26 ³⁰ <https://www.nytimes.com/2025/02/18/us/politics/national-science-foundation-firings.html>;
<https://www.cnn.com/2025/02/14/politics/probationary-federal-employees-agencies-firings-doge/index.html>

27 ³¹ <https://www.cnn.com/2025/02/14/politics/probationary-federal-employees-agencies-firings-doge/index.html>

28 ³² <https://thehill.com/homenews/5154340-dhs-fires-probationary-employees/>

29 ³³ *Id.*

30 ³⁴ <https://www.politico.com/news/2025/02/19/fema-email-firings-affect-majority-staff-00204779>

31 ³⁵ <https://apnews.com/article/doge-faa-air-traffic-firings-safety-67981aec33b6ee72cbad8dcee31f3437>

1 Department of Transportation³⁶
2 Food and Drug Administration³⁷
3 National Highway Traffic Safety Administration³⁸
4 Pipelines and Hazardous Materials Safety Administration³⁹
5 Centers for Medicare & Medicaid Services⁴⁰
6 Substance Abuse and Mental Health Services Administration⁴¹
7 Federal Deposit Insurance Corporation⁴²

8 59. While implementing OPM's orders, numerous federal agencies informed workers that
9 OPM ordered the terminations. For example, at the National Science Foundation meeting for
10 probationary employees, employees were told the following:

11 You've been invited here today because you were either a probationary employee or you are
12 an expert on intermittent appointment.

13 We've asked you here today to tell you face to face that we will be terminating your
14 employment at the end of the day today.

15 *We've been directed by the administration to remove all term probationary employees.*

16 Today at 11 o'clock, each of you will receive a termination letter by email.

17 At 1 p.m, you will lose access to the network[.] And at the end of the day today, you'll be
18 terminated.

19 You ready? You have one more thing. You have the option to resign in lieu of termination.

20 That may be beneficial to you. If you choose to resign, you will not be eligible for
21 unemployment.

22 However, if asked when you apply for future positions, you will be able to say that you were
23 not terminated.

24 So for those of you that have federal benefits. Sorry. Okay. For those of you that have
25 federal benefits, your health insurance will be terminated at the end of the pay period.

26 ³⁶ <https://www.nbcphiladelphia.com/news/national-international/transportation-department-workers-with-exceptional-reviews-told-theyre-fired-for-performance-issues/4111423/?os=iosdF&ref=app>

27 ³⁷ <https://www.nytimes.com/2025/02/18/us/politics/fda-food-safety-jim-jones-resignation.html> (terminated workers "included people with specialized skills in infant formula safety and food safety response"; FDA food safety chief resigns because "loss of critical employees overseeing the nation's food supply made his work impossible").

28 ³⁸ <https://www.politico.com/news/2025/02/18/layoffs-auto-pipeline-safety-00204715>

³⁹ *Id.*

⁴⁰ <https://www.fiercehealthcare.com/regulatory/mass-layoffs-hhs-cdc-cuts-1300-probationary-workers-reports-say>

⁴¹ *Id.*

⁴² <https://www.reuters.com/world/us/fdic-fires-new-employees-part-broader-government-layoffs-2025-02-18/>

1 Your federal dental and vision insurance plan, they will terminate at the end of the pay period.
2 There is no extension for coverage under FedVIP.

3 ...
4 This is in executing Government-wide guidance from the administration. I'm sure you've
5 read in the news that all agencies are terminating probationary employees.

6 ...
7 So there was no limited discretion. *This is not a decision the agency made. This is a*
8 *direction we received*, first of all. Second of all, this is the first of many forthcoming
9 workforce reductions.

10 ...
11 *We are following orders*. We are part of the executive branch. We follow that. I apologize for
12 people that have made life-changing career moves.

13 ...
14 We were directed last Friday by OPM to terminate all probationers except for a minimal
15 number of mission critical probationers.
16 Mission critical determination, first of all, it is exceptionally small number that we're
17 permitted to have.

18 ...
19 There's no negotiation, first of all. *And second of all, the administration has already*
20 *announced its intention to significantly reduce the workforce*.

21 It is only a matter of time. It is not today is not the only workforce reduction that we will do.

22 60. The NSF explained that the agency had previously been told that it would have
23 discretion to retain workers, and had in fact made the decision to retain all of its probationary
24 employees, only to have OPM issue a superseding order on February 13, 2025 requiring the agency
25 to terminate everyone:

26 We did. In the last two weeks. Up until Friday. Yes. We were told by OPM it was the
27 agency's discretion whether to remove probationers or not.

28 *We chose to retain them all*. Last Friday night.

They gave direction to there was some direction that was given to cabinet level agencies. And
so you saw those actions taking place at the end of last week.

But the directions we received were it was our discretion. And late, late Friday night....

They told us that they directed us to remove probationers.

61. On information and belief, OPM required agencies to use template letters, which OPM
created and provided to the agencies, to be sent to those agencies' probationary employees, citing
performance as the basis for the termination.

1 62. Reflecting that directive, many agencies have used identical or nearly identical text in
2 letters notifying probationary employees of their termination. For example:

- 3 a. Termination letters received by probationary employees in multiple agencies,
4 including the Departments of Homeland Security, Health and Human Services,
5 Agriculture, and Education, included identical introductory language stating as
6 follows, with identical footnotes and footnote text:

7 Guidance from the Office of Personnel Management (“OPM”) states,
8 “An appointment is not final until the probationary/trial period is over,”
9 and the probationary/trial period is part of “the hiring process for
10 employees.”[1] “A probationer is still an applicant for a finalized
11 appointment to a particular position as well as to the Federal
12 service.”[2] “Until the probationary period has been completed,” a
probationer has “the burden to demonstrate why it is in the public
interest for the Government to finalize an appointment to the civil
service for this particular individual.”[3]

- 13 b. Termination letters received by probationary employees in multiple agencies included
14 the following boilerplate language describing the reasons for their termination: “The
15 Agency finds, **based on your performance**, that you have not demonstrated that your
16 further employment at the Agency would be in the public interest.” (Boldface added).
17 c. Similarly, termination letters received by probationary employees in multiple agencies
18 included the following boilerplate language describing the reasons for their
19 termination: “Unfortunately, the Agency finds that that you are not fit for continued
20 employment because your ability, knowledge and skills do not fit the Agency’s current
21 needs, and **your performance** has not been adequate to justify further employment at
22 the Agency.” (Boldface added).⁴³

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⁴³ Recent reporting by the Washington Post revealed similar templates and instructions by OPM to agencies in January and February 2025 with respect to employees unlawfully targeted for termination and/or administrative leave because of perceived participation in work related to Diversity, Equity, and Inclusion programs. Washington Post, Feb. 15, 2025,, *Records show how DOGE planned Trump’s DEI purge — and who gets fired next*, available at: <https://wapo.st/4jVWqEd>.

1 63. At the National Science Foundation meeting reference above, employees were told the
2 language in the letters came from the “boilerplate” language from OPM:

3 “The cause comes from boilerplate we received from OPM. The cause says that the agency
4 finds based on your performance that you have not demonstrated that your further
5 employment at the agency would be in the public interest.”

6 64. The termination letters issued to probationary employees cite, as authority for the
7 terminations, the regulations that govern terminations **for performance reasons**: 5 C.F.R. § 315.803
8 (directing agencies to terminate probationary employees “if the employee fails to demonstrate fully
9 his or her qualifications for continued employment”); 5 C.F.R. § 315.804 (requiring notice of the
10 reasons when an agency “decides to terminate an employee serving a probationary or trial period
11 because his work performance or conduct during this period fails to demonstrate his fitness or his
12 qualifications for continued employment,” including a statement of the “agency’s conclusions as to
13 the inadequacies of [the employee’s] performance or conduct”); and 5 C.F.R. § 316.304 (entitling trial
14 period employees in the excepted service to the same notice rights upon termination for performance
15 reasons as probationary employees in the competitive service).

16 65. Despite the citation of these authorities in the template termination letters, the letters
17 fail to provide any individualized reasons why the employees’ performance warranted termination.
18 Many termination letters appear to have been created by means of mail merges. Some termination
19 letters do not even specify the name of the employee being terminated.

20 66. The reference to employee performance in the mass termination letters and the citation
21 to the authority for the termination of probationary employees for performance reasons is a pretext.
22 The real reason for the mass terminations, as expressed by the incoming Presidential Administration,
23 is to reduce the size of the federal workforce.

24 67. Many terminated probationary employees had received excellent performance reviews
25 from their agencies. Supervisors were not consulted as to the performance of individual probationary
26 employees before they were terminated. On information and belief, some probationary employees
27 have subsequently been told by agency representatives that they were terminated solely because their
28 agencies were being restructured, not based on any performance or conduct by the employee.

1 68. USA Today recently reported that “Fired probationary employees interviewed by USA
2 TODAY all said they were never told of any performance problems. One hadn’t been in the job long
3 enough to have a performance review. Another was fired just a month into her job after relocating
4 from more than 1,700 miles away to take it. And a third employee said his supervisor explicitly told
5 him he wasn’t being terminated for performance reasons.”⁴⁴

6 69. NBC News reported that although Department of Transportation probationary
7 employees received letters stating that they were being terminated for performance reasons, “most of
8 those employees were rated as being ‘exceptional’ performers by their supervisors.”⁴⁵

9 70. The Washington Post reported that: “One well-rated Veterans Affairs staffer texted her
10 boss to complain after she was fired. In text messages obtained by The Post, he replied, “It states it’s
11 due to your performance which is not true. ... Your performance has nothing to do with this.”⁴⁶

12 71. On information and belief, Defendants plan further waves of mass pretextual
13 terminations of probationary employees.

14 **III. Impact on Plaintiffs, the Federal Government, and the Public**

15 72. Plaintiffs each represent probationary employees who have been summarily fired, and
16 falsely informed that their termination was based on performance, as a result of OPM’s orders to
17 federal agencies.

18 73. Each Plaintiff has the core function of representing employees in federal bargaining
19 units in collective bargaining and providing counseling, advice, and representation to represented
20 employees in the event of adverse employment actions.

21 74. Each Plaintiff has been prevented, by the surprise mass terminations, from exercising
22 those core functions as employee representative, including because by providing sham reasons for
23 probationary employees’ terminations, OPM has undermined the Plaintiffs’ ability to effectively
24 assist represented employees in vindicating their rights and seeking appropriate remedies.

25 _____
26 ⁴⁴<https://www.msn.com/en-us/news/us/its-a-lie-federal-workers-incensed-by-performance-language-in-termination-letters/ar-AA1zcrnN?ocid=BingNewsSerp>

27 ⁴⁵<https://www.nbcnews.com/politics/doge/federal-workers-exceptional-reviews-fired-performance-issues-rcna192347>

28 ⁴⁶ <https://www.washingtonpost.com/nation/2025/02/17/trump-fires-federal-workers-performance/>

1 75. Each Plaintiff has expended substantial time and resources in the days following the
2 surprise mass terminations addressing member concerns and attempting to provide employees with
3 effective representation. As a result of the surprise mass terminations, each Plaintiff has been forced
4 to divert resources that would be devoted to representing employees who have experienced adverse
5 employment action for legitimate resources.

6 76. Each Plaintiff has been harmed in multiple other ways by the termination of its
7 members, including by the loss of dues income and bargaining power.

8 77. Terminated employees and their families now face an immediate loss of income and
9 benefits (including health benefits); economic insecurity; the immediate need to search for alternative
10 employment; and the future adverse impact of an employment termination falsely predicated on
11 performance.

12 78. OPM’s actions have already had impacts in California beyond terminated employees,
13 their families, and their representatives. For example, “the Trump administration has already made
14 the United States more exposed to catastrophic wildfires in ways that will be difficult to reverse,
15 current and former federal employees say....The job cuts, which amount to roughly 10 percent of the
16 agency’s work force, could hobble the Forest Service, which was already struggling to remove
17 vegetation across its vast land holdings at a pace that matches the growing threat from fires,
18 according to current and former federal employees, as well as private companies and nonprofit
19 organizations that work on thinning forested lands.”⁴⁷ The effects have been immediate:

20 In California, the Forest Service’s efforts to remove underbrush are on pause, according to a
21 person who manages an organization that runs wildfire prevention projects in the state and
22 who spoke on the condition of anonymity out of concern of reprisals.⁴⁸

23 //
24 //
25 //
26 //

27 _____
⁴⁷ <https://www.nytimes.com/2025/02/15/climate/us-forest-service-layoffs-wildfires.html>

28 ⁴⁸ <https://www.nytimes.com/2025/02/15/climate/us-forest-service-layoffs-wildfires.html>

1 **CLAIMS FOR RELIEF**

2 **Claim I: Separation of Powers/*Ultra Vires***

3 **OPM’s Order to Federal Agencies to Terminate Probationary Employees**
4 **Unlawfully Conflicts with and Overrides Legislative Power**

5 79. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

6 80. Plaintiffs have a non-statutory right of action to enjoin and declare unlawful official
7 action that is ultra vires.

8 81. The Constitution vests the legislative power in Congress. U.S. Const., art. I. Federal
9 legislation must be passed by both chambers of Congress before it may be presented to the President,
10 and, if signed, become law. U.S. Const., art. I.; *I.N.S. v. Chadha*, 462 U.S. 919, 951 (1983).

11 82. The Constitution vests executive power in the President. U.S. Const., art. II, and
12 imposes on the President a duty to “take Care that the Laws be faithfully executed.” U.S. Const. art.
13 II, § 3.

14 83. The President and Executive Branch have no constitutional power to unilaterally
15 enact, amend, or repeal parts of duly enacted statutes. *Clinton v. City of New York*, 524 U.S. 417,
16 438–39 (1998). The declared purpose of separating and dividing the powers of government was to
17 “diffus[e] power the better to secure liberty.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579,
18 635 (1952) (Jackson, J., concurring); *see also Bowsher v. Synar*, 478 U.S. 714, 721–22 (1986)
19 (“Justice Jackson’s words echo the famous warning of Montesquieu, quoted by James Madison in
20 The Federalist No. 47, that ‘there can be no liberty where the legislative and executive powers are
21 united in the same person, or body of magistrates’....” The Federalist No. 47, p. 325 (J. Cooke ed.
22 1961).”).

23 84. Congress exercised its Article I legislative authority to create the agencies of the
24 federal government. *See generally* United States Code, Title 5 (Government Organization and
25 Employees). To the agency heads, Congress has also expressly delegated the power to manage the
26 functions of the agencies, including the right to employ and discharge subordinate employees of the
27 agencies and to spend appropriated funds on those positions.

1 85. In addition to specific authorizing statutes, Congress has also generally authorized the
2 heads of administrative agencies to make employment decisions (5 U.S.C. § 3101), manage the
3 employees of that agency (5 U.S.C. § 301), or delegate to subordinate officers the management
4 decisions, including the hiring and firing of employees (5 U.S.C. § 302).

5 86. Congress also made the federal administrative agencies subject to the requirements of
6 the CSRA, which sets forth uniform rules pertaining to employment for the civil service across
7 federal agencies. The agencies, led by their agency heads, are obligated by Congress to comply with
8 the CSRA with respect to their employees.

9 87. The OPM Program requiring federal agencies to remove probationary employees
10 throughout the federal government unlawfully usurps the legislative authority of Congress and is
11 therefore ultra vires, by overriding the direct Congressional authorization of agency heads to manage
12 the affairs and employees of their respective agencies, including by overriding each of the following
13 statutes:

- 14 a. The authorization to all agencies to employ: 5 U.S.C. § 3101;
- 15 b. The authorization to all agencies to manage agency affairs via rules, including rules
16 for employment: 5 U.S.C. §§ 301, 302;
- 17 c. The specific authorizing statutes for each federal agency, which create the office of
18 agency head to administer the agencies, and enumerate the duties of the agency heads
19 including with respect to employment: *e.g.*, 26 U.S.C. §§ 7803, 7804 (IRS); 42 U.S.C.
20 §§ 7231, 7253 (DOE); 20 U.S.C. § 3461 (Dept. of Ed.); 42 U.S.C. § 203 (HHS); 12
21 U.S.C. § 5492 (CFPB); 16 U.S.C. §§ 551, 554a, e (Agr.; Forest Service); 38 U.S.C. §
22 303, 510 (VA); 10 U.S.C. § 113 (DOD); 42 U.S.C. § 282 (NIH); 51 U.S.C. §§
23 20111, 20113 (NASA).
- 24 d. The CSRA authorization to agencies that govern employee removal: 5 U.S.C. §§
25 7512, 7513;
- 26 e. The CSRA provisions that apply to agency RIFs, which authorize OPM to create
27 regulations by which agencies may conduct RIFs of their employees: 5 U.S.C. § 3502;
28 *see also* 5 C.F.R. § 351.204 Responsibility of agency (“Each agency covered by this
part is responsible for following and applying the regulations in this part when the
agency determines that a reduction force is necessary.”); *id.* § 351.205 Authority of
OPM (“The Office of Personnel Management may establish further guidance and
instructions for the planning, preparation, conduct, and review of reductions in
force.”).

1 88. OPM’s actions also exceed any statutory authority granted to it by Congress. In
 2 creating OPM and delegating duties to its Director, Congress did not authorize OPM or its Director to
 3 order the termination of employees at any other federal agency. *See* 5 U.S.C. § 1103 (authorizing
 4 Director of OPM to “appoint[] individuals to be employed *by the Office*” and “direct[] and
 5 supervis[e] employees *of the Office*, distribut[e] business among employees and organizational units
 6 *of the Office*, and direct[e] the internal management *of the Office*”) (emphases added).

7 89. OPM’s actions were not authorized by any Article II Executive power, because no
 8 Article II constitutional power authorizes OPM to order federal agencies created by Congress to
 9 discharge subordinate agency employees, or to direct agencies to rely on false statements regarding
 10 employee performance to effectuate the discharged ordered by OPM.

11 90. Therefore, OPM’s order to the federal agencies to terminate probationary employees
 12 was issued without legal authority and is *ultra vires*.

13
 14 **Claim II: Administrative Procedures Act Section 706(2)(A) and (C)**
(Action Inconsistent with Law and Exceeding Statutory Authority)

15 **The OPM Order to Terminate Probationary Employees Government-Wide**
 16 **Violates Statutes Governing Agency Powers and the CSRA**

17 91. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

18 92. Plaintiffs’ federal employee members are subject to the requirements of the OPM
 19 order that all federal agencies terminate probationary employees, and Plaintiffs and their members are
 20 persons who have suffered legal wrong as a result of, and have been adversely affected or aggrieved
 21 by, OPM and Acting OPM Director’s actions for purposes of 5 U.S.C. § 702.

22 93. OPM is an agency that Congress has made subject to the APA. 5 U.S.C. § 701.
 23 OPM’s mass termination program and order to federal agencies constitutes final agency action under
 24 the APA. 5 U.S.C. § 704.

25 94. Under the APA, a court shall “hold unlawful and set aside agency action” that is
 26 “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” (5 U.S.C. §
 27 706(2)(A)), or that is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory
 28 right” (5 U.S.C. § 706(2)(C)).

1 95. The actions of OPM and its Acting Director, including but not limited to the OPM
2 program requiring federal agencies to terminate probationary employees, violate the Administrative
3 Procedure Act because they are inconsistent with law in violation of 5 U.S.C. § 706(2)(A), and
4 exceed statutory authority, in violation of 5 U.S.C. § 706(2)(C), and are for those reasons also
5 arbitrary and capricious in violation of 5 U.S.C. § 706(2)(A).

6 96. The actions of OPM and its Acting Director overriding the direct Congressional
7 authorization of agency heads to manage the affairs and employees of their respective agencies,
8 including by overriding each and every one of the following statutes:

- 9 a. The authorization to employ: 5 U.S.C. § 3101;
- 10 b. The authorization to manage agency affairs via rules, including rules for employment:
11 5 U.S.C. §§ 301, 302;
- 12 c. The specific authorizing statutes for each federal agency, which create the office of
13 agency head to administer the agencies, and enumerate the duties of the agency heads
14 including with respect to employment: *e.g.*, 26 U.S.C. §§ 7803, 7804 (IRS); 42 U.S.C.
15 §§ 7231, 7253 (DOE); 20 U.S.C. § 3461 (Dept. of Ed.); 42 U.S.C. § 203 (HHS); 12
16 U.S.C. § 5492 (CFPB); 16 U.S.C. § 551, 554a, e (Agr.; Forest Service); 38 U.S.C. §§
17 303, 510 (VA); 10 U.S. C. § 113 (DOD); 42 U.S.C. § 282 (NIH); 51 U.S.C. §§
18 20111, 20113 (NASA).
- 19 d. The CSRA authorization to agencies that govern employee removal: 5 U.S.C. §§
20 7512, 7513;
- 21 e. The CSRA provisions that apply to agency RIFs, which authorize OPM to promulgate
22 regulations by which agencies may conduct RIFs of their employees: 5 U.S.C. § 3502;
23 *see also* 5 C.F.R. § 351.204 Responsibility of agency (“Each agency covered by this
24 part is responsible for following and applying the regulations in this part when the
25 agency determines that a reduction force is necessary.”); *id.*, § 351.205 Authority of
26 OPM (“The Office of Personnel Management may establish further guidance and
27 instructions for the planning, preparation, conduct, and review of reductions in
28 force.”).

97. OPM’s actions also exceed any statutory power or duties granted by Congress to
OPM. In creating OPM and delegating duties to its Director, Congress did not authorize OPM or its
Director to order the removal of employees employed by any other federal agency. *See* 5 U.S.C. §
1103 (authorizing Director of OPM to “appoint[] individuals to be employed *by the Office*” and
“direct[] and supervis[e] employees *of the Office*, distribut[e] business among employees and

1 organizational units *of the Office*, and direct[e] the internal management *of the Office*”) (emphases
2 added).

3 **Claim III: Administrative Procedures Act Section 706(2)(A) (Arbitrary and Capricious)**

4 **The OPM Order to Terminate Probationary Employees Government-Wide by Falsely**
5 **Invoking Performance is Arbitrary and Capricious**

6 98. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

7 99. Plaintiffs’ federal employee members are subject to the requirements of the OPM
8 order to federal agencies to terminate probationary employees, and Plaintiffs and their members are
9 persons who have suffered legal wrong as a result of, and have been adversely affected or aggrieved
10 by, OPM and Acting OPM Director’s actions for purposes of 5 U.S.C. § 702.

11 100. OPM is an agency that Congress has made subject to the APA. 5 U.S.C. § 701.
12 OPM’s order to federal agencies constitutes final agency action under the APA. 5 U.S.C. § 704.

13 101. The actions of OPM and its Acting Director, including but not limited to the OPM
14 program requiring federal agencies to terminate probationary employees, violate the APA because
15 they are arbitrary and capricious, in violation of 5 U.S.C. § 706(2)(A), for reasons that include the
16 following: OPM’s actions are based on the fiction that the employees are being terminated for
17 performance reasons; OPM’s actions are intended to deprive terminated employees of an
18 administrative remedy; OPM’s actions required agencies to terminate employees immediately, often
19 with only a few hours notice; OPM’s actions required agencies to violate commitments made to
20 employees and the agency’s own plans for those employees; and OPM’s actions had no relationship
21 to agencies’ staffing needs or statutory mandates.

22 **Claim IV: Administrative Procedures Act Section 706(2)(D)**
23 **(Notice and Comment Rulemaking)**

24 **The OPM Order to Terminate Probationary Employees Government-wide is Void for**
25 **Failure to Comply with Required Notice and Comment Rulemaking**

26 102. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth Herein.

27 103. Plaintiffs’ federal employee members are subject to the requirements of the OPM
28 Program requiring federal agencies to terminate probationary employees and Plaintiffs and their

1 members are persons who have suffered legal wrong as a result of, and have been adversely affected
2 or aggrieved by, OPM and Acting OPM Director's actions for purposes of 5 U.S.C. § 702. Had OPM
3 followed notice-and-comment procedures required by the APA, Plaintiffs would have provided
4 comments about the OPM Program.

5 104. OPM is an agency that Congress has made subject to the APA. 5 U.S.C. § 701.
6 OPM's order to federal agencies constitutes final agency action under the APA. 5 U.S.C. § 704.

7 105. Under the APA, a court shall "hold unlawful and set aside agency action ...found to be
8 without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

9 106. The OPM Order directing agencies to terminate probationary employees is a "rule" for
10 purposes of the APA. 5 U.S.C. § 551(4).

11 107. Congress assigned to the Director of OPM the duty of "executing, administering, and
12 enforcing—(A) the civil service rules and regulations of the President and the Office and the laws
13 governing the civil service." 5 U.S.C. § 1103(a)(5)(1). Congress also required that "in the exercise
14 of the functions assigned under this chapter, the Director shall be subject to subsections (b), (c), and
15 (d) of section 553 of this title." 5 U.S.C. § 1105. Congress expressly made the requirements of
16 section 553 apply to OPM actions "notwithstanding subsection (a) of such section 553," which
17 otherwise exempts "matter[s] relating to agency management or personnel or to public property,
18 loans, grants, benefits, or contracts." 5 U.S.C. § 553(a).

19 108. Notwithstanding the OPM Director's express obligations pursuant to 5 U.S.C. §§ 1103
20 and 1105 to comply with notice and comment rule-making pursuant to the APA, neither OPM nor its
21 Acting Director complied with the rule-making provisions set forth in 5 U.S.C. § 553 before issuing
22 the OPM order directing agencies to terminate probationary employees.

23 109. OPM's order directing agencies to terminate probationary employees therefore also
24 violates 5 U.S.C. § 706(2)(D) by failing to observe procedures required by law.

25 PRAYER FOR RELIEF

26 Wherefore, Plaintiffs pray that this Court:

27 1. Declare that OPM's order requiring federal agencies to terminate probationary
28 employees is unlawful;

1 2. Enter preliminary or permanent injunctive relief setting aside OPM’s order as
2 unlawful; requiring Defendants, and all persons acting in concert with them, to cease terminations of
3 probationary employees pursuant to OPM’s program and order; and requiring Defendants, and all
4 persons acting in concert with them, to rescind the prior unlawful terminations of probationary
5 employees pursuant to OPM’s Order.

6 3. Award Plaintiffs their costs, reasonable attorneys’ fees, and other disbursements as
7 appropriate;

8 4. Grant such other and further relief as the Court deems just and proper.

9
10 DATED: February 19, 2025

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