No. 24A

# In the Supreme Court of the United States

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UNITED STATES OFFICE OF PERSONNEL MANAGEMENT, ET AL., APPLICANTS

*v.*

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

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**APPLICATION TO STAY THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY**

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## PARTIES TO THE PROCEEDING

Applicants (defendants-appellants below) are United States Office of Personnel Management; Scott Bessent, Secretary of Treasury; Pamela Bondi, United States Attorney General; Bureau of Land Management; Doug Burgum, Secretary of the Interior; Robin Carnahan, Administrator of General Services; Department of Defense; Doug Collins, Secretary of Veterans Affairs; Sean Duffy, Secretary of Transportation; Department of Veterans Affairs; Leland Dudek, Acting Commissioner of Social Security; Charles Ezell, in his official capacity as Acting Director of the U.S. Office of Personnel Management; Pete Hegseth, Secretary of Defense; Robert F. Kennedy, Jr., Secretary of Health and Human Services; Kelly Loeffler, Administrator of the Small Business Administration; Howard W. Lutnick, Secretary of Commerce; Linda McMahon, Secretary of Education; Vince Micone, Acting Secretary of Labor; National Aeronautics and Space Administration; National Park Service; National Science Foundation; Kristi Noem, Secretary of Homeland Security; Office of Management and Budget; Sethuraman Panchanathan, Director of the National Science Foundation; Janet Petro, NASA Acting Administrator; Brooke Rollins, Secretary of the U.S Department of Agriculture; Social Security Administration; Scott Turner, Secretary of Housing and Urban Development; Marco Rubio, Secretary of State; United States Department of Agriculture; United States Department of Commerce; United States Department of Education; United States Department of Energy; United States Department of the Interior; United States Department of Justice; United States Department of Health and Human Services; United States Department of Homeland Security; United States Department of Housing and Urban Development; United States Department of Labor; United States Department of State; United States Department of Transportation; United States Department of the Treasury; United States Envi-

ronmental Protection Agency; United States General Services Administration; United States Small Business Administration; United States Department of Veterans Affairs; Russell Vought, Director of OMB; Chris Wright, Secretary of Energy; and Lee Zeldin, EPA Administrator.

Respondents (plaintiffs-appellees below) are American Federation of Government Employees, AFL-CIO; American Federation of Government Employees Local 1216; American Federation of Government Employees Local 2110; American Federation of State County and Municipal Employees, AFL-CIO; American Geophysical Union; American Public Health Association; Association of Flight Attendants—CWA AFL-CIO; Climate Resilient Communities; Coalition to Protect America's National Parks; Common Defense Civic Engagement; Main Street Alliance; Point Blue Conservation Science; the State of Washington; United Nurses Association of California—Union of Health Care Professionals, AFSCME, AFL-CIO; Vote Vets Action Fund, Inc.; and Western Watersheds Project.

**RELATED PROCEEDINGS**

United States District Court (N.D. Cal.):

*AFGE* v. *OPM*, No. 25-cv-1780 (Feb. 27, 2025) (TRO)

*AFGE* v. *OPM*, No. 25-cv-1780 (Mar. 13, 2025) (preliminary injunction)

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

*AFGE* v. *OPM*, No. 25-1677 (Mar. 17, 2025) (administrative stay)

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Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Acting Solicitor General—on behalf of applicants United States Office of Personnel Management, et al.—respectfully files this application to stay the preliminary injunction issued by the U.S. District Court for the Northern District of California (App., *infra*, 1a-24a), pending the consideration and disposition of the government's appeal to the U.S. Court of Appeals for the Ninth Circuit and, if the court of appeals affirms the injunction, pending the timely filing and disposition of a petition for a writ of certiorari and any further proceedings in this Court. In addition, the Acting Solicitor General respectfully requests an immediate administrative stay of the district court's order pending the Court's consideration of this application.

The district judge in this case spontaneously issued a preliminary injunction ordering a half-dozen departments and agencies to immediately offer reinstatement to over 16,000 probationary employees who had been lawfully terminated. The district court did so in a suit filed not by the employees themselves (whose claims Con-

gress has channeled through special administrative procedures), but by a group of nonprofits who claimed that these layoffs could contribute to downstream harms from less-robust governmental services. And the court issued this sweeping relief on the theory that the agency decisionmakers wrongly believed that OPM had directed the terminations—even though OPM clarified otherwise in response to the court's TRO, and even though the six enjoined agencies subsequently chose to stand by the terminations. The court's preliminary injunction thus let third parties hijack the employment relationship between the federal government and its workforce. And, like many other recent orders, the court's extraordinary reinstatement order violates the separation of powers, arrogating to a single district court the Executive Branch's powers of personnel management on the flimsiest of grounds and the hastiest of timelines. That is no way to run a government. This Court should stop the ongoing assault on the constitutional structure before further damage is wrought.

Throughout February 2025, as part of the Administration's efforts to streamline the federal workforce and address unsustainable federal expansion, multiple agencies terminated thousands of employees in probationary status, *i.e.*, those who have yet to establish their qualification for continued service and remain in their one- or two-year trial periods. Some of those employees have since filed complaints with the Office of Special Counsel, which, at one of the agencies, pursued administrative relief before the Merit Systems Protection Board. But no employees are plaintiffs in this suit. The respondents whose claims formed the basis for the injunction are instead nonprofit organizations whose members use government services that have, at best, only distant connections to the terminated employees. Yet they have now parlayed such alleged harms as the late opening of a national park's bathroom facility or supposedly dilatory Freedom of Information Act (FOIA) responses into a sweeping,

nationwide preliminary injunction ordering six federal agencies to immediately reinstate, to full duty status, more than 16,000 terminated probationary employees.

That injunction is especially remarkable given that respondents did not even move for it; the court issued an oral preliminary injunction from the bench at the end of an evidentiary hearing, later followed by a written opinion. The district court thus spontaneously expanded relief far beyond its initial temporary restraining order, which had simply required the Office of Personnel Management (OPM) to update its guidance to make clear that it does not have authority to direct personnel actions at the agencies (a principle that the government does not contest).

The notion that immediate reinstatement of thousands of probationary employees is the way to improve customer service at national park bathrooms also underscores fatal flaws with respondents' theory of Article III standing—flaws that should have foreclosed any relief. To call respondents' theory of standing attenuated is charitable. They speculate that OPM's original guidance, not the agencies' own assessments of whether retaining these probationary employees is necessary, prompted agencies to terminate probationary employees, thereby hampering specific services (like bathroom access and FOIA responsiveness) that would have been unaffected without the terminations. Those inferences cannot establish Article III standing. Nor can respondents link their theory of illegality—that OPM lacked the authority to direct terminations at particular agencies—to the injury they assert. If organizations could establish Article III standing just by positing that fewer government employees will translate into less-optimal government services for some of their members, then anyone anywhere with any contact with the federal government could second-guess any agencies' personnel decisions, down to which federal employees work which hours.

Declaring open season on challenges to federal personnel management is especially unsound because Congress has created an entirely different framework for resolving legal challenges to the terminations of federal employees. As this Court has held, challenges to terminations of federal employees must proceed, if at all, under the reticulated process Congress set out in the Civil Service Reform Act of 1978 (CSRA). Allowing strangers to the federal-employment relationship to head straight to district court and raise claims that the affected federal employees themselves cannot raise would upend that entire process.

This Court should not allow a single district court to erase Congress's handiwork and seize control over reviewing federal personnel decisions—much less to do so by vastly exceeding the limits on the scope of its equitable authority and ordering reinstatements en masse. This Court has recognized that the judicially compelled reinstatement of even a single government employee represents a substantial intrusion on the Executive. This Court has required a heightened showing before permitting that remedy, so as to preserve the Executive's traditional "latitude in the dispatch of its own internal affairs," *Sampson* v. *Murray*, 415 U.S. 61, 83 (1974) (citation and internal quotation marks omitted). Moreover, no statute—certainly not the Administrative Procedure Act (APA) that forms the basis of this suit—authorizes the use of reinstatement to redress downstream harm to the potential beneficiaries of the services generated by a particular employer-employee relationship. Nor have respondents come close to making a heightened showing that mass reinstatement of 16,000 probationary employees is necessary, especially after the government had already remedied the supposed legal mistake by making it clear that OPM cannot, and is not seeking to, direct terminations at other federal agencies.

The district court's extraordinarily overbroad remedy is now inflicting ongoing,

irreparable harm on the Executive Branch that warrants this Court's urgent intervention. Every day that the government remains subject to the injunction inflicts intolerable harm on the functioning of the Executive Branch. The district court has compelled the government to embark on the massive administrative undertaking of reinstating, and onboarding to full duty status, thousands of terminated employees in the span of a few days. Exacerbating the burden, the district court has insisted that employees must be returned to full duty status and staffed so as to restore the services that respondents seek to use. And the government is required to reinstate employees to active-duty status and provide them with assignments, all subject to the ongoing supervision of the district court. The injunction appears to prevent the agencies from terminating those employees based on the agencies' independent judgment or even on newly arising grounds, at least absent clarification or permission from the district court. The ensuing financial costs and logistical burdens of ongoing compliance efforts are immense.

Given those profound harms—made particularly intolerable by the injunction's sheer scale—the government sought an administrative stay and requested a decision by the court of appeals on its emergency motion for a stay pending appeal by 12 p.m. Pacific Time on Friday, March 21. The court of appeals denied an administrative stay, over the partial dissent of Judge Bade, and as this application is being filed on Monday, March 24, the court of appeals has yet to rule on the government's stay motion. Every additional day the injunction remains in effect is a day that six executive agencies are effectively under the district court's receivership, necessitating immediate relief from this Court.

This preliminary injunction also contributes to an untenable trend. In the two months since Inauguration Day, district courts have issued more than 40 injunctions

or TROs against the Executive Branch. Whereas "district courts issued 14 universal injunctions against the federal government through the first three years of President Biden's term," they issued "*15* universal injunctions (or temporary restraining orders) against the current Administration in February 2025 alone." Appl. at 26, *Trump* v. *CASA, Inc.* (No. 24A884) (filed Mar. 13, 2025); see *District Court Reform: Nationwide Injunctions*, 137 Harv. L. Rev. 1701, 1705 (2024). This situation is unsustainable. Emboldened by the lack of prompt appellate review (often occasioned by the use of the TRO mechanism), district courts have now issued dozens of orders without sufficient regard for limits on their own jurisdiction or to defects in plaintiffs' representations about the law and the underlying facts. Those orders have sown chaos as the Executive Branch scrambles to meet immediate compliance deadlines by sending huge sums of government money out the door, reinstating thousands of lawfully terminated workers, undoing steps to restructure Executive Branch agencies, and more. The lower courts should not be allowed to transform themselves into all-purpose overseers of Executive Branch hiring, firing, contracting, and policymaking. Only this Court can end the interbranch power grab.

## STATEMENT

1. a. OPM assists the President in overseeing the federal workforce. Congress has instructed OPM to, among other things, "aid[] the President * * * in preparing such civil service rules as the President prescribes, and otherwise advis[e] the President on actions which may be taken to promote an efficient civil service * * *, including recommending policies relating to the selection, * * * tenure, and separation of employees." 5 U.S.C. 1103(a)(7).

Federal law provides that "[t]he President may * * * provide * * * for a period of probation" for federal employees "before an appointment in the competitive service

becomes final." 5 U.S.C. 3321(a)(1); see 5 U.S.C. 7511(a)(1). Pursuant to that authority, OPM has issued rules defining the probationary term and specifying that an agency "shall utilize the probationary period as fully as possible to determine the fitness of the employee and shall terminate his or her services during this period if [he] fails to demonstrate fully his or her qualifications for continued employment." 5 C.F.R. 315.803(a); see 5 C.F.R. 315.801, 315.802.

b. The Civil Service Reform Act (CSRA) "establishe[s] a comprehensive system for reviewing personnel action taken against federal employees." *United States* v. *Fausto*, 484 U.S. 439, 455 (1988). Under the CSRA, most civilian employees of the federal government can appeal a major adverse personnel action—including a removal, suspension for more than 14 days, or furlough of 30 days or less—to the Merit Systems Protection Board (MSPB). 5 U.S.C. 7512, 7513(d), 7701. The MSPB can order relief to prevailing employees, including reinstatement. 5 U.S.C. 1204(a)(2), 7701(g). The Federal Circuit has exclusive jurisdiction to review final decisions of the MSPB. 5 U.S.C. 7703(b)(1).

Federal employees in their probationary period generally do not have a right to appeal to the MSPB. 5 U.S.C. 7511(a)(1); see 5 C.F.R. 315.806 (permitting probationary employees to appeal to the MSPB only on specific issues). In certain circumstances, probationary employees may file a complaint with the Office of Special Counsel, which may in turn pursue administrative relief before the MSPB. See 5 U.S.C. 1212, 1214.

The CSRA includes the Federal Service Labor-Management Relations Statute, which governs labor relations between the Executive Branch and its employees. See 5 U.S.C. 7101-7135; *American Fed'n of Gov't Emps.* v. *Trump*, 929 F.3d 748, 752 (D.C. Cir. 2019). The Federal Labor Relations Authority (FLRA) is charged with adjudi-

cating federal labor disputes. 5 U.S.C. 7105(a)(2). Congress has authorized review of the FLRA's decisions in the courts of appeal. 5 U.S.C. 7123(a).

2. a. On January 20, 2025, President Trump acted to optimize the size of the federal workforce and limit hiring to mission-critical positions. The President issued a memorandum instituting a hiring freeze of federal civilian employees, and ordering agencies to identify ways to reduce the size of the federal government. D. Ct. Doc. 111-6, at 1-2 (Mar. 12, 2025); see also Exec. Order No. 14,210, 90 Fed. Reg. 9669 (Feb. 14, 2025) (clarifying terms of the hiring freeze).

The same day, OPM Acting Director Charles Ezell transmitted to Executive Branch agencies a memorandum "providing * * * guidance * * * regarding critical potential personnel actions." D. Ct. Doc. 111-1, at 1 (Mar. 12, 2025). The memorandum explained that "[p]robationary periods are an essential tool for agencies to assess employee performance and manage staffing levels." *Ibid.* It stated that agencies "should identify all employees on probationary periods" and "should promptly determine whether those employees should be retained at the agenc[ies]." *Ibid.*

On February 12, OPM sent agency Chiefs of Staff an email titled "Probationary Employee Actions." D. Ct. Doc. 111-5, at 1 (Mar. 12, 2025). The email instructed the agency Chiefs of Staff to "partner with your [agency Chief Human Capital Officer] to action those [employees] you know you wish to separate from * * * using the attached template letter." *Ibid.* (emphasis omitted). The email requested that the agencies provide OPM with a tracker reflecting "[w]hich probationary employees have been terminated and which [the agencies] plan to keep." *Ibid.*

On February 14, OPM sent an email to an agency forum that provided additional guidance to agencies. D. Ct. Doc. 111-2 (Mar. 12, 2025). OPM explained that "[a]n appointment is not final until the probationary period is over," and that "[u]ntil

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 [his] appointment to the civil service." *Id.* at 1 (citation and internal quotation marks omitted). OPM advised that "[a]n employee's performance must be measured in light of the existing needs and interests of government," and that employees would have the requisite "qualifications for continued employment" only if they are "the highest-performing * * * in mission critical areas." *Id.* at 1-2 (citation omitted).

On February 24, OPM again emailed the interagency forum, noting that it had received numerous questions "[a]s agencies continue to make decisions on whether to retain probationary employees." D. Ct. Doc. 111-4 (Mar. 12, 2025). OPM provided a frequently-asked-questions document "[t]o assist agencies in carrying out their decisions." *Ibid.* None of those communications directed agencies to terminate any particular probationary employees; rather, OPM instructed agencies to engage in a review of probationers based on how their performance was advancing the agencies' mission. See, *e.g.*, D. Ct. Doc. 111-3, at 1 (Mar. 12, 2025) (asking "How should agencies evaluate the performance of an employee serving a probationary or trial period?") (emphasis omitted).

b. Beginning on February 13, federal agencies terminated numerous federal employees serving in their probationary periods. The Department of Veterans Affairs, for example, dismissed "more than 1,000 employees," consistent with "a government-wide Trump Administration effort to make agencies more efficient, effective and responsive to the American People." D. Ct. Doc. 111-9, at 1-2 (Mar. 12, 2025). The Department of Agriculture announced that it "is pursuing an aggressive plan to optimize its workforce," including "by eliminating positions that are no longer necessary." D. Ct. Doc. 111-10, at 2 (Mar. 12, 2025). And the Department of Defense

announced that it "is re-evaluating [its] probationary workforce, consistent with the President's initiative to reform the Federal workforce to maximize efficiency and productivity"; the Department noted that it "believe[s] in the goals of the program" and touted Secretary Hegseth's view that "it is simply not in the public interest to retain individuals whose contributions are not mission-critical." D. Ct. Doc. 111-11, at 1 (Mar. 12, 2025).

c. On March 4, OPM revised its guidance to clarify that "OPM is not directing agencies to take any specific performance-based actions regarding probationary employees." D. Ct. Doc. 64-1, at 2 (Mar. 7, 2025). OPM emphasized that "[a]gencies have ultimate decision-making authority over, and responsibility for, such personnel actions. *Ibid.* (citation omitted); see D. Ct. Doc. 78 (Mar. 10, 2025) (revised OPM guidance dated March 4, 2025).

3. a. Four labor unions filed this action on February 19, 2025. D. Ct. Doc. 1 (Feb. 19, 2025). Respondents filed an amended complaint adding as plaintiffs five additional organizations: Main Street Alliance, a network of small businesses; Coalition to Protect America's National Parks, a non-profit organization comprising individuals associated with the National Park Service; Western Watersheds Project, an environmental conservation group; and Vote Vets Action Fund Inc. and Common Defense Civic Engagement, organizations that work on behalf of veterans. D. Ct. Doc. 17, at 5-7 (Feb. 23, 2025). The action was brought against OPM and Acting OPM Director Ezell. *Id.* at 1. Respondents primarily alleged that OPM acted in excess of its statutory authority, and in contravention of agencies' own statutory authority to hire and manage their workers, by "order[ing] federal agencies" to terminate employees. *Id.* at 1-2, 24-28. Respondents moved for a temporary restraining order. D. Ct. Doc. 18 (Feb. 23, 2025).

b. On February 27, the district court issued a temporary restraining order from the bench. D. Ct. Doc. 41. In a written order the next day, the court determined that it likely lacks jurisdiction to hear the union respondents' claims because the claims in this case "'are the vehicle by which they seek to reverse the removal decisions, to return [members] to federal employment, and to [collect] the compensation they would have earned but for the adverse employment action,'" and that Congress has "channeled" such claims "to the FLRA and MSPB." App., *infra*, 11a-12a (quoting *Elgin* v. *Department of the Treasury*, 567 U.S. 1, 22 (2012)). But the court took a different view as to the organizational respondents, whose members are end-users of government services. As to those respondents, the court took the view that it likely had subject-matter jurisdiction because organizational respondents' claims—such as the assertion that OPM's actions "undermined the [agency's] ability to respond to [a respondent's member's] FOIA requests" and the "frustration of [a respondent's] ecological mission"—are "ill-suited to adjudication by a *labor* board." *Id.* at 13a. The court recognized that the organizational respondents asserted that their injuries occurred "*because*" the termination of the probationary employees was "unlawful[]." *Ibid.* It nonetheless determined that, because organizational respondents were not entitled to proceed before the FLSA and MSPB, they could bring their challenge to the legality of the terminations in district court. *Ibid.*

The district court also reasoned that the organizational respondents have standing. App., *infra*, 13a-22a. The court found standing for claims against four of the agencies based on organizational respondents' assertions that their members may suffer delays or disruption in government services as a result of the terminations. See *id.* at 14a-19a. As to the two remaining agencies, the court found standing for the organizational respondents themselves, crediting their assertion that the re-

spondents would feel forced to divert resources to counteract the impacts of a potential reduction in services caused by the terminations. See *id.* at 20a-21a.

On the merits, the district court observed that OPM "concedes that it lacks the authority to direct firings outside of its own walls." App., *infra*, 8a. But it rejected OPM's factual contention that it did not direct the firings, determining that the agencies likely terminated employees at the direction of OPM. *Id.* at 8-9.

The district court also determined that the organizational respondents are likely to suffer irreparable harm due to "loss of access to national recreational areas," and diminished government services, and because respondents had diverted significant resources to responding to the hardships created by the terminations. App., *infra*, 22a-23a. The court's temporary restraining order deemed OPM's January 20 memorandum and February 14 email "illegal" and "invalid"; directed that it "must be stopped and rescinded"; and required OPM to provide written notice of the order to six agencies. *Id.* at 24a (citation omitted).

c. OPM promptly complied with the court's temporary restraining order—rescinding the relevant communications and notifying the specified agencies. D. Ct. Doc. 75, at 3 (Mar. 10, 2025); D. Ct. Doc. 76, at 1 ¶ 4 (Mar. 10, 2025). Moreover, on March 4, OPM revised its earlier guidance as discussed above to clarify that it is not directing agencies to take any specific actions against probationary employees. D. Ct. Doc. 64-1, at 2; D. Ct. Doc. 78 (revised OPM guidance).

Respondents subsequently filed a second amended complaint adding several plaintiffs and naming 22 additional federal agencies as defendants "for relief purposes only." D. Ct. Doc. 90, at 5-17.

4. On March 13, the district court held an evidentiary hearing, at the conclusion of which it issued a preliminary injunction—even though respondents had

never filed a motion for that relief and defendants never had an opportunity to respond to such a motion. D. Ct. Doc. 115; App., *infra*, 38a-39a.

The district court ordered the Departments of Veterans Affairs, Agriculture, Defense, Energy, Interior, and Treasury to "immediately"—without waiting for a written order—"offer reinstatement to any and all probationary employees terminated on or about February 13th and 14th 2025"; "cease any termination of probationary employees at the direction of * * * OPM"; cease using a template termination notice provided by OPM; and submit, within seven days, a list of all probationary employees who were terminated, "with an explanation as to each of what has been done to comply with" the court's order. App., *infra*, 37a-38a. The court further stated that it may "extend[] the relief * * * to other agencies." *Id.* at 38a. The court also opened discovery and ordered the deposition of an OPM official. *Ibid.*

The district court issued a written preliminary injunction ruling the following day. It reiterated that it was ordering relief based solely on the claims made by the organizational respondents. App., *infra*, 47a. It incorporated its prior standing analysis, citing additional declarations asserting that the organizational respondents have felt compelled to divert resources to address problems caused by the terminations. *Id.* at 51a. On the merits, it again rejected applicants' factual contention that OPM did not issue a directive. *Id.* at 49a. The court then denied the applicant's request for a stay pending appeal. See D. Ct. Doc. 133 (Mar. 15, 2025). The court subsequently ordered the agencies to provide updates about the onboarding process, and it specified that "rehir[ing]" probationary employees "but then plac[ing] them on administrative leave" is "not allowed by the preliminary injunction, for it would not restore the services the preliminary injunction intends to restore." D. Ct. Doc. 138; see D. Ct. Doc. 140.

5. On March 14, the government sought a stay pending appeal and an immediate administrative stay from the court of appeals. On March 17, the court of appeals denied the administrative stay, over the partial dissent of Judge Bade. App., *infra*, 54a-65a. In the course of briefing the emergency motion for stay, the government requested a decision by 12 p.m. Pacific Time on Friday, March 21. As this application is being filed on Monday, March 24, the court of appeals has yet to rule on the government's motion.

## ARGUMENT

Under Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Court may stay a preliminary injunction entered by a federal district court. See, *e.g.*, *Trump* v. *International Refugee Assistance Project*, 582 U.S. 571 (2017) (per curiam); *Brewer* v. *Landrigan*, 562 U.S. 996 (2010); *Brunner* v. *Ohio Republican Party*, 555 U.S. 5 (2008) (per curiam). To obtain such relief, an applicant must show a likelihood of success on the merits, a reasonable probability of obtaining certiorari, and a likelihood of irreparable harm. See *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam). In "close cases," "the Court will balance the equities and weigh the relative harms." *Ibid.* Those factors overwhelmingly support a stay here.

### A. The Government Is Likely To Succeed On The Merits

Respondents are nonprofit organizations who challenge the legality of various agencies' personnel decisions by claiming that terminations hamper their members' ability to access national-park bathrooms and other federal facilities or benefits. The district court responded by issuing a preliminary injunction forcing the government to re-hire and immediately re-employ 16,000 federal probationary employees. The government is likely to succeed on the merits of its challenge to that extraordinary order.

### 1. Organizations whose members use government services lack Article III standing to challenge the terminations of government employees

a. The courts do not sit to adjudicate the public's views about how the government should be run, but to redress legally cognizable injuries to specific protected interests. Under Article III, federal courts "do not exercise general legal oversight of the Legislative and Executive Branches." *TransUnion LLC* v. *Ramirez*, 141 S. Ct. 2190, 2203 (2021). Instead, a plaintiff must establish an injury that is both "legally and judicially cognizable." *Raines* v. *Byrd*, 521 U.S. 811, 819 (1997). "This requires, among other things, that the plaintiff have suffered 'an invasion of a legally protected interest which is * * * concrete and particularized,' and that the dispute is 'traditionally thought to be capable of resolution through the judicial process.'" *Ibid.* (citations omitted).

To establish standing, "a plaintiff must demonstrate (i) that she has suffered or likely will suffer an injury in fact, (ii) that the injury likely was caused or will be caused by the defendant, and (iii) that the injury likely would be redressed by the requested judicial relief." *FDA* v. *Alliance for Hippocratic Med.*, 602 U.S. 367, 380 (2024). An organization may establish standing by establishing (in addition to other requirements) the standing of its members, *Hunt* v. *Washington State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977), or by identifying "'injuries [the organizations themselves] have sustained,'" and establishing "injury in fact, causation, and redressability" as to those injuries, *Alliance*, 602 U.S. at 393-394 (quoting *Havens Realty Corp.* v. *Coleman*, 455 U.S. 363, 379, n.19 (1982)).

In granting the preliminary injunction, the district court relied exclusively on the standing of organizational respondents whose members are end-users of government services. See App., *infra*, 39a, 47a. Significantly, in entering relief against two

of the enjoined agencies, the court appeared to rely solely on the theory that the organizations themselves suffered an injury by having to "divert" organizational resources to "counteract[]" the effects of the agencies' actions. See App., *infra*, 20a (citation omitted); see *id.* at 20a-21a; see also D. Ct. Doc. 18-7, ¶ 11; D. Ct. Doc. 18-3, ¶ 6. That standing theory is squarely foreclosed by this Court's decision in *Alliance for Hippocratic Medicine*, which held that "divert[ing] [organizational] resources in response to a defendant's actions" is not an Article III injury-in-fact. 602 U.S. at 395.

And the district court's remaining standing analysis is hardly better. The court determined that organizational respondents may suffer indirect harms from agencies' termination of probationary employees because the terminations might cause delays or disruptions in government services. But the organizations offered only speculation that the terminations will impair or delay specific government services. One respondent, for instance, asserts that terminated employees at the Small Business Administration "will make access to [certain] financial assistance slower and less reliable," which is "likely to have ripple effects" across the economy. See D. Ct. Doc. 18-16, ¶¶ 8-9. Another alleges that Yosemite National Park "will likely have to stop specific functions and close park areas" because "[w]hen there was a partial government shutdown in 2018, visitors trashed scenic viewpoints" and "trampled sensitive ecological areas." D. Ct. Doc. 18-15, ¶ 5. And the district court found Article III injury from the possibility that, given reduced available staff, the Bureau of Land Management may be unable to provide timely "land health assessments" and that the Fish and Wildlife Service may be unable to meet deadlines in separate litigation. App., *infra*, 17a-18a (citation omitted).

The organizations identified only a handful of concrete examples of alleged delays in government services, including alleging that a bathroom facility in Joshua

Tree National Park, "remained closed well after its scheduled opening time" during one organizational member's visit, D. Ct. Doc. 39-3, ¶ 4 (Feb. 26, 2025), and that a staff member at the Bureau of Land Management identified "staffing issues" as the reason it was unable to respond to a respondent's Freedom of Information Act request, D. Ct. Doc. 18-13, ¶ 7. Those allegations are a far cry from establishing that the challenged terminations *themselves* caused a particular reduction in services affecting the organization's members, let alone that they would continue to do so going forward, or that the particular services respondents' members use would resume to their liking if the employees were reinstated. Respondents' claims of redressability are particularly attenuated because the district court correctly recognized that "[e]ach agency had (and still has) discretion to hire and fire its own employees." App., *infra*, 52a (emphasis omitted); see, *e.g.*, D. Ct. Doc. 111-11, at 1 (press release from the Department of Defense explaining that a "re-evaluation of probationary employees is being done across government" and that the Department "believe[s] in the goals of the program" and reiterating its Secretary's view that "it is simply not in the public interest to retain individuals whose contributions are not mission-critical"). In other words, even without OPM's involvement, agencies could have (and, as discussed below, would have) carried out the terminations to effectuate the President's priorities about Executive Branch staffing, and could (absent the injunction) choose to re-terminate the probationary employees at any time.

At a minimum, the handful of particularized allegations that individual members of respondents' organization suffered some delay or disruption in a government service cannot justify sweeping relief reinstating thousands of employees across multiple agencies. Cf. *Alliance*, 602 U.S. at 402 (Thomas, J., concurring) ("Because no party should be permitted to obtain an injunction in favor of nonparties, I have diffi-

culty seeing why an association should be permitted to do so for its members."). To take just one example, the injunction has required the reinstatement of more than 1,000 seasonal employees at the Forest Service who were not in pay status nor performing work at the time of their terminations due to the off-season, D. Ct. Doc. 144-8, ¶ 10 (Mar. 20, 2025); that relief could not have redressed any certainly impending injury. More fundamentally, ordering the reinstatement of more than 16,000 employees is an absurd way to remedy an injury from a delayed bathroom opening.

Respondents have also failed to identify any "case or historical practice" offering precedent for the notion that courts can micromanage federal personnel policies in order to produce particular downstream effects. *United States* v. *Texas*, 599 U.S. 670, 677 (2023). On the district court's theory of harm, any plaintiff purportedly aggrieved by deficient government services might even seek to compel terminations of underperforming employees and then compel the government to hire better workers in their place. See 5 U.S.C. 706(1) (authorizing a court to "compel agency action unlawfully withheld or unreasonably delayed"). The kind of injury that plaintiffs assert is plainly not one "traditionally thought to be capable of resolution through the judicial process." *Texas*, 599 U.S. at 676 (citation omitted).

b. The district court's theory of standing is particularly untenable because the central claim in this case is that OPM unlawfully directed other agencies to fire probationary employees without statutory authority to do so. But, in response to the district court's temporary restraining order, OPM has already issued revised guidance to all agencies clarifying that "OPM is not directing agencies to take any specific performance-based actions regarding probationary employees," and that "[a]gencies have ultimate decision-making authority over, and responsibility for, such personnel actions." D. Ct. Doc. 78, at 2; see also D. Ct. Doc. 75, at 3. At least one agency did

subsequently rescind some probationary employees' terminations. See App., *infra*, 28a.

For that reason, any alleged harms experienced by respondents from the downstream effects of the terminations of probationary employees are not plausibly traceable to any extant directive by OPM; rather, they are traceable, at most, to each agency's independent decision to adhere to prior terminations. And for the same reason, those harms are not redressable by relief the district court could properly order on respondents' claims: deeming invalid the original OPM guidance will not restore the jobs and lead to the provision of services that respondents seek to use, especially when that guidance has already been withdrawn. See D. Ct. Doc. 75, at 3.

**2. The district court lacked subject-matter jurisdiction to assess the legality of government personnel actions**

The district court issued an injunction based on its determination that the dismissal of the government employees was unlawful based on OPM's involvement in the dismissal decision. But it lacked jurisdiction to assess the legality of the Executive's personnel actions. Congress has "established a comprehensive system for reviewing personnel action[s] taken against federal employees" that provides the "exclusive means" for review. *Elgin* v. *Department of the Treasury*, 567 U.S. 1, 5, 8 (2012) (citation omitted). The Civil Service Reform Act of 1978 (CSRA), Pub. L. No. 95-454, which includes the Federal Service Labor-Management Relations Statute for federal labor-management relations, 5 U.S.C. 7101-7135, sets out an "integrated scheme of administrative and judicial review" for challenges to personnel actions taken against members of the civil service. *United States* v. *Fausto*, 484 U.S. 439, 445 (1988). That scheme permits some, but not all challenges, with some challenges limited to certain types of employees; channels those challenges to agencies; and grants exclusive juris-

diction to the Federal Circuit over appeals from final agency action. See *Elgin*, 567 U.S. at 5-6 & n.1; 5 U.S.C. 7703(b)(1); 5 U.S.C. 7105(a)(2), 7123(a); see also 5 U.S.C. 1101 *et seq.*

If end-users of government services could challenge the legality of personnel actions and obtain reinstatement of terminated employees without the constraints that apply to the aggrieved employees and to unions that represent them, that would turn "upside down" the structure of the CSRA by privileging end-users of government services who are, at most, indirectly affected by a termination over the employees whom the legislative scheme seeks to protect. *Fausto*, 484 U.S. at 449. Allowing separate litigation by such end-users would "seriously undermine[]" "[t]he CSRA's objective of creating an integrated scheme of review," *Elgin*, 567 U.S. at 14, and harm "the development * * * of a unitary and consistent Executive Branch position on matters involving personnel action," *Fausto*, 484 U.S. at 449.

The district court acknowledged Congress's comprehensive system and recognized that it foreclosed claims by the union respondents. App., *infra*, 11a-12a. But the court took the view that the CSRA likely poses no obstacle to the organizational respondents' suit because the organizations whose members are end-users of government services are not entitled to administrative or judicial review under the CSRA. See *id.* at 12a-13a.

That gets it exactly backwards. The "exclusion" of end-users of government services "from the provisions establishing administrative and judicial review for personnel action" of the type challenged here "*prevents* [them] from seeking review" under other provisions. *Fausto*, 484 U.S. at 455 (emphasis added); see also, *e.g.*, *Block* v. *Community Nutrition Inst.*, 467 U.S. 340, 347 (1984) (recognizing that where a statute omitted a "provision for participation" by dairy consumers, but allowed par-

ticipation by dairy producers and handlers, "Congress intended to foreclose consumer participation in the regulatory process" and "intended a similar restriction of judicial review"); see also, *e.g.*, *Grosdidier* v. *Chairman*, 560 F.3d 495, 497 (D.C. Cir.) ("[T]he CSRA is the exclusive avenue for suit even if the plaintiff cannot prevail in a claim under the CSRA."), cert. denied, 558 U.S. 989 (2009). The exclusion of plaintiffs like the organizational respondents reflects Congress's considered judgment about the limitations of who should be permitted to challenge a personnel decision, rather than providing a carte blanche for tangentially affected parties to sue without using the CSRA's comprehensive system.

**3. Ordering the government to reinstate thousands of employees was an unlawful remedy**

The government is also likely to prevail because the district court badly exceeded the scope of its equitable authority by ordering reinstatement—on a mass scale—for the perceived legal violation it identified. Reinstatement is not an available remedy under the APA because it goes beyond the bounds of a court's historical authority in equity. And even where reinstatement is a permissible remedy, this Court has recognized that it requires an elevated showing, a showing that petitioners' threadbare theory of injury does not come close to satisfying. That sweeping remedy is all the more unwarranted because, in response to the court's temporary restraining order, OPM has clarified its role, redressing any harm from the legal violation that the district court (wrongly) believed had occurred.

a. The district court's remedy also exceeded the scope of its equitable powers. Respondents invoke the remedies available under the Administrative Procedure Act, see C.A. Opp'n 25-26. But the APA authorizes a court to grant injunctive relief subject to traditional equitable limitations. See 5 U.S.C. 702(1). Absent express stat-

utory authority, a federal court may grant only those equitable remedies that were "traditionally accorded by courts of equity." *Grupo Mexicano de Desarrollo S.A.* v. *Alliance Bond Fund, Inc.*, 527 U.S. 308, 319 (1999). Reinstatement is not a remedy that was traditionally available at equity. See *Sampson* v. *Murray*, 415 U.S. 61, 83 (1974). To the contrary, courts of equity lacked "the power * * * to restrain by injunction the removal of a [public] officer." *In re Sawyer*, 124 U.S. 200, 212 (1888); see, *e.g.*, *Baker* v. *Carr*, 369 U.S. 186, 231 (1962) (decisions that "held that federal equity power could not be exercised to enjoin a state proceeding to remove a public officer" or that "withheld federal equity from staying removal of a *federal* officer" reflect "a traditional limit upon equity jurisdiction"); *Walton* v. *House of Representatives*, 265 U.S. 487, 490 (1924) ("A court of equity has no jurisdiction over the appointment and removal of public officers."); *Harkrader* v. *Wadley*, 172 U.S. 148, 165 (1898) ("[T]o sustain a bill in equity to restrain * * * the removal of public officers, is to invade the domain of the courts of common law, or of the executive and administrative department of the government."); *White* v. *Berry*, 171 U.S. 366, 377 (1898) ("[A] court of equity will not, by injunction, restrain an executive officer from making a wrongful removal of a subordinate appointee, nor restrain the appointment of another.").

The creation of new remedies is "a legislative endeavor," *Egbert* v. *Boule*, 596 U.S. 482, 491 (2022), and courts of equity lack "the power to create remedies previously unknown to equity jurisprudence," *Grupo Mexicano*, 527 U.S. at 332. Accordingly, where Congress departs from equitable tradition, it does so expressly. In the CSRA, Congress authorized the Merit Systems Protection Board to award "reinstatement," as well as "backpay" to prevailing employees, and it has authorized review of the MSPB's decision in the Federal Circuit. *Elgin*, 567 U.S. at 6 (citing 5 U.S.C. 1204(a)(2), 7701(g), and 7703(b)(1)); 5 U.S.C. 1214(g); see also, *e.g.*, 42 U.S.C. 2000e-

5(g) (empowering courts to grant "reinstatement" as well as "back pay" as remedies for employment discrimination). But respondents are neither entitled to proceed under the CSRA nor did they follow the required CSRA procedures. And neither the courts below nor respondents have identified any statute that authorizes a court to reinstate public employees in order to restore government services to third parties—let alone a statute that allows a court to do so based on a purported illegality in the employees' termination, rather than based on a statutory entitlement by those third parties to the services sought. Accordingly, the district court lacked the power to grant the reinstatement remedy here.

b. Even where Congress has authorized reinstatement, this Court has recognized that a grant of preliminary injunctive relief in government personnel cases requires an elevated showing. *Sampson*, 415 U.S. at 84. The Court emphasized the historical denial of reinstatement power by courts of equity, "the well-established rule that the Government has traditionally been granted the widest latitude in the dispatch of its own internal affairs, and the traditional unwillingness of courts of equity to enforce contracts for personal service," instructing that a plaintiff in a "Government personnel case[]" must, "at the very least * * * make a showing of irreparable injury sufficient in kind and degree to override these factors cutting against the general availability of preliminary injunctions." *Id.* at 83-84 (citation and internal quotation marks omitted). The district court plowed through those principles here by awarding reinstatement to thousands of employees to redress speculative potential harms—such as delays in processing a FOIA request or reduced hours at a park facility—to users of government services. To the extent that those harms met the bare minimum required for Article III (and for the reasons already explained, they do not do even that), the attenuated disruptions in end-users' preferred government services

cannot be the basis for reinstating thousands of government employees that executive agencies have chosen to dismiss.

c. The district court's sweeping order was particularly unjustified because it was badly out of step with the illegality that respondents asserted. Respondents' central claim has been that OPM lacks statutory authority to direct other agencies to terminate probationary employees. The government agrees with that legal principle, but disputes that OPM in fact directed any such firings (a dispute that the Court need not address at this preliminary stage).

To the extent that any preliminary relief was appropriate in this case, therefore, it was limited to instructing OPM to clarify that it has no power to direct personnel actions at the agencies, and to give agencies the opportunity to rescind terminations if it acted based on confusion about OPM's authority. When the district court granted respondents a temporary restraining order, it ordered that relief, directing OPM to rescind certain communications to agencies and notify agencies of the court's decisions. OPM complied with the court's order and, further, issued clarifying guidance. OPM has now made clear that "[a]gencies have ultimate decision-making authority over, and responsibility for," performance-based personnel actions against probationary employees. D. Ct. Doc. 64-1, at 2. Any confusion was therefore cleared up, and agencies were left to make their own politically accountable decisions. At least one agency did rescind some probationary employees' terminations after OPM's clarification. See App., *infra*, 42a. Most did not. See, *e.g.,* D. Ct. Doc. 127-3, ¶¶ 7-9. That result is to be expected—the President directed agencies to optimize the federal workforce, and agencies may and should make employment decisions against the backdrop of that policy choice. See Exec. Order No. 14,210 § 3. And it illustrates both that any perceived direction from OPM was not the cause of respondents' asserted

injury, and that any appropriate remedial order would have been limited to clarifying OPM's role rather than reversing terminations that the agencies would have made had OPM's initial guidance been even clearer about OPM's limited authority and the agencies' ultimate discretion.[1]

**B. The Other Factors Support Relief From The District Court's Order**

In deciding whether to grant emergency relief, this Court also considers whether the underlying issues warrant its review, whether the applicant likely faces irreparable harm, and, in close cases, the balance of equities. See *Hollingsworth*, 558 U.S. at 190. Those factors overwhelmingly support relief here.

**1. The issues raised by this case warrant this Court's review**

The district court's order directs agencies to reinstate more than 16,000 terminated employees at six agencies. What is more, it requires the employees to be reinstated to active-duty status and provided with assignments, apparently such that the services respondent organizations seek to benefit from are provided in the manner the respondents wish. This Court has repeatedly intervened in cases in which lower courts have attempted to direct the functioning of the Executive Branch. See, *e.g.*, *Heckler* v. *Lopez*, 463 U.S. 1328, 1329 (1983) (Rehnquist, J., in chambers) (granting stay of district court order requiring Secretary of Health and Human Services "immediately to reinstate benefits to the applicants" and mandating that the Secretary then make certain showings "before terminating benefits"); cf. *Trump* v. *Sierra Club*, 140 S. Ct. 1 (2019) (granting stay of district court order enjoining the Department of

[1] In the court of appeals, respondents argued that, despite the March 4 clarification, the case is not moot because they lack assurance "that the alleged violation will [not] recur." C.A. Opp'n 23 (citation omitted). But regardless of whether the case is moot in light of OPM's action, the fact that the alleged illegality has been corrected and is inflicting no continuing harm on respondents is reason enough to reject the sweeping injunction ordered by the district court pending full resolution of the issues.

Defense from undertaking any border-wall construction using funding the Acting Secretary transferred pursuant to statutory authority); *INS* v. *Legalization Assistance Project*, 510 U.S. 1301, 1305-1306 (1993) (O'Connor, J., in chambers) (granting stay of district court order requiring INS to engage in certain immigration procedures, as "an improper intrusion by a federal court into the workings of a coordinate branch of the Government"). This case involves intrusions on a far greater scale. It therefore necessarily presents an issue that would similarly warrant this Court's intervention.

**2. The district court's injunction causes irreparable harm to the Executive Branch**

a. The district court's order causes extraordinary and irreparable harm to the Executive Branch by ordering the reinstatement—to full duty status, complete with work assignments—of more than 16,000 employees the Executive has chosen to terminate. This Court has recognized that "the Government has traditionally been granted the widest latitude in the dispatch of its own internal affairs." *Sampson*, 415 U.S. at 83 (citation omitted). And the Court has expressed concern about the intrusion inflicted by a court order directing the reinstatement of a single government employee. See *id.* at 91-92. An order directing reinstatement of thousands of employees across six agencies is intolerable. The injunction appears to prevent the agencies from terminating the employees based on an exercise of the agencies' independent judgment—and would even seem to prevent the employees' termination based on newly arising grounds like new instances of poor performance or misconduct without, at a minimum, obtaining permission from the district court. That is a profound invasion of the Executive's ability to manage its internal affairs—especially given the injunction's application to more than 16,000 employees. Magnifying the harm, the district court has made clear that the employees—employees whom the Executive

Branch has specifically chosen to terminate—must be returned to full duty status and provided with work assignments. See D. Ct. Doc. 140.

The practical burdens of implementing the preliminary injunction have been, and continue to be, enormous. In response to the injunction, agencies have contacted thousands of terminated employees and offered them reinstated employment—itself a substantial administrative burden, *e.g.*, D. Ct. Doc. 127-2, ¶ 9. Those efforts are ongoing. See, *e.g.*, D. Ct. Doc. 141-1, ¶¶ 4-5 (declaration from the Department of Defense indicating that the Department successfully reinstated or revoked pending termination notices for 65 employees and is attempting to reinstate 299 others). And the agencies continue to work on onboarding employees who accept reinstatement. That onboarding process is an extensive one, and includes assigning workspace, issuing appropriate credentials, enrolling in benefits programs, and completing required training. See, *e.g.*, D. Ct. Doc. 141-1, ¶ 6; D. Ct. Doc. 127-5, ¶ 9. The reinstatements have involved logistical burdens due to their scale, requiring substantial resources to address various issues, including effectuating reinstatement across multiple systems and pay periods, addressing issues such as the reinstatement of a terminated probationary employee who had pleaded guilty to a crime relating to covering up a murder and another found to be a foreign national from a country of particular concern. See, *e.g.*, D. Ct. Doc. 144-8, ¶ 12. In addition, the obligation to pay terminated employees inflicts massive financial costs that cannot be recouped.

And those burdens continue to be staggering for every day the injunction remains in effect because the sweeping injunction entered by the district court requires employees to be returned in a manner that "restore[s] the services the preliminary injunction intends to restore." D. Ct. Doc. 140. That suggests that, beyond reinstatement, the injunction also requires the employees the agencies had terminated to be

given the same work assignments they had been given before February 13—regardless of other changes to work assignments that the agencies might have made between the terminations and the issuance of the preliminary injunction ordering reinstatement on March 13. Adding to the chaos, agencies have to make assignment decisions in the shadow of the serious uncertainty about the legality of the court's order, and in light of its potential reversal—and the ensuing re-termination of the probationary employees—once the appellate process has had a chance to unfold.

Making matters worse, the district court apparently intends to superintend the continuing assignments to the reinstated employees and has repeatedly ordered the agencies to provide updates about the onboarding process. See, *e.g.*, D. Ct. Docs. 138, 140. Each day the preliminary injunction remains in effect subjects the Executive Branch to judicial micromanagement of its day-to-day operations.[2]

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[2] Five of the six agencies at issue in this case are also required to reinstate employees under the temporary restraining order issued in *Maryland* v. *U.S. Dep't of Agriculture*, No. 25-cv-748 (D. Md. Mar. 13, 2025). That order does not reduce the irreparable harm to the government from the preliminary injunction in this case because that order could be lifted at any time. See Order at 2, *Maryland* v. *U.S. Dep't of Agriculture*, No. 25-1248 (Mar. 21, 2025) (denying the government's motion for emergency relief from the TRO "[g]iven the district court's stated intention to hold a [preliminary injunction] hearing on March 26, 2025"). In any event, the *Department of Agriculture* order expressly permits reinstated employees to be placed on administrative leave, meaning that the preliminary injunction here inflicts additional practical and administrative burdens even while the *Department of Agriculture* order remains in effect.

The U.S. Department of Agriculture (USDA), which is one of the five agencies covered by the *Department of Agriculture* order is subject to an additional order by the MSPB, staying the termination of its probationary employees until April 18. That order does not reduce the irreparable harm at the USDA for similar reasons, both because it can be lifted and because it does not entail judicial supervision of work assignments. See *Doe* v. *U.S. Dep't of Agriculture*, No. CB-1208-25-20-U-1 (M.S.P.B. March 5, 2025). Indeed, to the extent that the MSPB order is unlikely to be lifted, it shows that respondents failed to show extant irreparable harm from USDA terminations and that the district court in this case erred by ordering reinstatement of USDA employees in the preliminary injunction.

### 3. The balance of equities weighs strongly in favor of the government

The balance of the equities also weighs strongly in favor of the government. Respondents have asserted possible disruptions in their members' use of discrete government services. See, *e.g.*, D. Ct. Doc. 18-13, ¶ 7 (request for records under the Freedom of Information Act); D. Ct. Doc. 18-16, ¶¶ 7-8 (application for financial assistance from the Small Business Association); D. Ct. Doc. 39-2, ¶¶ 3-4 (activities involving endangered species); see also App., *infra*, 22a (invoking the potential "degradation" of wildlife and natural parks). Even if those attenuated injuries suffice for purposes of Article III (and, as explained above, they do not do even that), they cannot outweigh the government's authority to manage its own internal affairs. That is particularly so because reinstatement, while incredibly burdensome for the government, has at best an attenuated impact on any specific services respondents' members seek to utilize. Restoration of any services that were in fact affected by the terminations relies on the independent judgment of employees (who are not parties in this suit) to accept reinstatement to full duty status, and on agencies' independent decisions about how to deploy reinstated employees in light of agency priorities and the continuing uncertainty about those employees' status. As Judge Bade observed below in dissenting from the denial of an administrative stay, respondents "offer no reason to believe that *immediate* offers of reinstatement would cure" the potential defects in government services; instead, the efforts to onboard employees and redistribute work assignments—all under the continuing uncertainty of the likely vacatur of the district court's order on appellate review—"would likely draw (already depleted) agency resources away from their designated service functions." App., *infra*, 64a (Bade, J., dissenting).

### C. This Court Should Grant An Administrative Stay

The Acting Solicitor General respectfully requests that this Court grant an administrative stay while it considers applicants' submission that ensures that applicants are not required to take additional steps beyond those already taken to comply with the preliminary injunction. That would leave matters as they currently lie, with the probationary employees the district court required to be reinstated remaining reinstated in at least a paid administrative leave status. But it would relieve agencies of the obligation of continuing efforts to onboard employees to full duty status; and it would relieve applicants of any obligation to provide work assignments to the onboarded employees or to file additional reports documenting those measures in district court. Each additional day of such superintendence of personnel matters is intolerable and warrants immediate relief while the Court considers the government's broader request.

## CONCLUSION

This Court should stay the district court's preliminary injunction. In addition, the Acting Solicitor General respectfully requests an immediate administrative stay of the district court's order pending the Court's consideration of this application.

Respectfully submitted.

SARAH M. HARRIS
*Acting Solicitor General*

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