

The Mass Removal of Probationary Federal Employees Is an Unlawful Reduction in Force

The mass removal of tens of thousands of probationary employees across the executive branch constitutes a reduction in force, or a series of reductions in force, because the administration has focused on eliminating positions in the federal workforce, rather than evaluating employees individually. Regulations governing reductions in force apply and must be followed in order for the removals to be lawful.

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This document is not intended as legal advice and should not be relied on as such.

Introduction

The following discussion addresses the Trump administration's ongoing mass removal of probationary employees across the federal executive branch. **This document does not provide legal advice to any person.**¹

The administration has characterized this mass removal as a series of individual adverse actions taken during the affected employees' probationary or trial periods.² The volume of simultaneous or contemporaneous removals across the executive branch, apparently numbering in the tens of thousands, undermines that claim.³

Though many of the removal notices have alleged that the recipients' performance caused their removals, the evidence consistently indicates that performance was not the cause.⁴ The administration coordinated the mass removal centrally to reduce the federal workforce.⁵ The responsible administration officials either have been unaware of the quality of the employees' performance or have ignored the assessments of agency supervisors that the employees were high performers.⁶ Those directing the effort have focused on whether employees hold "mission critical" positions, pressing for the removal of probationary employees in positions deemed "non-mission critical."⁷

The accusations of poor performance in removal notices have been based on boilerplate language that the Office of Personnel Management (OPM) included in a template it distributed to agencies for use in the coordinated mass removal of probationary employees.⁸ In one documented incident, the Office of Management and Budget (OMB) issued removal decisions based on the OPM template without inserting names and titles of recipient employees in spaces provided for that information.⁹ The Small Business Administration sent unsigned removal decisions to probationary employees, later rescinded the decisions, then issued new removal decisions to many of the same probationary employees.¹⁰ In the rush to conduct this purge, some removal notices accusing probationary employees of poor performance have,

¹ This publication should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Protect Democracy or the authors. This publication also contains hypertext links to information created and maintained by other entities. Protect Democracy does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.

² Eric Katz, *OPM tells court it never ordered mass firings, contradicting prior claims*, GOV'T EXEC. (Feb. 27, 2025) [[link](#)].

³ See Katie Mettler, *Multistate lawsuit seeks to reverse Trump administration purge of federal workers*, WASH. POST (Mar. 8, 2025) [[link](#)]; Will Peischel, *How Many Federal Workers Have Lost Their Jobs? All the firing, layoffs, and resignations so far.*, N.Y. MAGAZINE (Feb. 26, 2025) [[link](#)].

⁴ See, e.g., Leah Douglas, Nathan Layne and Tim Reid, *Federal workers were fired 'for performance.' Their records say otherwise.*, REUTERS (Feb. 20, 2024) [[link](#)].

⁵ See, e.g., Memorandum from Charles Ezell, acting Dir., U.S. Off. of Pers. Mgmt. to heads and acting heads of departments and agencies, *Guidance on Probationary Periods, Administrative Leave and Details*, at 1 (Jan. 20, 2025) [[link](#)] (internet archive)].

⁶ Sarah D. Wire, Riley Beggin, Terry Collins, Dinah Voyles Pulver and Jessica Guynn, *Commendations, cash awards, positive reviews. Then they were fired for poor performance.*, USA TODAY (Feb. 27, 2025) [[link](#)].

⁷ Press Release, U.S. Dep't of Veterans Affairs, *VA dismisses more than 1,400 probationary employees* (Feb. 24, 2025) (emphasis added) [[link](#)] (last visited Mar. 11, 2025) [[link](#)] (internet archive)].

⁸ Exhibit D to Decl. of Pace Schwarz, *Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt.*, 3:25-cv-01780 (Feb. 26, 2025) (ECF No. 39-4) [[link](#)].

⁹ Makena Kelly and Dhruv Mehrotra, *Dozens of CFPB Workers Fired in After-Hours Blitz*, WIRED (Feb. 11, 2025) [[link](#)].

¹⁰ Eleanor Pringle, *Trump's small business department fired staff and said it was an accident – then emailed the next day re-firing them*, FORTUNE (Feb. 12, 2025) [[link](#)].

themselves, contained misspellings and errors.¹¹ A source told reporters that one agency, believing the probationary employees had performed satisfactorily, removed the language regarding performance from the removal notices for the sake of accuracy.¹² OPM's template removal letter designated no space for agencies to offer examples of poor performance,¹³ and the removal letters that have been made public contain no such examples.¹⁴

Because the administration focused on reducing the federal workforce, rather than on individual employees' performance, each of these personnel actions qualifies as an action taken through a reduction in force (RIF). The Civil Service Reform Act (CSRA) and OPM's implementing regulations establish mandatory procedures for RIFs, which the administration did not use when removing probationary employees in February and March 2025.¹⁵ Most probationary employees may challenge removals effected through RIFs either by appealing to the Merit Systems Protection Board (MSPB) or, with their unions, by invoking arbitration under collective bargaining agreements.¹⁶ The MSPB and arbitrators will not examine the management decision to downsize an agency's staff, but they must examine whether the agency properly implemented applicable RIF procedures.¹⁷ If the agency failed to do so, the MSPB or an arbitrator would have authority to reinstate the affected employee.¹⁸

Should the MSPB fail to maintain a quorum of two board members,¹⁹ pending appeals would fall into two categories.²⁰ The CSRA would entitle most RIF appellants whose appeals include any claim of discrimination described in 5 U.S.C. § 7702 to file a civil action in an appropriate federal district court if the MSPB does not issue a final decision within 120 days of the filing of their

¹¹ See, e.g., Hannah Natanson, Lisa Rein and Emily Davies, *Trump administration fires thousands for 'performance' without evidence, in messy rush*, WASH. POST (Feb. 17, 2025) ("The first message from her manager on Saturday afternoon misspelled Amanda Mae Downey's name.") [\[link\]](#); Exhibit 1 to Decl. of Liliana Caetano Bachelder, at 1–2, Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt., 3:25-cv-01780 (Feb. 22, 2025) (ECF No. 18–9, at 11–12) (producing removal letter erroneously dated March 14, 2024, but signed on February 13, 2025) [\[link\]](#).

¹² Shannon Bond, Geoff Brumfiel, Andrea Hsu, and Cory Turner, *Sweeping cuts hit recent federal hires as Trump administration slashes workforce*, NPR (Feb. 13, 2025) [\[link\]](#).

¹³ See Exhibit D to Decl. of Pace Schwarz, Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt., 3:25-cv-01780 (Feb. 26, 2025) (ECF No. 39–4) [\[link\]](#).

¹⁴ See, e.g., Exhibits A and B to Decl. of Pace Schwarz, Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt., 3:25-cv-01780 (Feb. 26, 2025) (ECF No. 39–4) [\[link\]](#).

¹⁵ 5 C.F.R. pt. 351.

¹⁶ 5 U.S.C. § 7121(a); 5 C.F.R. §§ 351.901, 1201.3(c).

¹⁷ See, e.g., *Hartman v. Dep't of Treasury*, 79 M.S.P.R. 576 (1998) ("Adherence to the RIF regulations is mandatory wherever those regulations are applicable."); *Foster v. Tennessee Valley Auth.*, 87 M.S.P.R. 48 (2000) ("The agency bears the burden of proving by a preponderance of the evidence that the appellant's competitive area was properly determined.")

¹⁸ See, e.g., *Price v. Dep't of Transp.*, 19 M.S.P.R. 516, 519 (1984) ("The agency is ORDERED to cancel the reduction in force action in this matter."). Arbitrators may generally award relief that is drawn from the "essence" of the collective bargaining agreement, provided it is consistent with applicable law. See Broad. Bd. of Governors Off. of Cuba Broad. & Am. Fed'n of Gov't Emps. Loc. 1812, 66 F.L.R.A. 1012, 1019 (2012).

¹⁹ Special Couns. ex rel. *Klein v. Dep't of Veterans Affs.*, 124 M.S.P.R. 191, 193 (2017) (indicating board must have more than one member for quorum). *But see id.* ("Congress has recently passed legislation amending 5 U.S.C. § 1214 to allow an individual Board member to extend a stay granted under section 1214(b)(1)(A) during periods when the Board lacks a quorum. See S. 1083 115th Cong. (as passed by the House of Representatives on May 25, 2017, and by the Senate on June 14, 2017).")

²⁰ Member Raymond Limon resigned on February 28, 2025, leaving only two members—the minimum for a quorum. Press Release, U.S. Merit Sys. Prot. Bd., *Member Raymond A. Limon Retiring* (Feb. 28, 2025) [\[link\]](#). President Trump removed the MSPB's chair, Cathy Harris, but a U.S. District Court judge enjoined her removal and reinstated her as a member of the board. Tom Jackman, *Federal judge rules Trump's firing of merit board chair was illegal*, WASH. POST (Mar. 4, 2025) [\[link\]](#). The administration has appealed the injunction. See Order (Henderson, Millett and Walker, JJ.), *Harris v. Bessent*, No. 25-5037 (Mar. 6, 2025) (No. 1:25-cv-00412-RC) (scheduling appellee's response to a motion for stay pending appeal and appellant's reply) [\[link\]](#).

appeals.²¹ RIF appellants whose appeals do not include qualifying claims of discrimination would have the statutory right to petition the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) for review only after the board has regained a quorum and issued a final decision,²² which may take years if President Trump does not nominate new MSPB members for Senate confirmation.²³ The legal question of whether an administration's intentional elimination of quorum on the MSPB's board would confer jurisdiction on the Federal Circuit to review an initial decision by an MSPB Administrative Judge (AJ) or Administrative Law Judge (ALJ) is beyond the scope of this analysis, as is the related question of whether the elimination of a quorum would allow an individual to file in U.S. District Court.

I. Applicable Adjudicative Procedures and Legal Requirements for RIFs

There are several avenues for probationary employees to challenge RIF actions, and they are available to most probationary executive branch employees.²⁴ At issue in any review of a RIF action will be whether OPM's RIF regulations apply and, if so, whether the employing agency complied with them.

A. Applicable adjudicative procedures

The rights of competitive service and excepted service probationary federal employees upon removal are normally limited. While some probationary employees have accrued full protection under the CSRA to appeal adverse actions such as removal to the MSPB, due to their having met certain time in service thresholds,²⁵ most lack any general right to appeal adverse actions.²⁶ They are not, however, entirely without rights.²⁷ Importantly, most competitive service and

²¹ 5 U.S.C. § 7702(e)(1)(B). See also *Butler v. West*, 164 F.3d 634, 643 (D.C. Cir. 1999) (“[W]e hold that the initial decision of an administrative judge is not a ‘judicially reviewable decision’ for purposes of 5 U.S.C. § 7702(e)(1)(B) unless neither party, nor the MSPB on its own motion, seeks further review within thirty-five days. Accordingly, section 7702 allows a complainant like Butler to appeal her claim to the appropriate federal district court when, after filing a mixed case appeal with the MSPB, 120 days elapse without final MSPB action [despite the pendency of cross petitions for review to the board].”).

²² 5 U.S.C. § 7703(a)(1).

²³ The MSPB lacked a quorum for over five years from January 2017 to March 2022. Press Release, Nat'l Whistleblower Center, *MSPB Regains Quorum, Two Members Confirmed* (Mar. 2, 2022) [[link](#)].

²⁴ Different rules may apply to employees who are not covered by OPM's RIF regulations, 5 C.F.R. part 351, or the Federal Service Labor-Management Relations Statute (FSLMRS), 5 U.S.C. chapter 71. See, e.g., 5 U.S.C. § 3501(b). There are too many types of employment in the federal government to identify all employees who are not subject to either of these authorities. Most executive branch employees, however, are subject to OPM's RIF regulations or the FSLMRS.

²⁵ The CSRA provides these protections to individuals who meet the definition of “employee” in 5 U.S.C. § 7511(a)(1).

²⁶ 5 U.S.C. § 7511(a)(1).

²⁷ For example, competitive service probationary employees may appeal to the MSPB if they believe their removals were based on political affiliation or marital status, 5 C.F.R. § 315.806(b), or if their agencies failed to comply with certain procedures for removals based on matters predating their federal employment, 5 C.F.R. § 315.805. Probationary employees in the excepted service have no such rights. 5 C.F.R. § 210.101(b). Both competitive service and excepted service probationary employees may file prohibited personnel practice complaints with the U.S. Office of Special Counsel or discrimination complaints with their agencies' Equal Employment Opportunity offices, subject to applicable deadlines. 5 U.S.C. §§ 1214, 2302; 42 U.S.C. 2000e-16; 5 C.F.R. § 1800.2(a); 29 C.F.R. §§ 1614.103(c), .105(a)(1). See Protect Democracy, *Understanding the Termination of Federal Probationary Employees and Their Rights* (Feb. 2025) [[link](#)] (last visited Mar. 11, 2025). But note that President Trump removed the Senate-confirmed special counsel, Hampton Dellinger, and named Department of Veterans Affairs Secretary Doug Collins to serve simultaneously as the cabinet secretary of an agency with more than 482,000 employees, acting special counsel, and acting director of the U.S. Office of Government Ethics.

excepted service employees may challenge an action taken through a RIF,²⁸ either by appealing to the MSPB or by using the grievance and arbitration procedures under collective bargaining agreements.

Most probationary employees in both the competitive service and the excepted service have additional rights in connection with RIFs, subject to an exception discussed later for collective bargaining unit employees. Most can appeal to the MSPB if they have been furloughed for more than 30 days, separated, or demoted by a “reduction in force action.”²⁹ The appeal will first go before a hearing officer, who will be an ALJ or an AJ.³⁰ The initial decision of the ALJ or AJ will become the final decision of the MSPB if neither party petitions the board for review.³¹ If either party or OPM petitions for review,³² the board can issue the MSPB’s final decision,³³ or it can deny the petition and allow the initial decision of the ALJ or AJ to become the MSPB’s final decision.³⁴ An employee may seek review by the Federal Circuit of a final decision of the MSPB, except in certain cases involving discrimination claims.³⁵ The Federal Circuit will overturn the MSPB’s decision if it is found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; obtained without procedures required by law, rule, or regulation having been followed; or unsupported by substantial evidence.³⁶

If the RIF appeal also includes a claim of discrimination covered by 5 U.S.C. § 7702, the process for seeking review of the MSPB’s decision is different.³⁷ In such “mixed cases,” jurisdiction to review the MSPB’s decision lies in an appropriate U.S. District Court, as to both the discrimination claim and the RIF challenge.³⁸ This remains true even when the MSPB dismisses an appeal alleging discrimination not on the merits, but on either procedural grounds or jurisdictional grounds.³⁹ The district court reviews the discrimination claim *de novo*, and it reviews the non-discrimination RIF challenge under the same standard of review that the Federal Circuit applies when reviewing MSPB decisions.⁴⁰ An employee who has raised a covered discrimination claim in connection with a challenge to a RIF action may file a civil action if the MSPB does not issue a judicially reviewable decision (i.e., a final decision, as opposed to

²⁸ Different rules may apply to employees who are not covered by OPM’s RIF regulations, 5 C.F.R. part 351, or the Federal Service Labor-Management Relations Statute (FSLMRS), 5 U.S.C. chapter 71. *See, e.g.*, 5 U.S.C. § 3501(b). There are too many types of employment in the federal government to identify all employees who are not subject to either of these authorities. Most executive branch employees, however, are subject to OPM’s RIF regulations or the FSLMRS.

²⁹ 5 C.F.R. §§ 351.202(a) & (b), 351.501(b)(2), 351.502(b)(2), 351.901. *See also* Bielomaz v. Dep’t of Navy, 86 M.S.P.R. 276 (2000) (“[T]he Board’s jurisdiction to consider a demotion that occurred as a result of a RIF is not dependent on the individual’s probationary status or on the length of the individual’s current continuous service.”).

³⁰ 5 C.F.R. pt. 1201, subpt. B.

³¹ 5 C.F.R. § 1201.113 (“The initial decision of the judge will become the Board’s final decision 35 days after issuance.”).

³² OPM has the right to petition for review in limited circumstances. 5 C.F.R. § 1201.114(c).

³³ 5 C.F.R. § 1201.117.

³⁴ 5 C.F.R. § 1201.113(b).

³⁵ 5 U.S.C. § 7703(b)(1)(A); 28 U.S.C. § 1295(a)(9).

³⁶ 5 U.S.C. § 7703(c).

³⁷ Covered claims of discrimination are those arising under the following laws, rules or regulations: section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16); section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)); section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a); or any rule, regulation, or policy directive prescribed under any provision of these laws. 5 U.S.C. § 7702(a)(1)(B).

³⁸ *Kloeckner v. Solis*, 568 U.S. 41 (2012).

³⁹ *Perry v. Merit Sys. Prot. Bd.*, 582 U.S. 420, 423 (2017); *Kloeckner v. Solis*, 568 U.S. 41, 44 (2012).

⁴⁰ 5 U.S.C. § 7703(c). *See also* *Washington v. Garrett*, 10 F.3d 1421, 1428 (9th Cir. 1993), *as amended on denial of reh’g* (Jan. 26, 1994).

an initial decision) within 120 days of the filing of the employee's appeal.⁴¹ (The employee also has an option to seek review of the discrimination claim by the EEOC under a complex procedure, prior to filing in court.⁴²)

There is an exception to the general rule that most probationary employees may appeal to the MSPB, and there is an exception to the exception (i.e., a carve out from the exception). The *exception* is that members of collective bargaining units must use grievance and arbitration procedures if any applicable collective bargaining agreement (CBA) does not exclude actions taken through RIFs from those procedures.⁴³ The parties may seek review of the arbitrator's decision by the Federal Labor Relations Authority.⁴⁴ There is no avenue for judicial review of the FLRA's decision unless the arbitration involved an unfair labor practice charge under 5 U.S.C. § 7116.⁴⁵

The *exception to the exception* is that collective bargaining unit employees may choose whether to use the grievance and arbitration procedures or to appeal directly to the MSPB if their challenges to the RIF actions include certain types of claims of discrimination.⁴⁶ (Note that different rules may apply to Postal Service employees and others excluded from the coverage of 5 U.S.C. chapter 71.)⁴⁷ If the employee and the union select arbitration first, they may seek the MSPB review the arbitrator's decision if the arbitration involved one of the covered types of discrimination.⁴⁸ The normal rules for processing mixed cases, discussed earlier, apply to these types of cases, whether the employee went directly to the MSPB or through arbitration to the MSPB.

⁴¹ 5 U.S.C. § 7702(e)(1)(B). See also *Butler v. West*, 164 F.3d 634, 643 (D.C. Cir. 1999) (“[W]e hold that the initial decision of an administrative judge is not a ‘judicially reviewable decision’ for purposes of 5 U.S.C. § 7702(e)(1)(B) unless neither party, nor the MSPB on its own motion, seeks further review within thirty-five days. Accordingly, section 7702 allows a complainant like Butler to appeal her claim to the appropriate federal district court when, after filing a mixed case appeal with the MSPB, 120 days elapse without final MSPB action [despite the pendency of cross petitions for review to the board].”).

⁴² See 5 U.S.C. § 7702(b), (c) and (d); 5 C.F.R. pt. 1201, subpt. E; 29 C.F.R. pt. 1614, subpt. C.

⁴³ 5 U.S.C. § 7121(a); 5 C.F.R. § 1201.3(c). See also *Di Sera v. Dep’t of Army*, 71 M.S.P.R. 120, 122 (1996) (“If an employee is covered by a [collective bargaining agreement], matters that customarily would be within the appellate jurisdiction of the Board are deemed to be covered by the negotiated grievance procedure, and thus beyond the Board’s jurisdiction, unless a matter is excluded from the application of the grievance procedure.”).

⁴⁴ 5 U.S.C. § 7122.

⁴⁵ 5 U.S.C. § 7123(a)(1). See also *Overseas Educ. Ass’n v. Fed. Lab. Rels. Auth.*, 824 F.2d 61, 63 (D.C. Cir. 1987) (“[T]he statute[, 5 U.S.C. § 7123(a),] as a general matter removes FLRA decisions reviewing arbitral awards from judicial review, but carves out an exception of decisive relevance to the cases at hand—arbitral decisions are to be subjected to judicial scrutiny *only* when the FLRA’s order ‘involves an unfair labor practice under section 711[6] of this title.’” (emphasis in original)); *Begay v. Dep’t of Interior*, 145 F.3d 1313, 1316 (Fed. Cir. 1998) (“Our sister circuits that have addressed the scope of this provision ‘essentially have concurred that an Authority decision is reviewable only if an unfair labor practice is either an explicit or necessary (implied) ground for disposition of the arbitrated grievance.’ *Philadelphia Metal Trades Council v. Federal Labor Relations Auth.*, 963 F.2d 38, 40 (3d Cir.1992) (citing cases) (internal quotation marks omitted); see also *National Treasury Employees Union v. Federal Labor Relations Auth.*, 112 F.3d 402, 404 (9th Cir.1997); *American Fed’n of Gov’t Employees, AFL–CIO, Local 916 v. Federal Labor Relations Auth.*, 951 F.2d 276, 278 (10th Cir.1991) (‘AFGE’).”).

⁴⁶ 5 U.S.C. §§ 7121(d), 7702(a); 5 C.F.R. § 1201.155(a)(1). See also *McCann v. Dep’t of Navy*, 57 M.S.P.R. 288, 293-94 (1993) (“Under 5 U.S.C. § 7121(a), the grievance procedures provided in the applicable collective bargaining agreement generally are the exclusive means of resolving disputes related to matters not excluded from the agreement’s coverage. An aggrieved employee who has been ‘affected by’ a personnel practice prohibited under 5 U.S.C. § 2302(b)(1), however, may file an appeal with the Board concerning an action otherwise covered by the collective bargaining agreement. See 5 U.S.C. § 7121(d). The Board has construed the words ‘affected by’ to mean that the Board is not divested of jurisdiction by the terms of a collective bargaining agreement providing for exclusivity of remedy where an appellant alleges discrimination. See *Jones v. Department of the Army*, 42 M.S.P.R. 680, 683-84 (1990); *Avila v. Defense Logistics Agency*, 21 M.S.P.R. 91, 92-93 (1984). Personnel practices prohibited under section 2302(b)(1) include discrimination based on age. 5 U.S.C. § 2302(b)(1)(B).” (emphasis in original)); *Varnado v. Dep’t of Just.*, 2023 WL 4567660, at *2 (M.S.P.B. 2023) (nonprecedential) (citing *McCann* as “recognizing that the Board is not divested of jurisdiction by the terms of a CBA providing for exclusivity of remedy when an appellant alleges discrimination”).

⁴⁷ See 5 U.S.C. § 7121(d); 5 C.F.R. § 1201.155(a)(2).

⁴⁸ 5 U.S.C. §§ 7121(d), 7702(a)(1)(B); 5 C.F.R. § 1201.155.

B. Applicable legal requirements for RIFs

The RIF rules are complex and largely mathematical in nature, requiring the “release” of employees in the inverse order of their retention standing. The applicable statute specifies the relevant factors for establishing the order of retention for employees affected by a RIF, and it provides that OPM “shall prescribe” regulations that give “due effect” to those factors.⁴⁹

OPM has issued regulations at 5 C.F.R. part 351. They require an agency to complete several tasks before conducting any RIF.⁵⁰ An agency must establish “competitive areas,” defined solely in terms of the agency’s organizational units and geographical locations.⁵¹ Within each competitive area, the agency must establish “competitive levels” consisting of all positions in the competitive area that share the same grade level and classification series and that are sufficiently similar to ensure that any employee holding a position in the competitive level can qualify for reassignment to any other position in the competitive level.⁵² The order of retention of employees in a competitive level is based on an employee’s tenure group,⁵³ military preference, length of service and performance ratings.⁵⁴ The agency must create a “retention register” ranking employees in order of retention standing within a competitive level.⁵⁵ An employee’s release from a competitive level may result in separation from the civil service, though it could have other consequences, such as reassignment or demotion.⁵⁶

Compliance with OPM’s RIF regulations is mandatory when they are applicable.⁵⁷ As provided in 5 C.F.R. § 351.201(a)(2), they apply whenever an employee is released from a competitive level due to the following specified reasons:

(2) Each agency shall follow this part when it releases a competing employee from his or her competitive level by furlough for more than 30 days, separation, demotion, or reassignment requiring displacement, *when the release is required because of lack of work; shortage of funds; insufficient personnel ceiling; reorganization; the exercise of reemployment rights or restoration rights; or reclassification of an employee’s position die [sic] to erosion of duties* when such action will take effect after an agency has formally announced a reduction in force in the employee’s competitive area and when the reduction in force will take effect within 180 days.⁵⁸

The term “release[]” is undefined but refers to the employee’s being furloughed for more than 30 days, separated, demoted, or subjected to a reassignment requiring the displacement of

⁴⁹ 5 U.S.C. § 3502(a).

⁵⁰ The summary provided here significantly simplifies the process for the purpose of providing an overview. Within the groupings of employees mentioned here are subgroups, and OPM must consider a variety of factors to determine retention standing and carry out the RIF. See U.S. OFF. OF PERS. MGMT., WORKFORCE RESHAPING OPERATIONS HANDBOOK (Mar. 2017) [\[link\]](#); Appendices to *id.* (Mar. 2017) [\[link\]](#); Cong. Research Serv., *Reductions in Force (RIFs): An Overview*, IF12908 (Feb. 13, 2025) [\[link\]](#).

⁵¹ 5 C.F.R. § 351.402.

⁵² 5 C.F.R. § 351.403.

⁵³ The regulations establish and define three tenure groups (I, II and III) for competitive service employees and three tenure groups (I, II and III) for excepted service employees. 5 C.F.R. §§ 351.501(b), 351.502(b).

⁵⁴ 5 U.S.C. § 3502; 5 C.F.R. §§ 351.501(a), 351.502(a).

⁵⁵ 5 C.F.R. § 351.404.

⁵⁶ 5 C.F.R. pt. 351, subpts. F & G.

⁵⁷ *Robinson v. U.S. Postal Serv.*, 63 M.S.P.R. 307 (1994).

⁵⁸ 5 C.F.R. § 351.201(a)(2) (emphasis added).

another employee as a result of a RIF.⁵⁹ The MSPB's decision in *McClure v. FEMA* illustrates the breadth of the term "release[]" in the context of the RIF rules.⁶⁰ In that case, "[t]he chief of the agency's staffing division stated in an affidavit that, rather than expend its resources by conducting a reduction in force (RIF) of all the fire representatives, the agency decided to reassign each affected employee into a GS-13 position that was slated for downgrading to the GS-12 grade level pursuant to a classification audit conducted by [OPM]."⁶¹ It was the reassignment, not the subsequent downgrading, that constituted the RIF because the agency knew the position was slated for downgrading.⁶²

As *McClure* also demonstrated, an agency may not circumvent the RIF rules merely by choosing not to "formally announce[] a reduction in force in the employee's competitive area" that "will take effect within 180 days."⁶³ That language in 5 C.F.R. § 351.201(a)(2) prevents an agency's availing itself of RIF procedures, rather than adverse action procedures, if an action occurs more than 180 days after a RIF is announced,⁶⁴ however, it is not a necessary element for triggering the application of RIF rules when an agency improperly releases an employee from a competitive level during a reorganization.⁶⁵ The MSPB has focused not on whether the agency has formally announced a RIF but on whether the agency has released an employee from a competitive level.⁶⁶ That focus is consistent with the controlling statute, 5 U.S.C. § 3502, which mandates that OPM's regulations must address "the release of competing employees in a reduction in force," giving "due effect" to tenure of employment, military preference, length of service; and efficiency or performance ratings.⁶⁷

An agency's characterization of an action as an adverse action or a RIF action is irrelevant.⁶⁸ In *Salo v. Department of Defense*, the MSPB indicated that it "will determine whether an action falls under 5 C.F.R. Part 752 [covering individual adverse actions] or 5 C.F.R. Part 351 [covering RIFs] based on the essential nature of the action itself."⁶⁹ The MSPB has reiterated this principle in other cases.⁷⁰ In *Marcheggiani v. Department of Defense*, for example, the board explained

⁵⁹ See *Myers v. Dep't of Army*, 87 M.S.P.R. 77 (2000) ("An agency is required to use RIF procedures when it releases a competing employee from her competitive level by furlough of more than 30 days, separation, demotion, or reassignment requiring displacement when the release is required due to a reorganization.").

⁶⁰ *McClure Fed. Emergency Mgmt. Agency*, 32 M.S.P.R. 672 (1987).

⁶¹ *Id.* at 674.

⁶² *Id.* at 676 ("The agency's circumvention of the RIF regulations occurred when it reassigned the appellant.").

⁶³ See 5 C.F.R. § 351.202(a)(2).

⁶⁴ *Hardy v. Dep't of Army*, 67 M.S.P.R. 292, 296 (1995) (finding agency could not rely on RIF procedures when "the RIF was effected outside the 180-day period set forth in the regulation").

⁶⁵ See 5 U.S.C. § 3502; 5 C.F.R. § 351.202(a)(2).

⁶⁶ See, e.g., *Miller v. Dep't of Homeland Sec.*, 111 M.S.P.R. 325, 333 (2009), *aff'd sub nom. Miller v. Merit Sys. Prot. Bd.*, 361 F. App'x 134 (Fed. Cir. 2010); *Hartman v. Dep't of Treasury*, 79 M.S.P.R. 576 (1998); *Mims v. Dep't of Def.*, 71 M.S.P.R. 74, 78 (1996); *Perlman v. Dep't of Army*, 23 M.S.P.R. 125, 126 (1984).

⁶⁷ 5 U.S.C. § 3502(a)(2).

⁶⁸ *Marcoux v. U.S. Postal Serv.*, 63 M.S.P.R. 373 (1994) ("The appellant appears to argue that his assignment cannot constitute a RIF action because the agency failed to declare a RIF or to apply RIF procedures. As the authorities cited above indicate, however, neither the agency's mischaracterization of the action nor its failure to adhere to applicable regulatory requirements in effecting the action can alter the nature of the action."). See also *Leddy v. U.S. Postal Serv.*, 64 M.S.P.R. 453 (1994), *aff'd*, 91 F.3d 166 (Fed. Cir. 1996); *Strachan v. U.S. Postal Serv.*, 64 M.S.P.R. 333 (1994); *Bergon v. U.S. Postal Serv.*, 64 M.S.P.R. 228 (1994), *aff'd sub nom. Goss v. U.S. Postal Serv.*, 74 F.3d 1260 (Fed. Cir. 1996).

⁶⁹ *Salo v. Dep't of Def.*, 122 M.S.P.R. 417 (2015). See also *Hudson v. Dep't of Veterans Affs.*, 104 M.S.P.R. 283 (2006) ("It is the nature of the action, not the agency's characterization of it, that determines Board jurisdiction."); *Baker v. Dep't of Homeland Sec.*, 99 M.S.P.R. 92 (2005) ("It is well-settled that the Board's jurisdiction is determined by the nature of an agency's action against a particular appellant.").

⁷⁰ *Robinson v. U.S. Postal Serv.*, 63 M.S.P.R. 307 (1994) (holding that the RIF rules "give employees rights that must be protected even when their protection is inconvenient for the agency").

that “a reassignment to a lower-graded position that constitutes a release from the employee’s competitive level because of a reorganization or some other reason listed at 5 C.F.R. § 351.201(a)(2) is an appealable RIF demotion.”⁷¹ In *Calhoun v. Department of Treasury*, the board emphasized that “[a]n agency must use the procedures set out in the RIF regulations, 5 C.F.R. Part 351, when it releases a competing employee from her competitive level by demotion, when the release is required because of reorganization.”⁷² This principle also drove the analysis in *Campbell v. Department of Treasury*, after an agency demoted an employee during a reorganization without applying RIF procedures: “An employee who has been released from her competitive level by demotion as a result of an agency’s reorganization, and who is covered by the RIF regulations, is entitled to appeal the demotion to the Board. See 5 C.F.R. §§ 351.201(a)(2), 351.901. . . . We therefore find that the appellant’s demotion constitutes an appealable RIF action.”⁷³

The Federal Circuit has taken the same approach, finding that it is the *nature of an action*, not the label the agency gives it, that dictates whether an action is taken pursuant to a RIF or as an individual adverse action.⁷⁴ Neither the United States Code nor the Code of Federal Regulations defines the term “reduction in force”;⁷⁵ however, the Federal Circuit has defined a RIF as “an administrative procedure by which agencies eliminate jobs and reassign or separate employees who occupied the abolished positions.”⁷⁶ “A RIF is not an adverse action against a particular employee, but is directed solely at a position within an agency.”⁷⁷ The court has added that “[a] RIF for the purpose of reorganization is defined as ‘the planned elimination, addition, or redistribution of functions or duties in an organization.’ 5 C.F.R. § 351.203.”⁷⁸

For purposes of OPM’s regulations, the term “reorganization” means “the planned elimination, addition, or redistribution of functions or duties in an organization.”⁷⁹ The MSPB has said that “‘reorganization’ is a term which is broad enough to cover a multitude of legitimate management considerations, but there must be a change of substance to warrant its recitation as justification for a RIF.”⁸⁰ At the same time, “[t]he agency’s failure to use the term ‘reorganization’ in the RIF notice does not conclusively determine whether, in fact, a reorganization occurred.”⁸¹ To determine whether a reorganization occurred, the MSPB necessarily examines the totality of the

⁷¹ *Marcheggiani v. Dep’t of Def.*, 90 M.S.P.R. 212 (2001) (citing 5 C.F.R. § 351.901 and *Robinson v. U.S. Postal Service*, 63 M.S.P.R. 307, 311–23 (1994)).

⁷² *Calhoun v. Dep’t of Treasury*, 90 M.S.P.R. 375, 378 (2001). To avoid confusion, the board explained in a footnote that “[a] ‘competing employee’ means an employee in tenure group I, II, or III,” *id.* at 378 n.3, a status that does not depend on an agency’s announcement of a RIF, 5 C.F.R. §§ 351.203 (“*Competing employee* means an employee in tenure group I, II, or III.”); 351.501(b) (establishing tenure groups for competitive service employees); 351.502(b) (establishing tenure groups for excepted service employees).

⁷³ *Campbell v. Dep’t of Treasury*, 61 M.S.P.R. 99, 103 (1994).

⁷⁴ *Huber v. Merit Sys. Prot. Bd.*, 793 F.2d 284, 287 (Fed. Cir. 1986), *cert. denied*, 479 U.S. 1043 (1987).

⁷⁵ See 5 U.S.C. § 3502; 5 C.F.R. §§ 210.102, 351.203.

⁷⁶ *James v. Von Zemenszky*, 284 F.3d 1310, 1314 (Fed. Cir. 2002) (citation omitted).

⁷⁷ *Id.*

⁷⁸ *Huber*, 793 F.2d at 287.

⁷⁹ 5 C.F.R. § 351.203.

⁸⁰ *Blalock v. Dep’t of Agric.*, 28 M.S.P.R. 17, 20–21 (1985), *aff’d sub nom. Huber v. Merit Sys. Prot. Bd.*, 793 F.2d 284 (Fed. Cir. 1986).

⁸¹ *Holmes v. Dep’t of Army*, No. 41 M.S.P.R. 612 (1989), *aff’d*, 914 F.2d 271 (Fed. Cir. 1990).

circumstances.⁸² In one case, the Federal Circuit held that reorganization had occurred even though only a single employee was demoted.⁸³

An agency's failure to comply with applicable RIF procedures is generally fatal to the action taken against an employee, unless the action had no effect on an employee's substantive rights. The MSPB has explained that the proper determination of an employee's entitlement under RIF regulations is a substantive right, and not merely a procedural requirement subject to the harmful error standard.⁸⁴ The agency bears the burden of proving that an error had no effect on the employee's substantive rights, such as continued employment or assignment to a position for which the employee was qualified.⁸⁵ In *Metger v. Department of Navy*, the board reinstated an employee because the agency failed to prove that it properly defined the competitive level and that it would have separated the employee if it had defined the competitive level correctly.⁸⁶ (Along the same lines, an agency's failure to advise an employee of the right to appeal a RIF action merits significant leeway with respect to filing deadlines.⁸⁷)

In *Horne v. ICC*, the MSPB upheld a hearing officer's determination that the Interstate Commerce Commission (ICC) had conducted a "de facto" RIF.⁸⁸ A manager had demoted two GS-15 attorneys to the GS-14 level based on a mistaken belief that they were political appointees, then hired 19 attorneys at the GS-15 level over the next several months.⁸⁹ In determining that the appellants' demotions were the proper result of the de facto RIF, the hearing officer adopted the agency's definitions of their competitive areas and competitive levels.⁹⁰ The D.C. Circuit vacated the MSPB's decision because the hearing officer should not have undertaken to conduct a RIF that the ICC had failed to conduct:

⁸² See *Willson v. Dep't of Army*, 25 M.S.P.R. 167, 170 (1984) ("The Board must examine all the evidence to determine if the RIF was actually an adverse action against the appellant." (emphasis added)).

⁸³ *Welch v. Dep't of Army*, 323 F.3d 1042 (Fed. Cir. 2003).

⁸⁴ *Robinson v. U.S. Postal Serv.*, 63 M.S.P.R. 307, 329-30 (1994). See also *Dixon v. U.S. Postal Serv.*, 64 M.S.P.R. 445, 449 (1994) ("The agency's arguments that it provided [appellants] with the equivalent of what they could have gotten had the procedural requirements of the regulations been followed, and therefore that there was no harmful error, the Board found, were not persuasive since an employee's RIF entitlements are substantive in nature and not subject to the harmful error rule.").

⁸⁵ *Robinson*, 63 M.S.P.R. at 330.

⁸⁶ *Metger v. Dep't of Navy*, 68 M.S.P.R. 225, 229 (1995). See also *Schroeder v. Dep't of Transp.*, 60 M.S.P.R. 566, 578 (1994) (remanding for further proceedings where the record did not establish whether employee would have been reached for release in a properly defined competitive level); *Foster v. Tennessee Valley Auth.*, (2000) (remanding for further proceedings where AJ failed to examine whether competitive area was properly defined and, if not, how proper definition of the competitive area would have affected employee); *Harris v. Nat'l Archives & Recs. Admin.*, 87 M.S.P.R. 323, 327-28 (2000) ("In *Cramton and Carter*, the Board found that the agency's failure to afford the appellants any RIF procedures required reversal of the demotion actions. *Cramton*, 27 M.S.P.R. at 560-61; *Carter*, 23 M.S.P.R. [309,] 313 [(1984)]."), *aff'd sub nom*, *Harris v. Carlin*, EEOC Doc. No. 03A10040, 2001 WL 209288 (Feb. 16, 2001).

⁸⁷ *Yuni v. Merit Sys. Prot. Bd.*, 784 F.2d 381, 388 (Fed. Cir. 1986) ("The procedures governing federal employment, by statute and regulation, represent a careful balance of employer and employee needs. The benefits of these procedures are not rewards for the select few with the resources to penetrate agency errors. The agency failed to inform Mr. Yuni of his right to appeal to the Board, failed to correct its error, and despite the *Carter* decision continues to seek to deny equal treatment to Mr. Yuni. Mr. Yuni filed his appeal within twenty days after learning of the *Carter* decision. In the circumstances of this case, we hold that Mr. Yuni met the requirement of "[d]ue diligence on the employee's part once the employee learns of his adverse protection rights". *Casey v. Merit Systems Protection Board*, 748 F.2d 685, 686 (Fed.Cir.1984). Therefore, the Board abused its discretion in failing to waive, for good cause shown, the twenty day time limit for filing the appeal. 5 C.F.R. § 1201.22. The decision is reversed and the case is remanded for further proceedings.").

⁸⁸ *Horne v. I.C.C.*, 5 M.S.P.R. 208 (1981) (hereinafter *Horne I*), *vacated sub nom*. *Horne v. Merit Sys. Prot. Bd.*, 684 F.2d 155 (D.C. Cir. 1982) (hereinafter *Horne II*). Note that the D.C. Circuit had jurisdiction to review the appeal because the case arose before Congress created the U.S. Court of Appeals for the Federal Circuit and reassigned jurisdiction over MSPB decisions to that court. Federal Courts Improvement Act of 1982, Pub. L. No. 97-164, § 127, 96 Stat. 38 (codified at 28 U.S.C. § 1295(a)(9)) [[link](#)].

⁸⁹ *Horne I*, 5 M.S.P.R. at 210-11. See also *Horne II*, 684 F.2d at 156-57.

⁹⁰ *Horne I*, 5 M.S.P.R. at 210-11.

[T]he ICC had substantial discretion to decide when to invoke a RIF and how to define a competitive area. When clearly exercised, such discretion and expertise should receive deference in review by the Board and the courts. In this case, however, the ICC never exercised its discretion. The Board adopted the [hearing officer's] de facto RIF rationale after the fact, so there was nothing to which the Board could properly have deferred. The only clearly exercised act of discretion by the agency was its decision not to conduct a formal RIF—a decision that the Board found to be an error. When the Board decided that the demotions required a RIF, the Board should have remanded the case for disposition pursuant to proper procedures.⁹¹

In *Wade v. Department of Interior*, the board explained what an appellant would have to show to be entitled to a jurisdictional hearing on the question of whether a RIF occurred:

An appellant is entitled to a jurisdictional hearing if he makes specific allegations of fact that, if proven, could establish a prima facie showing of Board jurisdiction. See *Ferdon v. U.S. Postal Service*, 60 M.S.P.R. 325, 329 (1994). Here, the appellant has made non-frivolous allegations that the agency conducted a reorganization of the Farmington District Office, that it abolished his GS-1801-11 position, and that it assigned him to a newly-created GS-802-10 position either before the purported “reclassification” of his GS-11 position or after he had been given retained grade as a GS-11. These allegations would support a finding that the agency released the appellant from his competitive level and demoted him by RIF, without invoking RIF procedures, and without affording him his substantive rights under the RIF rules.⁹²

Ultimately, the distinguishing feature between a RIF removal and an adverse action removal is whether the action is based on the conduct or performance of an employee or on the government’s desire to eliminate positions.⁹³ In *LaMell v. Armed Forces Retirement Home*, the MSPB examined whether the agency’s action “was based on reasons personal to the employee and not directed to a position.”⁹⁴ In *Gabriel v. Department of Labor*, the board explained that, “[a]s a matter of civil service law, a RIF taken for reasons personal to an employee is an adverse action.”⁹⁵

⁹¹ *Horne II*, 684 F.2d at 158. In *Mayo v. Hodel*, the D.C. Circuit found that it had more leeway when the employee was “the sole member of his competitive area at his competitive level,” and the only possible outcome was his separation. *Mayo v. Hodel*, 741 F.2d 441, 442-43 (D.C. Cir. 1984). But the board has found *Mayo* to describe a narrow set of circumstances, which are unlikely to arise in the typical situation in which an agency has failed to apply RIF procedures at all. *Cramton v. Dep’t of Treasury*, 27 M.S.P.R. 558, 560-61 (1985) (“The agency in this case had, as in *Horne*, ‘substantial discretion to decide when to invoke a RIF’, discretion to define the scope of competition in establishing competitive areas and levels, and various options in determining assignment rights. It would be inappropriate for the Board now to decide this case based upon how the agency ‘might have acted if it had followed the proper procedures.’ *Horne*, supra, at 157. This rationale becomes even more compelling when no determinations whatsoever under Part 351 were initially provided appellant, thus precluding his opportunity to contest the propriety of the action.”).

⁹² *Wade v. Dep’t of Interior*, 79 M.S.P.R. 686 (1998).

⁹³ *Huber*, 793 F.2d at 286. See also *Tippins v. United States*, 93 F.4th 1370, 1375 (Fed. Cir. 2024) (“We have consistently defined a ‘reduction in force’ as an ‘administrative procedure by which agencies eliminate jobs and reassign or separate employees who occupied the abolished positions.’”); *Carter v. Department of the Army*, 62 M.S.P.R. 393, 398 (1994) (discussing that the focus of a RIF is on positions, while adverse actions are focused on personal characteristics of individuals). Cf. *Gandola v. Federal Trade Commission*, 773 F.2d 308, 312 (Fed. Cir. 1985) (“A reduction in force may not be used as a disguised adverse action to remove or demote a particular employee.”).

⁹⁴ *LaMell v. Armed Forces Ret. Home*, 104 M.S.P.R. 413 (2007) (examining whether the agency’s action “was based on reasons personal to the employee and not directed to a position”).

⁹⁵ *Gabriel v. Dep’t of Lab.*, 108 M.S.P.R. 186 (2008) (“As a matter of civil service law, a RIF taken for reasons personal to an employee is an adverse action.”).

II. Factual Background

The Trump administration has undertaken a global effort to downsize the federal workforce, and the sudden mass removal of probationary employees across the executive branch is a component of that effort. Publicly available evidence contradicts the administration's claim that performance deficiencies warranted the removal of probationers. The administration has focused on eliminating the positions it has determined are "non-mission critical," rather than evaluating the performance of individual probationary employees.

A. The Trump Administration's global downsizing effort

In Executive Order 14217, President Donald Trump declared that the policy of his administration is to "dramatically reduce the size of the Federal Government."⁹⁶ This policy has been evident since the first day of his second term, when he imposed an executive branch-wide hiring freeze.⁹⁷ In Executive Order 14210, which criticized "waste, bloat, and insularity" in the federal government,⁹⁸ President Trump ordered the Director of the Office of Management and Budget (OMB) to submit a plan for reducing the size of the federal workforce, including a limit on hiring no more than "one employee for every four employees that depart."⁹⁹ The order further directed agencies to "undertake preparations to initiate large-scale reductions in force (RIFs)."¹⁰⁰

To meet the President's extraordinary workforce reduction goals, his administration began encouraging federal workers to quit. On January 28, 2025, the temporary organization labeled "Department of Government Efficiency" (DOGE) offered vast numbers of the government's 2.3 million civilian employees the opportunity to resign in exchange for eight months of paid administrative leave.¹⁰¹ DOGE's email threatened that most federal agencies were slated for downsizing, advising recipients that the administration "cannot give you full assurance regarding the certainty of your position or agency."¹⁰² Employees were given until February 6 to accept the offer.¹⁰³

A second email went out on February 3 reiterating this offer of what the administration labelled "deferred retirement."¹⁰⁴ That evening, the President's closest advisor, Elon Musk, declared on his social media platform that "DOGE is the wood chipper for bureaucracy."¹⁰⁵ Politico highlighted other statements by Musk that put pressure on federal workers in the days leading

⁹⁶ Exec. Order No. 14217 (Feb. 19, 2025), *reprinted in* 90 Fed. Reg. 10577 (Feb. 25, 2025) ("It is the policy of my Administration to dramatically reduce the size of the Federal Government . . .") [[link](#)].

⁹⁷ Donald J. Trump, *Hiring Freeze* (Jan. 20, 2025) (presidential memorandum), *reprinted in* 90 Fed. Reg. 8247 (Jan. 28, 2025) [[link](#)].

⁹⁸ Exec. Order No. 14210, § 3(a) (Feb. 11, 2025), *reprinted in* 90 Fed. Reg. 11095 (Feb. 14, 2025) [[link](#)].

⁹⁹ Exec. Order No. 14210, § 3(a).

¹⁰⁰ Exec. Order No. 14210, § 3(c).

¹⁰¹ Aimee Picchi and Alain Sherter, *Trump administration's federal "buyout" plan moves forward*. CBS NEWS (Feb. 12, 2025) [[link](#)].

¹⁰² U.S. Off. of Pers. Mgmt., *Deferred Resignation Email to Federal Employees* (Jan. 28, 2025) [[link](#)] (last visited Mar. 11, 2025) [[link](#)] (internet archive)].

¹⁰³ Opinion and Order, at 1-2 (O'Tool, J.), *Am. Fed'n of Gov't Emps.*, 1:25-cv-10276-GAO (Feb. 12, 2025) (ECF No. 66) [[link](#)].

¹⁰⁴ Will Steakin and Laura Romer, *OPM, implementing Musk's DOGE plans, sends federal workers 2nd 'Fork in the Road' email*, ABC NEWS (Feb. 3, 2025) [[link](#)].

¹⁰⁵ Elon Musk (@elonmusk), X (formerly TWITTER) (Feb 3, 2025, 10:59 p.m.) [[link](#)].

up to the initial February 6 deadline: "He accused Treasury employees of 'breaking the law every hour of every day,' attacked the U.S. Agency for International Development as a 'viper's nest of radical-left marxists who hate America,' and shared a post belittling government workers as dumb."¹⁰⁶

Employee unions filed a motion in a U.S. District Court for a temporary restraining order to postpone the deadline for acceptance of the offer, and a federal judge delayed the deadline briefly before issuing an order on February 12 denying the motion on standing and subject matter jurisdiction grounds.¹⁰⁷ Roughly 75,000 employees across the executive branch accepted DOGE's offer before it expired at 7:00 p.m. on February 12.¹⁰⁸ This number fell far short of the White House's initial estimate that up to 10 percent of the federal workforce would accept the offer.¹⁰⁹ The next day, the Trump administration began its mass firing of probationary employees.¹¹⁰

In addition to the firing of probationary employees, the administration has begun the process of conducting RIFs to remove tenured career employees.¹¹¹ As of March 7, 2025, Reuters reported that "100,000 workers have been fired or taken a buyout."¹¹² President Trump declared in a cabinet meeting that the Environmental Protection Agency plans to remove 65 percent of its employees.¹¹³ The administration reportedly aims to cut as much as 50 percent of the Internal Revenue Service's 100,000-employee staff.¹¹⁴ The Department of Veterans Affairs is reportedly planning to eliminate 83,000 positions.¹¹⁵ The Department of Defense is reportedly planning to eliminate about 61,000.¹¹⁶ The Social Security Administration may cut as much as 50% of its 80,000-employee workforce.¹¹⁷ Similar projections at other agencies have been reported.¹¹⁸

¹⁰⁶ Holly Otterbein, *Musk aims to hobble federal workers ahead of 'buyout' deadline*, POLITICO (Feb. 6, 2025) [\[link\]](#).

¹⁰⁷ Opinion and Order (O'Tool, J.), Am. Fed'n of Gov't Emps., 1:25-cv-10276-GAO (Feb. 12, 2025) (ECF No. 66) [\[link\]](#).

¹⁰⁸ Joey Garrison, *Firings across federal government begin after Trump, Musk order sweeping cuts*, USA TODAY (Feb. 13, 2025); Chris Cameron, Karoun Demirjian and Madeleine Ngo, *Trump's Federal Resignation Program Moves Ahead After Court Win*, N.Y. TIMES (Feb. 12, 2025) [\[link\]](#).

¹⁰⁹ Claire Ballentine, Francesca Maglione and Dina Katgara, *Musk Buyout Has US Workers Vowing to Stay Until 'Told to Leave'*, BLOOMBERG LAW (Feb. 5, 2025) [\[link\]](#).

¹¹⁰ Ashley Wu, Amy Schoenfeld Walker, Jon Huang and Elena Shao, *Where Trump, Musk and DOGE Have Cut Federal Workers So Far*, N.Y. TIMES (Feb. 26, 2025) ("Agencies began dismissing some of the more than 200,000 probationary staff members across the federal work force on Feb. 13, though many are not yet publicly reporting their total cuts.") [\[link\]](#).

¹¹¹ Eileen Sullivan, *The Next Phase of Trump's Large-Scale Work Force Cuts Is Underway*, N.Y. TIMES (Feb. 26, 2025) [\[link\]](#).

¹¹² Nathan Layne and Aleksandra Michalska, *DOGE job cuts bring pain to Trump heartland*, REUTERS (Mar. 7, 2025) [\[link\]](#). The Department of Education offered its employees \$25,000 buyouts, threatening that employees who decline the offer would be subject to a "very significant reduction in force." Zach Montague, *Education Dept. Workers Offered Buyouts Ahead of 'Very Significant' Layoffs*, N.Y. TIMES (Feb. 28, 2025) [\[link\]](#). The Department of Health and Human Services offered its employees the option of early retirement. Patrick Wingrove and Dan Levine, *US health department offers early retirement in latest round of Musk-led cuts*, REUTERS (Mar. 4, 2025) [\[link\]](#).

¹¹³ Cheyenne Haslett, Benjamin Siegel, Luke Barr, and Katherine Faulders, *Trump administration offers federal workers payouts for resignations in move mirroring Elon Musk's memo at Twitter*, ABC NEWS (Jan. 28, 2025) [\[link\]](#).

¹¹⁴ Andrew Duehren, *Trump Administration Pushes to Slash I.R.S. Work Force in Half*, N.Y. TIMES (Mar. 4, 2025) [\[link\]](#).

¹¹⁵ Eric Katz, *VA plans to lay off as many as 83,000 employees this year, Gov't EXEC.* (Mar. 4, 2025) [\[link\]](#).

¹¹⁶ Meghann Myers, *Pentagon to fire up to 61,000 workers, starting with 5,400 next week*, DEFENSE ONE (Feb. 21, 2025) [\[link\]](#).

¹¹⁷ Sara Dorn, *Here's Where Trump's Government Layoffs Are Targeted—As CIA Begins Firing New Recruits*, FORBES (Mar. 6) [\[link\]](#).

¹¹⁸ Sara Dorn and Molly Bohannon, *Here's Where Trump's Government Layoffs Are Targeted—As NOAA Reportedly Set To Cut 20% Of Staff*, FORBES (Mar. 9, 2025) [\[link\]](#).

B. The mass firing of probationary employees

On the day of President Trump's inauguration, OPM issued a memorandum directing federal agencies to furnish it with lists of "all employees on probationary periods, who have served less than a year in a competitive service appointment, or who have served less than two years in an excepted service appointment, and send a report to OPM listing all such employees."¹¹⁹ The memorandum required that agencies "determine whether those employees should be retained," and somewhat inaccurately informed them that "[e]mployees on probationary periods can be terminated during that period without triggering appeal rights to the Merit Systems Protection Board (MSPB)."¹²⁰

1. The focus on positions

The Trump administration began its mass removal of probationary employees on February 13, 2025, the day after the "deferred retirement" offer expired. A purge of thousands of probationary employees began immediately.¹²¹ Firings occurred at a wide range of agencies across the federal executive branch.¹²²

From the start, the administration communicated that its efforts were orchestrated by OPM, acting in concert with DOGE, and were focused on eliminating positions not deemed "mission critical." Among the many examples are the following:

¹¹⁹ Memorandum from Charles Ezell, acting Dir., U.S. Off. of Pers. Mgmt. to heads and acting heads of departments and agencies, *Guidance on Probationary Periods, Administrative Leave and Details*, at 1 (Jan. 20, 2025) [[link](#)] (internet archive)].

¹²⁰ *Id.* at 1. As mentioned earlier, some probationary employees have full MSPB appeal rights because they have met the applicable service requirements, 5 U.S.C. 7511(a)(1); competitive service employees may appeal to the MSPB if they believe their removals were based on partisan political reasons or marital status, 5 C.F.R. 315.806(b); if the removals were based on matters arising before their appointments, competitive service employees may appeal to the MSPB on the ground that their agencies failed to follow applicable procedures, 5 C.F.R. 315.806(c); and the Special Counsel of the U.S. Office of Special Counsel may seek, on their behalf, stays or corrective action by the MSPB on their behalf if their agencies committed prohibited personnel practices in removing them, 5 U.S.C. 1214.

¹²¹ Tami Luhby, Rene Marsh, Matt Egan and Sean Lyngaas, *Thousands of probationary employees fired as Trump administration directs agencies to carry out widespread layoffs*, CNN (Feb. 14, 2025) [[link](#)]; Ted Oberg and Megan Lebowitz, *Trump administration tells federal agencies to fire probationary employees*, MSNBC (Feb. 13, 2025) [[link](#)].

¹²² Meg Kinnard, *A comprehensive look at DOGE's firings and layoffs so far*, ASSOC. PRESS (Feb. 21, 2025) [[link](#)]. The pace of the firings, coupled with a lack of transparency, has made it difficult to compile a full list of agencies that have participated in the mass firing of probationary employees. News reports have identified a number of agencies, including: the Consumer Financial Protection Bureau, the Department of Agriculture, the Department of Commerce, the Department of Defense, the Department of Education, the Department of Energy, the Department of Health & Human Services, the Department of Homeland Security, the Department of Housing & Urban Development, the Department of Interior, the Department of Labor, the Department of Treasury, the Department of Veterans Affairs, the Environmental Protection Agency, the Federal Deposit Insurance Corporation, the General Services Administration, the National Archives and Records Administration, the National Oceanographic and Atmospheric Administration, the National Science Foundation, the Office of Personnel Management, the Small Business Administration, U.S. Agency for International Development, and possibly other agencies. See Andrea Hsu, *Nearly 6,000 USDA workers fired by Trump ordered back to work for now*, NPR (Mar. 5, 2025) [[link](#)]; Eric Katz, *Some agencies are still firing probationers while others have recalled theirs, following court ruling*, GOV'T EXEC. (Mar. 3, 2025) [[link](#)]; Terry Collins, *Science agency reinstates some fired employees, includes people with disabilities, veterans, military spouses*, USA TODAY (Mar. 3, 2025) [[link](#)]; Christopher Flavelle, Austyn Gaffney, Camille Baker and Ana Swanson, *Mass Layoffs Begin at NOAA, With Hundreds Said to Be Fired in One Day*, N.Y. TIMES (Feb. 27, 2025) [[link](#)]; Ellen Knickmeyer, *The Trump administration is putting USAID staffers on leave worldwide and firing at least 1,600*, ASSOC. PRESS (Feb. 23, 2025) [[link](#)]; *Federal agencies are still firing probationary employees—most recently DHS and USPTO*, GOV'T. EXEC. (Feb. 14, 2025) [[link](#)]; Joey Garrison, *Firings across federal government begin after Trump, Musk order sweeping cuts*, USA TODAY (Feb. 13, 2025) [[link](#)]; David DiMolfetta and Eric Katz, *OPM fires its own probationary period staff*, GOV'T EXEC. (Feb. 13, 2025) [[link](#)]; Laurel Wamsley, *Dozens of CFPB workers are fired as the agency remains shuttered*, NPR (Feb. 12, 2025) [[link](#)].

- OPM's January 20 memorandum, which sought lists of probationary employees, incorrectly stated that one of the purposes of probationary periods was for agencies to "manage staffing levels."¹²³
- DOGE's January 28 deferred retirement email indicated that "the majority of federal agencies are likely to be downsized through restructurings, realignments, and reductions in force."¹²⁴
- On February 13, a Forest Service employee named Leandra Bailey received from her department head a document created by that agency's Human Resources Management, which read in part:

All federal agencies, including the Department of Agriculture, *were notified on February 12, 2025, by the Office of Personnel Management (OPM) to terminate all employees who have not completed their probationary or trial period.* To ensure that all employees are notified, and receive appropriate due process, below are recommendations to appropriately offboard impacted employees. Employees will be given written notice of termination, and this briefing paper assists supervisors with an orderly offboarding.

Recommended Briefing Points for Supervisor/Leader Discussions with Employees:

- *OPM directed agencies to separate Probationary employees starting 2/13/25.*¹²⁵
- A February 14 email from OPM directed agencies to separate probationary employees in non-mission critical positions:

Over the past several days, agencies have worked to review, clean up, and finalize their lists of probationary employees they wish to keep, and wish to terminate, and begin taking action. *We have asked that you separate probationary employees that you have not identified as mission-critical no later than end of the day Monday, 2/17.* We have attached a template letter. The separation date should be as soon as possible that is consistent with applicable agency policies (including those in CBAs).¹²⁶

- OPM's February 14 email included a template with boilerplate language for the removal of probationary employees. The template provided blank spaces for entering the names and titles of employees. Though these employees were unknown to OPM, the template included language preemptively indicating that the recipients' removal was based on

¹²³ *Id.* at 1.

¹²⁴ U.S. Off. of Pers. Mgmt., *Deferred Resignation Email to Federal Employees* (Jan. 28, 2025) [[link](#)] (last visited Mar. 5, 2025) [[link](#)] (internet archive)].

¹²⁵ Decl. of Leandra Bailey, at 1, ¶15, *Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt.*, 3:25-cv-01780 (Feb. 22, 2025) (ECF No. 71, at 6) [[link](#)]; Exhibit C to *id.* (Mar. 7, 2025) (ECF No. 71, at 16-18) (containing information sheet distributed by Human Resources Management, U.S. Forest Service, U.S. Dep't of Agric., *Forest Service Briefing Paper*, (Feb. 13, 2025)) [[link](#)]. See also Decl. of Leandra Bailey, at 1, *Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt.*, 3:25-cv-01780 (Feb. 22, 2025) (ECF 70-1, at 2) (providing Bailey's signature) [[link](#)].

¹²⁶ Attach. B to Decl. of Charles Ezell, at 1, *Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt.*, 3:25-cv-01780 (Feb. 14, 2025) (ECF No. 37-1) (emphasis added) [[link](#)].

their performance. It did not designate a space for providing examples of poor performance.¹²⁷

- On February 14, the Chief Human Capital Officers (CHCOs) Council issued an email to all executive branch CHCOs and Deputy CHCOs that read, in part:

An employee's performance must be viewed through the current needs and best interest of the government, in light of the President's directive to *dramatically reduce the size of the federal workforce*.

. . .

Through the exemptions process, agencies have identified the highest performing probationers *in mission critical areas*.¹²⁸

- On February 14, the Deputy CHCO for the U.S. Department of Agriculture, Crystal L. Harris, sent an email in which she stated:

Last night, agencies were notified by the Office of Personnel Management (OPM) that the Administration has decided probationary employees are not eligible for the Deferred Resignation program and also *that these employees are to be terminated*. Agencies were *directed* to begin providing termination notices to affected employees and directed the use of a specific template and language for the notice beginning immediately upon OPM notification.¹²⁹

- On February 14, an OPM spokesperson indicated that probationary employees were being fired "in support of the President's broader efforts to restructure and streamline the federal government . . ."¹³⁰
- On February 14, a spokesperson for the Department of Health and Human Services, Andrew Nixon, similarly indicated that the firings were meant "to support the President's broader efforts to restructure and streamline the federal government."¹³¹
- On February 18, NSF fired probationary employees en masse through a video conference. The plaintiffs in *AFGE v. OPM* obtained a declaration by Dr. Andrew Frassetto, who attended the video conference.¹³² He provided a transcript of the call, authenticated it, identified the speakers, and attested under penalty of perjury to its

¹²⁷ Exhibit D to Decl. of Pace Schwarz, *Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt.*, 3:25-cv-01780 (Feb. 26, 2025) (ECF No. 39-4) [[link](#)]. See also Exhibit 1 to Defendants' Notice in Response to Court's Second Request for Information, *Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt.*, 3:25-cv-01780 (Mar. 10, 2025) (ECF No. 87-1) [[link](#)].

¹²⁸ Exhibit B to Decl. of Charles Ezell, acting Dir., *U.S. Off. of Pers. Mgmt.*, at 1 (emphasis added), *Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt.*, 3:25-cv-01780 (ECF No. 37-1, at 1) [[link](#)].

¹²⁹ Exhibit A to Decl. of Kory Blake, at 1-2 (emphasis added), *Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt.*, 3:25-cv-01780 (ECF No. 39-6 at 5-6) [[link](#)].

¹³⁰ Shannon Bond, Jennifer Ludden, Andrea Hsu, Laurel Wamsley and Michael Copley, *Layoffs accelerate at federal agencies with more cuts to come*, NPR (Feb. 14, 2025) ("The probationary period is a continuation of the job application process, not an entitlement for permanent employment," a spokesperson for the federal Office of Personnel Management said in a statement. "Agencies are taking independent action in light of the recent hiring freeze and in support of the President's broader efforts to restructure and streamline the federal government to better serve the American people at the highest possible standard.") [[link](#)].

¹³¹ *Federal agencies are still firing probationary employees—most recently NOAA*, GOVERNMENT EXECUTIVE (Feb. 14, 2025) [[link](#)].

¹³² Decl. of Dr. Andrew Frassetto, at 2, ¶¶ 10-11, *Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt.*, 3:25-cv-01780 (Feb. 22, 2025) (ECF No. 18-9, at 3) [[link](#)].

accuracy.¹³³ He identified NSF Chief Management Officer Micah Cheatham as the speaker quoted in the transcript as making the following statements:

- We've invited Most [sic] probationary employees and all experts today to announce that your employment will be terminated at the end of the day today.¹³⁴
- *We've been directed by the administration to remove all term probationary employees. We have identified an extremely small number that we identified as mission critical we were not given any real significant discretion in that area.*¹³⁵
- In the last two weeks. Up until Friday. Yes. We were told by OPM it was the agency's discretion whether to remove probations or not. *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.*¹³⁶
- Dr. Frassetto identified NSF's Chief Human Capital Officer (CHCO), Wonzie Gardner, as the speaker quoted in the transcript as making the following statements:
 - When Micah says law, when angel says law, *we have no choice for following what we're getting from OPM.*¹³⁷
 - We are following orders. We are part of the executive branch. We follow that. I apologize for people that have made life-changing career moves.¹³⁸
- On February 21, then-Internal Revenue Service Human Capital Officer Traci DiMartini conducted a video conference in which she was recorded making the following statements:

¹³³ Decl. of Dr. Andrew Frassetto, at 3, 13, Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt., 3:25-cv-01780 (Feb. 22, 2025) (ECF No. 18-9, at 4) [\[link\]](#).

¹³⁴ Decl. of Dr. Andrew Frassetto, at 3, 18, Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt., 3:25-cv-01780 (Feb. 22, 2025) (ECF No. 18-9, at 4) [\[link\]](#); Exhibit B to *id.* at 6 (ECF No. 18-9, at 15) [\[link\]](#).

¹³⁵ Decl. of Dr. Andrew Frassetto, at 3, 18, Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt., 3:25-cv-01780 (Feb. 22, 2025) (ECF No. 18-9, at 4) [\[link\]](#); Exhibit B to *id.* at 2 (ECF No. 18-9, at 11) (emphasis added) [\[link\]](#).

¹³⁶ Decl. of Dr. Andrew Frassetto, at 3, 16, Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt., 3:25-cv-01780 (Feb. 22, 2025) (ECF No. 18-9, at 4) [\[link\]](#); Exhibit B to *id.* at 17 (ECF No. 18-9, at 26) (emphasis added) [\[link\]](#).

¹³⁷ Decl. of Dr. Andrew Frassetto, at 3-4, ¶¶ 14, 20, Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt., 3:25-cv-01780 (Feb. 22, 2025) (ECF No. 18-9, at 4-5) [\[link\]](#); Exhibit B to *id.* at 15 (ECF No. 18-9, at 24) (emphasis added) [\[link\]](#).

¹³⁸ Decl. of Dr. Andrew Frassetto, at 3-4, ¶¶ 14, 20, Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt., 3:25-cv-01780 (Feb. 22, 2025) (ECF No. 18-9, at 4-5) [\[link\]](#); Exhibit B to *id.* at 16 (ECF No. 18-9, at 25) [\[link\]](#).

And I'm going to explain how we got here, and I'm going to explain what I believe is coming down the pike. And I will answer your questions.

But I will also tell you a lot of times I'm going to say, I do not know. Because this information is being *directed to us from the Office of Personnel Management*. And a lot of times the information comes down not even 24 hours before we are supposed to take action.

. . . .

This is going on government wide. There's no agency that's being spared, not even Department of Defense. Which at first was not going to be touched, but I have just seen this morning where they are going to be doing some layoffs and reductions in force.

. . . .

Regarding the removal of the probationary employees, again, that was something that was directed from OPM. And even the letters that your colleagues received yesterday were letters that were written by OPM, put forth through Treasury, and given to us.

. . . .

And there's actually one final list that we also received, so a few people will be getting letters today, about another set of a hundred. You know, they already will be – they're being sent out by mail.

I cannot explain to you why this has happened. *I've never seen OPM direct people at any agency to terminate*. The only thing I can surmise is that the current administration has been very clear they would like to reduce the number of Federal employees across the whole enterprise.

So one of the first steps they took was to start with people on probation who have very limited appeal rights before MSPB, or any other entity, and they probably felt that was the most expedient avenue to do the whole enterprise before they go into other areas, which I will also begin to address.¹³⁹

- The plaintiffs in *Maryland v. U.S. Department of Agriculture* filed an affidavit signed under penalties of perjury by former IRS Human Capital Officer Traci DiMartini.¹⁴⁰ DiMartini indicated that, after OPM issued its January 20 directive, Treasury Department Chief Human Capital Officer Trevor Norris assigned her office to take responsibility for coordinating the termination of probationary employees at IRS.¹⁴¹ She indicated that probationary employees deemed "essential personnel for tax filing season, as well as some other categories of workers" were exempted from the mass removal.¹⁴² She indicated that her office "did not review or consider the actual job performance or

¹³⁹ Exhibit A to Decl. of Gabriel Lezra, at 1-7, (emphasis added) *Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt.*, 3:25-cv-01780 (ECF No. 39-5, at 5-11) (emphasis added) [[link](#)], and video obtained by plaintiffs in *id.* [[link](#)] (last visited Mar. 9, 2025)].

¹⁴⁰ Exhibit HH to Mem. in Support of Plaintiff's Mot. for a Temp. Restraining Order, Decl. of Traci DiMartini, Human Capital Officer, *Int. Rev. Serv., State of Maryland v. U.S. Dep't of Agric.*, 1:25-cv-00748 (Mar. 6, 2025) (ECF No. 4-37) [[link](#)].

¹⁴¹ *Id.* at 2-3, ¶¶ 5-13 (ECF No. 4-37, at 3-4).

¹⁴² *Id.* at 3, ¶ 11 (ECF No. 4-37, at 4).

conduct of any IRS probationary employee when issuing the termination notices.”¹⁴³ She added, “I also know that Treasury did not review or consider the actual job performance or conduct of any IRS probationary employee when issuing the termination notices. I know this because this fact was discussed openly in meetings.”¹⁴⁴ DiMartini indicated that she and then-acting IRS Commissioner Doug O’Donnell refused to sign the removal notices.¹⁴⁵ On March 3, 2025, a new acting IRS Commissioner, Melanie Krause, advised DiMartini that she was being terminated.¹⁴⁶

- On February 24, the Department of Veterans Affairs issued a press release indicating that it had terminated probationary employees in non-mission critical positions:

The Department of Veterans Affairs today announced the dismissal of more than 1,400 employees in *non-mission critical positions*.

In the meantime, VA continues to hire for more than 300,000 *mission-critical* positions that are exempt from the federal hiring freeze.

VA positions considered *mission critical* include Veterans Crisis Line responders, among other roles. VA positions considered *non-mission critical* include DEI-related positions, among other roles.

Those dismissed today are bargaining-unit probationary employees who have served less than a year in a competitive service appointment or who have served less than two years in an excepted service appointment.

The personnel moves will save the department more than \$83 million per year, and VA will redirect all of those resources back toward health care, benefits and services for VA beneficiaries.¹⁴⁷

- On February 24, CNBC reported that a spokesperson for the National Highway Traffic Safety Administration (NHTSA) described the removal of probationary employees in non-mission critical positions as layoffs:

The National Highway Traffic Safety Administration *laid off* 4% of its staff as part of a government-wide trimming of probationary employees, a spokesperson said Monday.

...

NHTSA said under President Joe Biden the agency grew by 30% and is still considerably larger after the job cuts earlier this month. Its workforce was about 800 before the job cuts.

“We have retained positions *critical to the mission* of saving lives, preventing injuries, and reducing economic costs due to road traffic

¹⁴³ *Id.* at 4, 14 (ECF No. 4-37, at 5).

¹⁴⁴ *Id.* at 4, 14 (ECF No. 4-37, at 5).

¹⁴⁵ *Id.* at 3-4, 13 (ECF No. 4-37, at 4-5).

¹⁴⁶ *Id.* at 6-7, ¶¶ 23-24 (ECF No. 4-37, at 7-8).

¹⁴⁷ Press Release, U.S. Dep’t of Veterans Affairs, *VA dismisses more than 1,400 probationary employees* (Feb. 24, 2025) (emphasis added) [[link](#)] (last visited Mar. 6, 2025) [[link](#)] (internet archive)].

crashes," NHTSA said, adding it "will continue to enforce the law on all manufacturers of motor vehicles and equipment."¹⁴⁸

- On February 25, 2025, the Department of Veterans Affairs' CHCO, Tracey Therit, testified under oath before Congress that the direction to fire probationary employees came from OPM:

RANKING MEMBER TAKANO: So nobody ordered you to carry out these terminations? You did it on your own?

MS. THERIT: There was direction from the Office of Personnel Management.¹⁴⁹

- On February 25, a component of the Department of Defense issued a memorandum to members of the Civilian Personnel Policy Council with the subject line: "Direction to Terminate Individuals Serving a Probationary or Trial Period in the Department of Defense."¹⁵⁰ The memorandum indicated that OPM had directed agencies to fire all probationary employees, with exceptions for employees in "mission critical" positions:

Following direction from OPM, reference (1), federal agencies have been thoroughly reviewing their rosters to identify individuals serving a probationary or trial period in mission-critical positions essential for executing agency functions and fulfilling national priorities. This review aligns with the Administration's directive to streamline the federal workforce and ensure effective resource allocation.

In accordance with direction from OPM, beginning February 28, 2025, all DoD Components must terminate the employment of all individuals who are currently serving a probationary or trial period. This requirement to terminate individuals serving a probationary or trial period does NOT apply to:

1. individuals whose positions have been designated as mission-critical;
2. nonappropriated fund (NAF) employees;
3. dual-status technicians;
4. political appointees;
5. appointments made under the Pathways program, or

¹⁴⁸ David Shepardson, *US auto safety agency laid off 4% of staff, spokesperson says*, REUTERS (Feb. 24, 2025) (emphasis added) [[link](#)].

¹⁴⁹ *Legislative Hearing on: H.R. 472, The Restore VA Accountability Act of 2025; H.R. 1041, Veterans 2nd Amendment Protection Act; Discussion Draft: To amend title 38, United States Code, to prohibit the Secretary of Veterans Affairs from transmitting certain information to the Department of Justice for use by the national instant criminal background check system; H.R. 740, Veterans' ACCESS Act of 2025; and Discussion Draft: Student Veteran Benefit Restoration Act of 2025* before the H. Comm. on Veterans' Aff., U.S. House of Representatives, 119th Cong., YOUTUBE (Feb. 25, 2025) (questioning of Chief Human Capital Officer Tracey Therit, Dep't of Veterans Aff. by Ranking Member Mark Takano) (video starting at 0:52:32) [[link](#)]; Exhibit A to Decl. of Milana Walls, at 8, Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt., 3:25-cv-01780 (ECF No. 39-1 at 13) (transcript) [[link](#)].

¹⁵⁰ Exhibit C to Decl. of Pace Schwarz, at 1, Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt., 3:25-cv-01780 (ECF No. 39-4, at 14) (emphasis added) [[link](#)].

6. individuals who have opted in to OPM's Deferred Resignation Program.¹⁵¹

- On February 26, OMB Director Russell Vought and acting OPM Director Charles Ezell issued a memorandum that labeled the federal workforce a “bloated, corrupt federal bureaucracy” and laid out a plan for agency heads to “promptly undertake preparations to initiate large-scale reductions in force.”¹⁵² As part of these downsizing efforts, the memorandum directed agencies to “continu[e] to evaluate probationary employees.”¹⁵³
- On February 26, 2025, OPM Director Charles Ezell signed an affidavit in which he expressed his view that agencies must factor the “existing needs and interests of government” into the decision to remove a probationary employee.¹⁵⁴
- On February 6, 2025, the plaintiffs in *AFGE v. OPM* produced examples of removal notices issued by different agencies that closely tracked OPM’s boilerplate template for the mass removal of probationary employees.¹⁵⁵
- On February 26, 2025, the Department of Justice filed a pleading in a pending civil action, *AFGE v. OPM*, acknowledging that the administration’s purpose in firing probationary employees was to “streamline” the federal workforce:

Animating . . . critical reforms is the recognition that *the federal workforce must be streamlined* to be more efficient and to better serve the American people. *In furtherance of those objectives*, the U.S. Office of Personnel Management (“OPM”) issued a January 20, 2025 memorandum to the heads and acting heads of Executive Branch departments and agencies directing them to identify all employees on “probationary” periods—generally, those members of the Competitive Service with less than one year of federal service and those members of the Excepted Service with less than two years of federal service—and directing each agency to “promptly determine whether those employees should be retained at the agency.” *Following further OPM guidance over the following weeks, several federal agencies . . . began removing certain probationary employees* on February 13, 2025.¹⁵⁶

¹⁵¹ *Id.* (emphasis added).

¹⁵² Memorandum from Russell Vought, dir., U.S. Off. of Mgmt. & Budget, and Charles Ezell, acting dir., U.S. Off. of Pers. Mgmt., to heads of departments and agencies, *Guidance on Agency RIF and Reorganization Plans Requested by Implementing The President’s “Department of Government Efficiency” Workforce Optimization Initiative*, at 1 (Feb. 26, 2025) [[link](#)].

¹⁵³ *Id.* at 3.

¹⁵⁴ Decl. of Charles Ezell in Support of Defendants’ Opposition to Plaintiffs’ Motion for a Temporary Restraining Order and to Show Cause, *Am. Fed’n of Gov’t Emps. v. Ezell*, Case No. 3:25-cv-01780 (Feb. 26, 2025) (ECF No. 34) [[link](#)].

¹⁵⁵ *See, e.g.*, Exhibit 1 to Decl. of Yolanda Jacobs, at 1-2, *Am. Fed’n of Gov’t Emps. v. U.S. Off. of Pers. Mgmt.*, 3:25-cv-01780 (Feb. 26, 2025) (ECF No. 18-10, at 8-9) [[link](#)] (hereinafter *AFGE v. OPM*); Exhibit C to Decl. of Dr. Andrew Frassetto, at 1-2, *AFGE v. OPM* (Feb. 22, 2025) (ECF No. 18-9, at 38-39) [[link](#)]; Exhibit B to Decl. of Dr. Thomas Evans, at 1-2, *AFGE v. OPM* (Feb. 23, 2025) (ECF No. 18-8, at 18-19) [[link](#)]; Exhibit 1 to Decl. of Lilitiana Caetano Bachelder, at 1-2, *AFGE v. OPM* (Feb. 22, 2025) (ECF No. 18-9, at 11-12) [[link](#)]; Exhibit A to Decl. of Pace Schwarz, at 1-2, *AFGE v. OPM* (Feb. 26, 2025) (removal memorandum from Tracey Therit, Chief Human Capital Officer for the Department of Veterans Affairs, dated Feb. 12, 2025) (ECF No. 39-4, at 6-7) [[link](#)]; Exhibit B to *id.*, at 1-3 (ECF No. 10-12) (removal memorandum from Bonneville Power Admin., U.S. Dep’t of Energy) [[link](#)].

¹⁵⁶ Defendants’ Opposition to Plaintiffs’ Motion for a Temporary Restraining Order and to Show Cause; Memorandum of Points and Authorities, at 1, *Am. Fed’n of Gov’t Emps. v. Ezell*, Case No. 3:25-cv-01780 (Feb. 26, 2025) (ECF No. 33) (emphasis added) [[link](#)].

- On March 3, Darin Selnick, performing the duties of Under Secretary of Defense for Personnel and Readiness, issued a memorandum linking the termination of probationary employees to the goal of reducing the workforce:

I determined it necessary to *reduce the size of the Department's civilian workforce*. In conjunction with Secretary of Defense Memorandum, "Immediate Civilian Hiring Freeze for Alignment with National Defense Priorities," February 28, 2025, this action is part of the Department's broader effort to appropriately align its personnel resources with its critical war-fighting functions. *The first step in doing this will be terminating those probationary employees whose continued employment at the Department would not be in the public interest.* These terminations will commence on Monday, March 3, 2025.¹⁵⁷

- On March 6, Mr. Selnick released a statement again making explicit the connection between the firing of probationary employees and the effort to reduce the number of positions in the federal workforce:

We anticipate reducing the Department's civilian workforce by 5-8% to produce efficiencies and refocus the Department on the President's priorities and restoring readiness in the force.

We expect approximately 5,400 probationary workers will be released beginning next week *as part of this initial effort*, after which we will implement a hiring freeze while we conduct a further analysis of our personnel needs, complying as always with all applicable laws.

As the Secretary made clear, it is simply not in the public interest to retain individuals whose contributions are *not mission-critical*. Taxpayers deserve to have us take a thorough look at our workforce top-to-bottom to see where we can *eliminate redundancies*.¹⁵⁸

- The plaintiffs in *National Treasury Employees Union v. Vought* filed the affidavit of an employee of the Consumer Financial Protection Bureau (CFPB), signed pseudonymously under penalties of perjury as "Alex Doe" for purposes of the litigation.¹⁵⁹ Alex Doe explained that the termination of probationary employees was one of the planned phases of the broader reorganization that the administration was undertaking at CFPB:

3. Around February 13th, my team was directed to assist with terminating the vast majority of CFPB employees as quickly as possible. *The termination was to proceed in phases, to be completed in rapid succession. First, the Bureau fired all probationary and term employees.* Next, the Bureau would fire approximately 1,200 additional employees, by eliminating whole offices, divisions, and units. Finally, the

¹⁵⁷ Memorandum from Darin Selnick, performing duties of Under Sec'y of Defense for Pers. & Readiness, Dep't of Defense, to senior pentagon leadership commanders of Combatant Commands Defense Agency & DOD field activity dirs., *Independent Department of Defense Determination to Terminate Probationary Employees* (Mar. 3, 2025) (emphasis added) [[link](#)] [[link](#) (internet archive)].

¹⁵⁸ Press Release, U.S. Dep't of Defense, *DoD Probationary Workforce Statement* (Feb. 21, 2025) (emphasis added) [[link](#)] (last visited Mar. 6, 2025) [[link](#) (internet archive)].

¹⁵⁹ Attachment 2 to Plaintiff's Mot. for Leave to File Suppl. Decls., Decl. of "Alex Doe," at 1, ¶¶ 1-2, *Nat'l Treas. Emps. Union v. Vought*, 1:25-cv-00381 (Mar. 5, 2025) (ECF No. 38-2, at 1) [[link](#)].

Bureau would “reduce altogether” within 60-90 days by terminating most of its remaining staff, leaving a Bureau that could not actually perform any functions, or no Bureau at all.¹⁶⁰

- The plaintiffs in *National Treasury Employees Union v. Vought* filed the affidavit of a CFPB employee, signed pseudonymously under penalties of perjury as “Drew Doe” for purposes of the litigation. The affidavit similarly described the removal of probationary employees as part of the broader reorganization of that agency.¹⁶¹ This witness indicated that on “multiple occasions” senior executives in CFPB indicated that “the intention of the leadership was to fire everyone but the five positions required by the Dodd-Frank Act.”¹⁶² The CFPB’s buildings were being “returned to the agencies that had leased the buildings to CFPB,” and, “[b]y Thursday, February 13th, most of the CFPB’s contracts had been terminated, *all of the probationary employees had been fired* (via a failed mail merge), and all term employees who had not already agreed to resign were fired.”¹⁶³

2. Indications that the mass removal has not been based on performance

Plaintiffs in litigation, the Special Counsel of the U.S. Office of Special Counsel, individual employees, and reporters have identified numerous examples indicating that the mass removal of probationary employees has not been based on the performance of employees:

- The plaintiffs in *National Treasury Employees Union v. Vought* filed the affidavit of Seth Frotman, who served as CFPB’s General Counsel and Senior Advisor to the Director until February 7, 2025.¹⁶⁴ In his capacity as General Counsel implementing OPM’s January 20 memorandum, Mr. Frotman indicates that the “consulted formally, orally and in writing, with agency leaders about the CFPB’s employees on probationary periods, to determine . . . whether there were any performance issues with those employees or any other nonpolitical reasons for their termination.”¹⁶⁵ He indicated none of these managers identified any probationers “with performance or conduct issues that would have justified their termination.”¹⁶⁶
- The plaintiffs in *Maryland v. U.S. Department of Agriculture* filed an affidavit signed under penalties of perjury by the former Deputy Director for Operations, in the Center for Consumer Information and Insurance Oversight (CCIIO) for the Centers for Medicare and Medicaid Services (CMS), Jeffrey Grant, who retired after 41 years of service on February 28, 2025.¹⁶⁷ Prior to his retirement, he complied with an instruction to assess

¹⁶⁰ *Id.*, at 1–4 (emphasis added).

¹⁶¹ Attachment 5 to Plaintiff’s Mot. for Leave to File Suppl. Decls., Decl. of “Drew Doe,” at 2, ¶15, Nat’l Treas. Emps. Union v. Vought, 1:25-cv-00381 (Feb. 26, 2025) (ECF No. 38-5, at 2) [\[link\]](#).

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ Attachment 13 to Plaintiff’s Mot. for Leave to File Suppl. Decls., Decl. of Seth Frotman, at 13-14, ¶¶ 41-43, Nat’l Treas. Emps. Union v. Vought, 1:25-cv-00381 (Feb. 27, 2025) (ECF No. 38-13, at 13-14) [\[link\]](#).

¹⁶⁵ *Id.*, at 13, ¶ 41 (ECF No. 38-13, at 13).

¹⁶⁶ *Id.*, at 13-14, ¶ 42 (ECF No. 38-13, at 13-14).

¹⁶⁷ Exhibit GG to Mem. in Support Plaintiff’s Mot. for a Temp. Restraining Order, Decl. of Jeffrey Grant, Dep’y Dir. for Ops., Ctr. for Consumer Inf. & Ins. Oversight, Ctrs for Medicare & Medicaid Servs. (retired), at 1, ¶ 4, State of Maryland v. U.S. Dep’t of Agric., 1:25-cv-00748 (Mar. 5, 2025) (ECF No. 4-37, at 2) [\[link\]](#).

the performance of probationary employees in his office by consulting the group directors who reported to him.¹⁶⁸ He wrote: “The group of directors uniformly assured me that none of the probationary employees in CCIIIO should be removed from service because their performance uniformly met and typically exceeded the expectations and needs of the agency for probationary employees.”¹⁶⁹ Nevertheless, he indicated that, on February 15, CMS issued removal notices to 82 probationary employees in CCIIIO, without copying their supervisors, citing performance as the reason for their removal. CMS rescinded the notices as to 10 individuals who were not, in fact, probationary employees.¹⁷⁰ Mr. Grant stated: “The justifications written in these termination letters were false.”¹⁷¹

- The plaintiffs in *AFGE v. OPM* filed exhibits indicating that, before the National Science Foundation (NSF) removed probationary employee Dr. Thomas Evans, it rated his performance “outstanding.”¹⁷²
- The plaintiffs in *AFGE v. OPM* filed exhibits indicating that, five days before the NSF removed probationary employee Dr. Andrew Frassetto, his supervisor gave him a glowing performance review.¹⁷³
- The plaintiffs in *AFGE v. OPM* filed exhibits indicating that, before the Department of Energy removed probationary employee Ashley A. Nindl, she had received a positive performance rating.¹⁷⁴
- The plaintiffs in *AFGE v. OPM* filed exhibits indicating that, before the Forest Service removed probationary employee Leandra Bailey, she had received a positive performance rating.¹⁷⁵
- The plaintiffs in *AFGE v. OPM* filed a declaration signed under penalties of perjury by Kory Blake, who is an Area Field Services Director for the American Federation of State, County and Municipal Employees, AFL-CIO, stating:

[A]t least 17 terminated federal probationary employees have indicated, and provided me examples of documents evidencing, that they have received performance reviews, recent commendations, performance awards or other communications from their agencies or supervisors stating that their performance is outstanding or that their performance

¹⁶⁸ *Id.* at 2, ¶¶ 7-8 (ECF No. 4-37, at 3).

¹⁶⁹ *Id.* at 2, ¶ 9 (ECF No. 4-37, at 3).

¹⁷⁰ *Id.* at 3-4, ¶ 13 (ECF No. 4-37, at 4-5).

¹⁷¹ *Id.* at 4, ¶ 14 (ECF No. 4-37, at 5).

¹⁷² Decl. of Dr. Thomas Evans, at 2-3, ¶¶ 14-15, *AFGE v. OPM* (Feb. 23, 2025) (ECF No. 18-8, at 3-4) [\[link\]](#); Exhibit A to *id.* at 1-8 (ECF No. 18-9, at 9-16) [\[link\]](#).

¹⁷³ Decl. of Dr. Andrew Frassetto, at 2, ¶ 8, *AFGE v. OPM* (Feb. 22, 2025) (ECF No. 18-9, at 3) [\[link\]](#); Exhibit A to *id.* at 1 (ECF No. 18-9, at 8) [\[link\]](#).

¹⁷⁴ Decl. of Dr. Ashley Nindl, at 1, ¶ 3, *AFGE v. OPM* (Mar. 7, 2025) (ECF No. 70-14, at 2) [\[link\]](#); Exhibit A & B to *id.* (ECF 70-14, at 4-18) [\[link\]](#).

¹⁷⁵ Decl. of Leandra Bailey, at 13, *Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt.*, 3:25-cv-01780 (Feb. 22, 2025) (ECF No. 71, at 6) [\[link\]](#); *id.*, Exhibits A & B to *id.* (ECF No. 71, at 8-14) [\[link\]](#). See also Decl. of Leandra Bailey, at 1, *Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt.*, 3:25-cv-01780 (Feb. 22, 2025) (ECF 70-1, at 2) (providing Bailey's signature) [\[link\]](#).

meets expectations, and that their performance has never been questioned during their probationary period.¹⁷⁶

- The plaintiffs in *AFGE v. OPM* filed a declaration signed under penalties of perjury by Krista Finlay, who was removed during her probationary period by the National Oceanic and Atmospheric Administration, which stated in part:

10. At . . . a meeting in early February 2025, I and other employees in the West Coast Region offices of the National Marine Fisheries Service were told by West Coast region leadership that a list was provided to leadership of probationary employees. Leadership reported that they sent the list back to the United States Office of Personnel Management, telling them that each of us was considered mission critical for NOAA, and that the division would advocate that all of us be retained at our positions.

11. In my performance review completed on October 31, 2024, I had received the highest possible commendations my supervisor could make. Based on this, as well as the statements made at the February staff meeting, and the vital importance of the projects assigned to me, I fully expected to be retained at my position at the close of my probationary period.

12. On February 14, 2025, Ryan Wulff, Assistant Regional Administrator of the NOAA West Coast Regional Office, Sustainable Fisheries Division notified me and other NOAA scientists and staff at West Coast Regional offices that our names appeared on a list of probationary employees compiled at the request of agency leadership in Washington, DC. A true and correct copy of Ryan Wulff's February 14, 2025, email is attached as Exhibit A to this declaration.

13. At 12:43 pm PST on February 27, 2025, I received by email a notice from a general, mass-email NOAA address. The notice stated that NOAA was terminating my employment, effective at 2:00 pm PST that same day, asserting that "the Agency finds that you are not fit for continued employment because your ability, knowledge and/or skills do not fit the Agency's current needs." My termination thus became effective one hour and seventeen minutes after I received the notice. A true and correct copy of the email termination is attached as Exhibit B to this declaration.

14. The termination email did not identify any issue with my performance or conduct, nor did it identify any conditions arising before my appointment to justify my termination.¹⁷⁷

- The Special Counsel of the U.S. Office of Special Counsel attested in a pleading before the MSPB that the Department of Education removed a 100% service-connected disabled veteran who, after having served in the Army for 14 years, was serving a probationary period as a Program Support Assistant in the competitive service. Special Counsel Hampton Dellinger indicated that, on February 12, 2025, the employee's

¹⁷⁶ Decl. of Kory Blake, at 1-2, 3, 6, Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt., 3:25-cv-01780 (ECF No. 39-6 at 5-6) [[link](#)].

¹⁷⁷ Decl. of Krista Finlay, at 2-3, Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt., 3:25-cv-01780 (Mar. 6, 2025) (ECF 70-9, at 4-5) [[link](#)]; Exhibits A & B to *id.* (ECF 70-9, at 6-9) [[link](#)].

supervisor had “commended his exceptional performance, praising his dedication and calling him a perfect fit for the team.” Later that day he was removed.¹⁷⁸

- The Special Counsel’s pleading indicated that the Department of Energy removed an excepted service Program Communications Specialist who was serving a probationary period, despite having rated her performance “Significantly Exceeds Expectations” two months earlier.¹⁷⁹ Her termination indicated that: “Per OPM instructions, DOE finds that your further employment would not be in the public interest.”¹⁸⁰
- The Special Counsel’s pleading indicated that the Department of Housing and Urban Development removed an excepted service Trial Attorney who was serving a probationary period, despite having rated his performance a “4” on a five-point scale and having given him several performance awards.¹⁸¹
- The Special Counsel’s pleading indicated that the Office of Personnel Management removed an excepted service Benefits Analyst who was serving a probationary period, despite her managers having “repeatedly requested” that she be retained and having given her a positive performance rating.¹⁸²
- The Special Counsel’s pleading indicated that the Department of Veterans affairs removed a U.S. Navy Veteran who was serving a probationary period as an excepted service Training Specialist, despite the department having given “no indication of performance or conduct issues.”¹⁸³
- The Special Counsel’s pleading indicated that the Department of Agriculture removed a competitive service Loan Specialist who was serving a probationary period, who indicated in an affidavit that he had received positive feedback on his performance and that his supervisor was shocked to learn he had been removed, offering to serve as an employment reference.¹⁸⁴
- The plaintiffs in *Maryland v. U.S. Department of Agriculture* filed numerous affidavits under seal. Alluding to two of the affidavits, the plaintiffs wrote: “Many employees who were purportedly terminated for unsatisfactory performance had recently received

¹⁷⁸ U.S. Office of Special Counsel’s Initial Request for Stay of Personnel Actions, at 4, U.S. Office of Special Counsel ex rel. Former Employee v. Dep’t of Veterans Affairs (Feb. 21, 2025) (docket number not assigned) [[link](#)] [[link](#)] (internet archive)] (hereinafter referred to as “OSC Stay Request”). See also Am. Fed’n of Gov’t Emps. v. U.S. Off. of Pers. Mgmt., 3:25-cv-01780, at 23-62 (ECF No. 72) (containing additional exhibits to stay request) [[link](#)]. In a press release regarding OSC’s stay requests, Special Counsel Dellinger explained that “firing probationary employees without individualized cause appears contrary to a reasonable reading of the law, particularly the provisions establishing rules for reductions in force.” Press Release, U.S. Office of Special Counsel, *Special Counsel Dellinger Statement on Request that MSPB Stay Terminations of Probationary Employees* (Feb. 24, 2025) [[link](#)].

¹⁷⁹ OSC Stay Request, at 5. See also id., at 23-62 (ECF No. 72) (containing additional exhibits to stay request) [[link](#)].

¹⁸⁰ Exhibit B to Decl. of Pace Schwarz, Am. Fed’n of Gov’t Emps. v. Ezell, Case No. 3:25-cv-01780 (Feb. 26, 2045), at 1 (ECF No. 39-4, at 10) (emphasis added) [[link](#)].

¹⁸¹ OSC Stay Request, at 5-6. See also Am. Fed’n of Gov’t Emps. v. U.S. Off. of Pers. Mgmt., 3:25-cv-01780, at 23-62 (ECF No. 72) (containing additional exhibits to stay request) [[link](#)].

¹⁸² OSC Stay Request, at 6-7. See also Am. Fed’n of Gov’t Emps. v. U.S. Off. of Pers. Mgmt., 3:25-cv-01780, at 23-62 (ECF No. 72) (containing additional exhibits to stay request) [[link](#)].

¹⁸³ OSC Stay Request, at 7-8. See also Am. Fed’n of Gov’t Emps. v. U.S. Off. of Pers. Mgmt., 3:25-cv-01780, at 23-62 (ECF No. 72) (containing additional exhibits to stay request) [[link](#)].

¹⁸⁴ OSC Stay Request, at 8. See also Am. Fed’n of Gov’t Emps. v. U.S. Off. of Pers. Mgmt., 3:25-cv-01780, at 23-62 (ECF No. 72) (containing additional exhibits to stay request) [[link](#)].

stellar performance reviews. See, e.g., Ex. W, Sealed Decl. ¶11 ('Outstanding'); Ex. X, Sealed Decl. ¶¶ 12 ('Exceeds Expectations').¹⁸⁵

- *USA Today* reported that probationary employee Samantha Leach received "a perfect score of five out of five" on her performance appraisal before the Bureau of Engraving and Printing removed her.¹⁸⁶ The news outlet added that "[e]ach of the seven former employees interviewed for this article had received commendations, cash awards or multiple positive reviews yet were told they were being let go because of poor performance."¹⁸⁷
- *NBC News* reported that, according to "a source familiar and a secondary document viewed by NBC News," most of dozens of probationary employees removed by the Department of Transportation had been "rated as being 'exceptional' performers by their supervisors."¹⁸⁸
- *Reuters* reported that "Federal workers fired for alleged poor performance as part of U.S. President Donald Trump's remaking of the federal government received excellent performance reviews before they were fired, according to interviews and documents seen by Reuters."¹⁸⁹ The news outlet corroborated the account of 12 fired probationary employees that they had received high marks on their performance evaluations by reviewing "copies of recent performance evaluations and other commendations provided by the workers, and [speaking] with their former supervisors." Offering an example, Reuters indicated that it reviewed a performance appraisal indicating that the Food and Drug Administration had written that one fired probationer had "a spectacular year in 2024" and "excelled in every project he took on." The news outlet also cited documents it had reviewed demonstrating cash awards and positive reviews for a fired probationer at the U.S. Forest Service named Tanya Torst.¹⁹⁰
- The *Washington Post* reported that "[t]he termination letters hitting inboxes all struck the same note: Probationary workers were getting the ax for poor job performance. But many of those fired had just received positive reviews, or had not worked in the government long enough to receive even a single rating, according to interviews with federal employees and documents obtained by The Post."¹⁹¹
- *CNN* reported that "interviews with more than a dozen recently laid-off federal workers, plus documents obtained by CNN, demonstrate that . . . people who have been recently

¹⁸⁵ Mem. in Support of Plaintiff's Mot. for a Temp. Restraining Order, at 10 n.4, *Maryland v. U.S. Dep't of Agric.*, 1:25-cv-00748 (Mar. 7, 2025) (ECF No. 4, at 19) [[link](#)].

¹⁸⁶ Sarah D. Wire, Riley Beggin, Terry Collins, Dinah Voyles Pulver and Jessica Guynn, *Commendations, cash awards, positive reviews. Then they were fired for poor performance.*, USA TODAY (Feb. 27, 2025) [[link](#)]

¹⁸⁷ *Id.*

¹⁸⁸ Allan Smith, *Transportation Department workers with 'exceptional' reviews told they're fired for 'performance' issues*, NBC NEWS (Feb. 26, 2025) [[link](#)].

¹⁸⁹ Leah Douglas, Nathan Layne and Tim Reid, *Federal workers were fired 'for performance.' Their records say otherwise.*, REUTERS (Feb. 20, 2024) [[link](#)].

¹⁹⁰ *Id.*

¹⁹¹ Hannah Natanson, Lisa Rein and Emily Davies, *Trump administration fires thousands for 'performance' without evidence, in messy rush*, WASH. POST (Feb. 17, 2025) [[link](#)].

promoted or received strong performance reviews are among those who have been terminated.”¹⁹²

- *Wired* reported that, a few days after Office of Management and Budget Director Russell Vought assumed control of the Consumer Financial Protection Board, the board sent some probationary employees termination notices that did not include their names: “Workers were informed that they had been fired with a frenetic email delivered around 9 pm ET on Tuesday. An evidently failed mail merge meant that some affected employees were addressed as [EmployeeFirstName][EmployeeLastName], [Job Title], [Division].”¹⁹³
- The *Washington Post* reported: “Several [former employees] had been ‘terminated’ for what the Trump administration called performance reasons, despite glowing evaluations, but couldn’t prove that to potential employers after getting locked out of their files.”¹⁹⁴

3. Change in the administration’s messaging after legal action

In the face of pending legal challenges, the Trump administration changed its messaging regarding its purge of probationary employees. The multiple legal actions challenging the Trump administration’s activities included a group of plaintiffs who filed a civil action in the U.S. District Court of Northern District of California,¹⁹⁵ a similar group who filed in the U.S. District Court for the District of Columbia,¹⁹⁶ another group of plaintiffs who filed in the U.S. District Court for the District of Columbia,¹⁹⁷ the Special Counsel of the U.S. Office of Special Counsel (OSC) who opened an investigation and sought a stay pausing the removals from the MSPB,¹⁹⁸ and law firms representing groups of removed probationary federal employees that have been assembling individual and class action complaints to pursue through OSC and the MSPB.¹⁹⁹

¹⁹² Zachary Cohen, Ella Nilsen, Rene Marsh and Sunlen Serfaty, ‘Indiscriminate madness’: DOGE claims firings target low performers and new employees. *The reality is far from it*, CNN (Feb. 20, 2025) [\[link\]](#).

¹⁹³ Makena Kelly and Dhruv Mehrotra, *Dozens of CFPB Workers Fired in After-Hours Blitz*, WIRED (Feb. 11, 2025) [\[link\]](#).

¹⁹⁴ Danielle Paquette, *DOGE wants them ‘gone’ but makes it hard for federal workers to move on*, WASH. POST (Mar. 7, 2025) [\[link\]](#).

¹⁹⁵ The plaintiffs in that case included the American Federation of Government Employees, AFL-CIO (“AFGE”), American Federation of State County and Municipal Employees, AFL-CIO (“AFSCME”), AFGE Local 1216, and United Nurses Associations of California/Union of Health Care Professionals, AFSCME, AFLCIO (“UNAC/UHCP”), AFGE Local 2110 (collectively, “Union Plaintiffs”), Main Street Alliance, Coalition To Protect America’s National Parks, Western Watersheds Project, Vote Vets Action Fund Inc., and Common Defense Civic Engagement. First Amended Complaint For Declaratory And Injunctive Relief, Am. Fed’n of Gov’t Emps. v. U.S. Off. of Pers. Mgmt., 3:25-cv-01780 (Feb. 23, 2025) (ECF No. 17) [\[link\]](#).

¹⁹⁶ The plaintiffs in that case included the American Foreign Service Association, OXFAM America, and American Federation of Government Employees, AFL-CIO. First Amended Complaint for Declaratory and Injunctive Relief, Am. For. Serv. Assoc. v. Trump, 1:25-cv-00352 (Feb. 13, 2025) (ECF No. 30) [\[link\]](#).

¹⁹⁷ The plaintiffs in that case included the National Treasury Employees Union (NTEU), the National Federation of Federal Employees (NFFE), the International Association of Machinists and Aerospace Workers (IAM), the International Federation of Professional and Technical Engineers (IFPTE), and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW). Complaint For Declaratory And Injunctive Relief, Nat’l Treas. Emps. Union v. Trump, Case 1:25-cv-00420 (Feb. 12, 2025) (ECF No. 1) [\[link\]](#).

¹⁹⁸ Order on Stay Request, Raymond A. Limon, Member, Special Counsel Ex Rel. John Doe v. Dep’t of [redacted by MSPB], Docket No. CB-1208-25-[redacted by MSPB] (Feb. 25, 2025) [\[link\]](#); U.S. Office of Special Counsel’s Initial Request for Stay of Personnel Actions, U.S. Office of Special Counsel ex rel. Former Employee v. Dep’t of Veterans Affairs (Feb. 21, 2025) (docket number not assigned) [\[link\]](#) [\[link\]](#) (internet archive)] (hereinafter referred to as “OSC Stay Request”).

¹⁹⁹ See, e.g., Brian Witte, Attorneys file class action appeals to federal board for thousands of workers Trump fired, Assoc. Press (Mar. 6, 2025) [\[link\]](#); Press Release, Democracy Forward, *Democracy Forward and Alden Group Seek to Expand Stay of Unlawful Terminations of Probationary Federal Employees* (Feb. 26, 2025) [\[link\]](#); Democracy Forward, *Probationary and Trial Period Mass Terminations* [\[link\]](#) (last visited Mar. 11, 2025); Press Release, James & Hoffman, P.C., *Class actions challenge mass terminations of probationary employees at the Merit Systems Protection Board* [\[link\]](#) (last visited Mar. 11, 2025).

Several initial decisions were issued in connection with these matters. On February 25, MSPB Board Member Raymond Limon granted the Special Counsel's request for a stay as to six of the terminated probationary employees, ordering a pause in their removals.²⁰⁰ On March 5, 2025, MSPB Board Member Cathy Harris granted a stay pausing the removals of all of the probationary employees that the Department of Agriculture removed during the purge.²⁰¹ On February 28, 2025, U.S. District Court Judge William Alsup issued a temporary restraining order in *AFGE v. OPM*, which provided: "OPM's January 20 memo, February 14 email, and all other efforts by OPM to direct the termination of employees at NPS, BLM, VA, DOD, SBA, and FWS are unlawful, invalid, and must be stopped and rescinded."²⁰²

President Trump has disrupted legal challenges by removing Special Counsel Hampton Dellinger, who was temporarily reinstated by a federal judge but lost on appeal to the D.C. Circuit.²⁰³ President Trump also removed MSPB Member Harris, although she has been temporarily reinstated by a federal judge. If her removal is ultimately upheld, then the MSPB will be without a quorum to review personnel claims otherwise within its jurisdiction.²⁰⁴ One news outlet has reported that appeals to the MSPB have skyrocketed.²⁰⁵

Contemporaneously with this litigation, the administration and its lawyers began emphasizing references to the evaluation of probationary employees' performance in documents pertaining to the mass firing. Department of Justice lawyers submitted an affidavit by acting OPM Director Charles Ezell denying that OPM directed the purge,²⁰⁶ but the department subsequently withdrew that memorandum.²⁰⁷ On Tuesday, March 4, 2025, OPM altered the memorandum it had issued on January 20, 2025.²⁰⁸ The altered memorandum included new language stating: "Please note that, by this memorandum, OPM is not directing agencies to take any specific performance-based actions regarding probationary employees. Agencies have ultimate

²⁰⁰ Order on Stay Request, U.S. Special Counsel ex rel. John Doe v. Department of [redacted], [docket number redacted] (Feb. 25, 2025) (Limon, Member) [\[link\]](#).

²⁰¹ Order on Stay Request Special Counsel ex rel. John Doe v. Dep't of Agriculture, No. CB-1208-25-0020-U-1 (Mar. 5, 2025) ("I grant OSC's stay request for Mr. Doe and all other probationary employees whom the agency has terminated since February 13, 2025, pursuant to letters stating: 'The [a]gency finds, based on your performance, that you have not demonstrated that your further employment at the [a]gency would be in the public interest.'" [\[link\]](#)).

²⁰² Memorandum Op., at 24, Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt., 3:25-cv-01780 (Feb. 28, 2025) (ECF No. 45) [\[link\]](#).

²⁰³ Tom Jackman, *Federal judge rules Trump's firing of merit board chair was illegal*, WASH. POST (Mar. 4, 2025) [\[link\]](#); Mia Venkat, Juana Summers, Sarah Handel and Alejandra Marquez Janse, *Former government watchdog on his decision to end legal fight challenging his firing*, NPR (Mar. 7, 2025) [\[link\]](#).

²⁰⁴ Marshall Cohen, *'Merit board' chair was unlawfully fired by Trump, judge rules, keeping her on the job*, CNN (Mar. 4, 2025) [\[link\]](#).

²⁰⁵ Sasha Rogelberg, *Appeals from fired federal workers have skyrocketed more than 2,100% at one watchdog since Trump and DOGE took charge*, FORTUNE (Mar. 10, 2025) [\[link\]](#).

²⁰⁶ Decl. of Charles Ezell in Support of Defendants' Opposition to Plaintiffs' Motion for a Temporary Restraining Order and to Show Cause, at 2, 7, Am. Fed'n of Gov't Emps. v. Ezell, Case No. 3:25-cv-01780 (Feb. 26, 2025) (ECF No. 34, at 3) [\[link\]](#).

²⁰⁷ Defendants' Notice Advising Court of Intent Not to Produce Live Witnesses at March 13, 2025, Hearing, at 1 ("Defendants are withdrawing the declaration of Acting Office of Personnel Management ('OPM') Director Charles Ezell, see ECF No. 34, and will not be presenting Mr. Ezell at the hearing."), Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt., 3:25-cv-1780 (Mar. 11, 2025) (ECF No. 97, at 2) [\[link\]](#).

²⁰⁸ Andrea Hsu, *OPM alters memo about probationary employees but does not order mass firings reversed*, NPR (Mar. 4, 2025) [\[link\]](#).

decision-making authority over, and responsibility for, such personnel actions."²⁰⁹ The original memorandum did not contain this language.²¹⁰

The alteration of OPM's January 20 memorandum included another change. In the first sentence of the first substantive section of that memorandum, OPM removed language indicating that one of the purposes of probationary periods was for agencies to "manage staffing levels."²¹¹ Despite the apparent admission represented by this alteration of OPM's original memorandum, OPM has not ordered the reinstatement of probationary employees removed in the purge.²¹²

A *New York Times*' report on a March 6 cabinet meeting revealed both the degree to which the mass removal has been coordinated by DOGE and the administration's effort to downplay the indiscriminate nature of its mass firing of probationary employees:

Seated diagonally opposite, across the elliptical mahogany table, Elon Musk was letting [Secretary of State Marco] Rubio have it, accusing him of failing to slash his staff.

You have fired "nobody," Mr. Musk told Mr. Rubio, then scornfully added that perhaps the only person he had fired was a staff member from Mr. Musk's Department of Government Efficiency.

. . . .

Mr. Musk was not being truthful, Mr. Rubio said. What about the more than 1,500 State Department officials who took early retirement in buyouts? Didn't they count as layoffs? He asked, sarcastically, whether Mr. Musk wanted him to rehire all those people just so he could make a show of firing them again. Then he laid out his detailed plans for reorganizing the State Department.

. . . .

Just moments before the blowup with Mr. Rubio, Mr. Musk and the transportation secretary, Sean Duffy, went back and forth about the state of the Federal Aviation Administration's equipment for tracking airplanes and what kind of fix was needed. . . .

Mr. Duffy said the young staff of Mr. Musk's team was trying to lay off air traffic controllers. What am I supposed to do? Mr. Duffy said. I have multiple plane crashes to deal with now, and your people want me to fire air traffic controllers?²¹³

²⁰⁹ Memorandum from Charles Ezell, acting Dir., U.S. Off. of Pers. Mgm. to heads and acting heads of departments and agencies, *Guidance on Probationary Periods, Administrative Leave and Details*, at 2 (revised Mar. 4, 2025) (hereinafter "*Altered March 4, 2025 Ezell Memorandum*") [[link](#)].

²¹⁰ Compare *id.* with Memorandum from Charles Ezell, acting Dir., U.S. Off. of Pers. Mgm. to heads and acting heads of departments and agencies, *Guidance on Probationary Periods, Administrative Leave and Details*, at 1 (Jan. 20, 2025) [[link](#)] (internet archive).

²¹¹ Compare *Ezell Memorandum*, at 1 (Jan. 20, 2025) ("Probationary periods are an essential tool for agencies to assess employee performance and manage staffing levels.") with *Altered Ezell Memorandum*, at 1 (Mar. 4, 2025) ("Probationary periods are an essential tool for agencies to assess employee performance and ensure that a probationer's conduct and performance have established that the individual will be an asset to the Government.").

²¹² Andrea Hsu, *OPM alters memo about probationary employees but does not order mass firings reversed*, NPR (Mar. 4, 2025) [[link](#)].

²¹³ Jonathan Swan and Maggie Haberman, *Inside the Explosive Meeting Where Trump Officials Clashed With Elon Musk*, N.Y. TIMES (Mar. 7, 2025) [[link](#)].

On March 13, 2025, Judge James K. Bradar of the U.S. District Court for the District of Maryland concluded that the Trump administration had unlawfully circumvented RIF regulations by firing probationary employees en masse without following RIF rules.²¹⁴ In response to the government's claim that the firings were based on performance, Judge Bradar wrote: "On the record before the court, this isn't true."²¹⁵ He issued a 14-day temporary restraining order, adding "that the Court will likely consider an application for a preliminary or longer-term injunction."²¹⁶ The order applies to the probationary employees removed by 18 federal agencies.²¹⁷ Judge Bradar emphasized that the administration can remove employees—and can do so en masse—if it follows the rules, but found that is not what has happened thus far. He explained that, if agencies do not conduct lawful RIFs, their only other option is to remove probationary employees "on the basis of good-faith, individualized determinations."²¹⁸

On the same day, Judge William Alsup of the U.S. District Court for the Northern District of California issued a preliminary injunction from the bench at a motions hearing.²¹⁹ Judge Alsup called the mass removal of probationers based on claimed poor performance a "sham."²²⁰ The order applies to six federal departments, and CNN reported that "[t]he judge said that he might extend the order to cover other federal agencies at a later time."²²¹ According to CNN, Judge Alsup also stated: "The court finds that [the] Office of Personnel Management did direct all agencies to terminate probationary employees with the exception of mission critical employees . . ." ²²² According to ABC News, he referred to the removals as "at least in my judgment, a gimmick to avoid [the] Reduction in Force Act because the law always allows you to fire somebody for performance."²²³ He further noted that many employees terminated for "performance" are not able to get unemployment insurance.²²⁴

III. Analysis

The Trump administration's extraordinary mass firing of probationary employees is either a reduction in force or a series of reductions in force at the affected agencies. To determine whether a RIF has occurred, the MPSB and the Federal circuit consider whether employees were released from their competitive levels by separation (or one of the other covered actions) through a reorganization (or one of the other reasons listed in OPM's regulation).²²⁵ The Trump administration's recent actions meet the regulatory definition of a "reorganization," and the reorganization has resulted in the release of probationary employees from their competitive

²¹⁴ Memorandum (Bradar, J.), at 1, *Maryland v. Dep't of Agric.*, 1:25-cv-00748-JKB (Mar. 13, 2025) (ECF No. 43) [[link](#)].

²¹⁵ *Id.* at 1.

²¹⁶ *Id.*, at 2.

²¹⁷ Temporary Restraining Order (Bradar, J.), at 3-4, *Maryland v. Dep't of Agric.*, 1:25-cv-00748-JKB (Mar. 13, 2025) (ECF No. 44, at 3-4) [[link](#)].

²¹⁸ *Id.*, at 2 n.2 (ECF No. 44, at 2).

²¹⁹ Devan Cole, *Judge orders Trump administration to reinstate thousands of fired employees at VA, Defense Department and other agencies*, CNN (Mar. 14, 2025) [[link](#)].

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ Peter Charalambous, *Judge orders thousands of federal workers reinstated; slams 'sham' government declaration*, ABC News (Mar. 13, 2025) [[link](#)].

²²⁴ *Id.*

²²⁵ 5 C.F.R. § 351.201(a)(2).

levels through separation. They further meet the functional definition of a “reduction in force,” as understood by the MSPB and the Federal Circuit, because the administration has focused not on evaluating the performance of individual employees but on eliminating positions.²²⁶

A. The mass removal of probationary employees has been part of an ongoing reorganization.

The administration’s global effort at “dramatically reducing” the federal workforce constitutes a reorganization.²²⁷ For purposes of a RIF, a “reorganization” is “the planned elimination, addition, or redistribution of functions or duties in an organization” resulting in a change of substance.²²⁸ OMB and OPM have declared that they are pursuing the “maximum elimination of functions that are not statutorily mandated” through this reorganization.²²⁹ The resulting purge of tens of thousands of probationers,²³⁰ with hundreds of thousands of other positions reportedly planned for elimination,²³¹ is undeniably a change of substance warranting the effort’s characterization as a reorganization. This purge is only the first step in President Trump’s broader campaign to “dramatically reduce the size of the Federal Government.”²³² The administration itself has made the case that its mass firing of probationary employees is part of the reorganization.

The reorganization commenced in January 2025. First came the deferred retirement email warning employees that “the majority of federal agencies are likely to be downsized through restructurings, realignments, and reductions in force.”²³³ Then, President Trump’s February 11 executive order directed agencies to “promptly undertake preparations to initiate large-scale reductions in force (RIFs).”²³⁴ On February 13, one day after the deferred retirement offer expired and the day that the purge began, House Oversight Committee Chairman James Comer issued a press release asserting that “Congress can fast-track President Trump’s government

²²⁶ James v. Von Zemenszky, 284 F.3d 1310, 1314 (Fed. Cir. 2002).

²²⁷ Exec. Order No. 14217 (Feb. 19, 2025), *reprinted in* 90 Fed. Reg. 10577 (Feb. 25, 2025) (“It is the policy of my Administration to dramatically reduce the size of the Federal Government”) [[link](#)].

²²⁸ 5 C.F.R. § 351.203. *See also* Blalock v. Dep’t of Agric., 28 M.S.P.R. 17, 20-21 (1985), *aff’d sub nom.* Huber v. Merit Sys. Prot. Bd., 793 F.2d 284 (Fed. Cir. 1986).

²²⁹ Memorandum from Russell Vought, dir., U.S. Off. of Mgmt. & Budget, and Charles Ezell, acting dir., U.S. Off. of Pers. Mgmt., to heads of departments and agencies, *Guidance on Agency RIF and Reorganization Plans Requested by Implementing The President’s “Department of Government Efficiency” Workforce Optimization Initiative*, at 1 (Feb. 26, 2025) [[link](#)].

²³⁰ *See* Katie Mettler, *Multistate lawsuit seeks to reverse Trump administration purge of federal workers*, WASH. POST (Mar. 8, 2025) [[link](#)]; Nathan Layne and Aleksandra Michalska, *DOGE job cuts bring pain to Trump heartland*, REUTERS (Mar. 7, 2025) [[link](#)]; Will Peischel, *How Many Federal Workers Have Lost Their Jobs? All the firing, layoffs, and resignations so far.*, N.Y. MAGAZINE (Feb. 26, 2025) [[link](#)].

²³¹ Sara Dorn and Molly Bohannon, *Here’s Where Trump’s Government Layoffs Are Targeted—As NOAA Reportedly Set To Cut 20% Of Staff*, FORBES (Mar. 9, 2025) [[link](#)]; Nathan Layne and Aleksandra Michalska, *DOGE job cuts bring pain to Trump heartland*, REUTERS (Mar. 7, 2025) [[link](#)]; Andrew Duehren, *Trump Administration Pushes to Slash I.R.S. Work Force in Half*, N.Y. TIMES (Mar. 4, 2025) [[link](#)]; Eric Katz, *VA plans to lay off as many as 83,000 employees this year*, GOV’T EXEC. (Mar. 4, 2025) [[link](#)]; Patrick Wingrove and Dan Levine, *US health department offers early retirement in latest round of Musk-led cuts*, REUTERS (Mar. 4, 2025) [[link](#)]; Zach Montague, *Education Dept. Workers Offered Buyouts Ahead of ‘Very Significant’ Layoffs*, N.Y. TIMES (Feb. 28, 2025) [[link](#)]; Eileen Sullivan, *The Next Phase of Trump’s Large-Scale Work Force Cuts Is Underway*, N.Y. TIMES (Feb. 26, 2025) [[link](#)]; Meghann Myers, *Pentagon to fire up to 61,000 workers, starting with 5,400 next week*, DEFENSE ONE (Feb. 21, 2025) [[link](#)]; Cheyenne Haslett, Benjamin Siegel, Luke Barr, and Katherine Faulders, *Trump administration offers federal workers payouts for resignations in move mirroring Elon Musk’s memo at Twitter*, ABC NEWS (Jan. 28, 2025) [[link](#)].

²³² Exec. Order No. 14217 (Feb. 19, 2025), *reprinted in* 90 Fed. Reg. 10577 (Feb. 25, 2025) [[link](#)].

²³³ U.S. Off. of Pers. Mgmt., *Deferred Resignation Email to Federal Employees* (Jan. 28, 2025) [[link](#)] (last visited Mar. 11, 2025) [[link](#)] (internet archive)].

²³⁴ Exec. Order No. 14,210, § 3(c) (Feb. 11, 2025), *reprinted in* 90 Fed. Reg. 9669 (Feb. 14, 2025) [[link](#)].

reorganization plans by renewing a key tool to approve them swiftly in Congress.”²³⁵ The press release by the committee’s Republican leadership concedes that the President lacks authority to undertake reorganizations without legislation: “This legislation restores a reorganization authority that was last in effect in 1984”²³⁶

In the case of several agencies, the administration has attempted to eliminate functions to the maximum extent it considers permissible—despite obvious legal concerns about compliance with federal laws establishing those agencies and the impoundment of federal appropriations. *CNN* reported on a March 10, 2025, announcement that Secretary of State Marco Rubio made regarding the U.S. Agency for International Development: “After a 6 week review we are officially cancelling 83% of the programs at USAID,” Rubio said in a post on X from his personal account, not his official secretary of state one.”²³⁷ On February 10, the Trump administration ordered employees at the CFPB “not to perform any work tasks” pending further instructions.²³⁸ The CFPB then raced to remove employees through a RIF in anticipation of a court order pausing the effort.²³⁹ In granting the CFPB’s request for an exception to the requirement of giving employees 60 days advance notice before removal, OPM noted that the RIF was necessitated by Executive Order 14210.²⁴⁰ Similar efforts were conducted at the U.S. African Development Foundation.²⁴¹

The probationary employee purge is plainly part of that broader reorganization, and any suggestion to the contrary would be implausible. A spokesperson for OPM announced that the probationary employees’ removals were being taken “in light of the recent hiring freeze and in support of the President’s broader efforts to restructure and streamline the federal government to better serve the American people at the highest possible standard.”²⁴² The Department of Health and Human Services, likewise, linked the removal of probationary employees to the “broader efforts to restructure” the federal government.²⁴³ The Chief Human Capital Officers Council instructed agencies to consider probationers’ performance through the lens of “the President’s directive to dramatically reduce the size of the federal workforce.”²⁴⁴ *Reuters* reported that a spokesperson for NHTSA said that the agency laid off 4% of its staff as part of a “government-wide trimming of probationary employees.”²⁴⁵

²³⁵ Press Release, H. Comm on Oversight, *Chairman Comer and Senator Lee Introduce Bill to Fast-Track President Trump’s Government Reorganization Plans* [[link](#)].

²³⁶ *Id.*

²³⁷ Jennifer Hansler, *Rubio says Trump administration canceling 83% of programs at USAID and intends to move remaining ones to State Department*, *CNN* (Mar. 10, 2025) [[link](#)].

²³⁸ Laurel Wamsley, *New CFPB chief closes headquarters, tells all staff they must not do ‘any work tasks’*, *NPR* (Feb. 10, 2025) [[link](#)].

²³⁹ Evan Weinberger, *CFPB Raced to Fire Staff Ahead of Court Hearing, Emails Show*, *BLOOMBERG LAW* (Mar. 7, 2025) [[link](#)].

²⁴⁰ Letter from Veronica E. Hinton, assoc. dir., Workforce Policy and Innovation, Off. of Pers. Mgmt. to Adam Martinez, chief operating officer/acting chief human capital officer, Consumer Fin. Prot. Bd., at 1 (Feb. 14, 2025), filed as Exhibit 1/OO to Joint Motion for Leave to File Supplemental Emails and Communications, *Nat’l Treas. Emps. Union v. Vought*, 1:25-cv-00381-ABJ (ECF No. 66-1, at 28) [[link](#)].

²⁴¹ Thalia Beaty, *Judge stops immediate shutdown of small US agency for African development*, *ASSOC. PRESS* (Mar. 6, 2025) [[link](#)].

²⁴² Shannon Bond, Jennifer Ludden, Andrea Hsu, Laurel Wamsley and Michael Copley, *Layoffs accelerate at federal agencies with more cuts to come*, *NPR* (Feb. 14, 2025) [[link](#)].

²⁴³ *Federal agencies are still firing probationary employees—most recently NOAA*, *GOVERNMENT EXECUTIVE* (Feb. 14, 2025) [[link](#)].

²⁴⁴ CHCO Council Memorandum of Feb. 14, 2025, Exhibit B to Decl. of Charles Ezell, acting Dir., U.S. Off. of Pers. Mgmt., at 1, *Am. Fed’n of Gov’t Emps. v. U.S. Off. of Pers. Mgmt.*, 3:25-cv-01780 (ECF No. 37-1, at 1) [[link](#)].

²⁴⁵ David Shepardson, *US auto safety agency laid off 4% of staff, spokesperson says*, *REUTERS* (Feb. 24, 2025) (quoted language written by *Reuters* to describe the spokesperson’s remarks) [[link](#)].

The Department of Defense did not shrink from proclaiming that its removal of approximately 5,400 probationary workers was “part of [its] initial effort” to reduce “the Department’s civilian workforce by 5-8%.”²⁴⁶ An official performing the function of Under Secretary of Defense for Personnel and Readiness declared: “I determined it necessary to reduce the size of the Department’s civilian workforce.... The *first step* in doing this will be terminating those probationary employees whose continued employment at the Department would not be in the public interest.”²⁴⁷ The preceding sections have provided additional examples linking the mass firing of probationers to the administration’s broader reorganization of government.

In litigation over the purge of probationers, the Department of Justice conceded that the removal of probationary employees and other efforts have been “animat[ed]” by a desire to “streamline[]” the federal workforce,” and that OPM’s January 20 memorandum on probationary employees was “[i]n furtherance of those objectives.”²⁴⁸ Justice Department attorneys further admitted that, “[f]ollowing further OPM guidance over the following weeks,” agencies began carrying out the removals.²⁴⁹

In these circumstances, there is no room to doubt that the Trump administration has launched a reorganization and that the purge of probationary employees is part of that reorganization.

B. The removals taken as part of the reorganization have focused on eliminating positions, not evaluating individual performance, demonstrating that the administration has unlawfully conducted a RIF or a series of RIFs.

The evidence demonstrates that in conducting its mass removal of probationers as a phase of its broader reorganization plans, the administration has been focused not on the evaluation of individual performance but on the elimination of positions. The extensive examples provided above show that the administration required agencies to work with DOGE and OPM “to shrink the size of the federal workforce,” and the agencies responded by distinguishing “mission critical” from “non-mission critical” positions before commencing the mass removal of probationers. Overwhelming evidence refutes the administration’s claim that its purge has been based on individual performance.

Undercutting any claim that the removals were ever intended to be based on performance, extensive documentation cited in Part II, above, demonstrates that OPM and DOGE directed and coordinated the mass removal of probationary employees.²⁵⁰ Human Resources officials and

²⁴⁶ Press Release, U.S. Dep’t of Defense, *DoD Probationary Workforce Statement* (Feb. 21, 2025) (emphasis added) [\[link\]](#) (last visited Mar. 6, 2025) [\[link\]](#) (internet archive)].

²⁴⁷ Memorandum from Darin Selnick, performing duties of Under Sec’y of Defense for Pers. & Readiness, Dep’t of Defense, to senior Pentagon leadership commanders of Combatant Commands Defense Agency & DOD field activity dirs., *Independent Department of Defense Determination to Terminate Probationary Employees* (Mar. 3, 2025) (emphasis added) [\[link\]](#) [\[link\]](#) (internet archive)].

²⁴⁸ Defendants’ Opposition to Plaintiffs’ Motion for a Temporary Restraining Order and to Show Cause; Memorandum of Points and Authorities, at 1, *Am. Fed’n of Gov’t Emps. v. Ezell*, Case No. 3:25-cv-01780 (Feb. 26, 2025) (ECF No. 33) [\[link\]](#).

²⁴⁹ *Id.*

²⁵⁰ Attach. B to Decl. of Charles Ezell, at 1, *Am. Fed’n of Gov’t Emps. v. U.S. Off. of Pers. Mgmt.*, 3:25-cv-01780 (Feb. 14,

supervisors lamented that the agencies had no control over the decision to remove employees whose contributions they valued.²⁵¹ Recounted above are also numerous examples of the administration removing probationary employees whose supervisors had provided them with either positive feedback or positive formal performance reviews. OPM's template for rapid reduction of the workforce further demonstrated that these removals did not arise out of particularized questions about the employees' personal performance or conduct.²⁵² Highlighting OPM's direct control over the mass removal, OPM established a tracker to monitor the removal of probationary employees.²⁵³

The RIF regulations apply to the Trump administration's likely unprecedented campaign of workforce reduction. Ultimately, the administration cannot circumvent the regulations because it released competing employees from their competitive levels during a reorganization for reasons that had nothing to do with their personal performance or conduct.²⁵⁴ The MSPB has been clear that an agency must "use the procedures set out in the RIF regulations, 5 C.F.R. Part 351, when it releases a competing employee from her competitive level by demotion, when the release is required because of reorganization."²⁵⁵ As provided in 5 C.F.R. § 351.201(a)(2), OPM's RIF regulations apply whenever an "agency . . . releases a competing employee from his or her competitive level by . . . separation . . . when the release is required because of . . .

2025) (ECF No. 37-1) (We have asked that you separate probationary employees that you have not identified as mission-critical no later than end of the day Monday, 2/17.) [\[link\]](#) (hereinafter "AFGE v. OPM"); Exhibit C to Decl. of Leandra Bailey, *AFGE v. OPM* (Mar. 7, 2025) (ECF No. 71, at 16-18) (containing the Forest Service's admission that "OPM directed agencies to separate Probationary employees starting 2/13/25") [\[link\]](#); Decl. of Dr. Andrew Frassetto, at 3, 18, *AFGE v. OPM* (Feb. 22, 2025) (ECF No. 18-9, at 4) [\[link\]](#); Exhibit B to *id.* at 2 (ECF No. 18-9, at 11) ("We've been directed by the administration to remove all term probationary employees.") [\[link\]](#); Decl. of Dr. Andrew Frassetto, at 3-4, ¶¶ 14, 20, *AFGE v. OPM* (Feb. 22, 2025) (ECF No. 18-9, at 4-5) [\[link\]](#); Exhibit B to *id.* at 15 (ECF No. 18-9, at 24) ("[W]e have no choice for following what we're getting from OPM.") [\[link\]](#); Exhibit A to Decl. of Gabriel Lezra, at 1-7, *AFGE v. OPM* (ECF No. 39-5, at 5-11) ("Regarding the removal of the probationary employees, again, that was something that was directed from OPM. And even the letters that your colleagues received yesterday were letters that were written by OPM, put forth through Treasury, and given to us.") [\[link\]](#); Exhibit A to Decl. of Milana Walls, at 8, *AFGE v. OPM* (Feb. 25, 2025) (ECF No. 39-1, at 13) ("RANKING MEMBER TAKANO: So nobody ordered you to carry out these terminations? You did it on your own? MS. THERIT: There was direction from the Office of Personnel Management.") [\[link\]](#); Exhibit C to Decl. of Pace Schwarz, at 1, *AFGE v. OPM* (ECF No. 39-4, at 14) ("In accordance with direction from OPM, beginning February 28, 2025, all DoD Components must terminate the employment of all individuals who are currently serving a probationary or trial period.") [\[link\]](#); Exhibit A to Decl. of Kory Blake, at 1-2, *AFGE v. OPM* (ECF No. 39-6 at 5-6) "Last night, agencies were notified by the Office of Personnel Management (OPM) that the Administration has decided probationary employees are not eligible for the Deferred Resignation program and also that these employees are to be terminated. Agencies were directed to begin providing termination notices to affected employees and directed the use of a specific template and language for the notice beginning immediately upon OPM notification.") [\[link\]](#).

²⁵¹ See, e.g., Decl. of Dr. Andrew Frassetto, at 3-4, ¶¶ 14, 16, 20, *Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt.*, 3:25-cv-01780 (Feb. 22, 2025) (ECF No. 18-9, at 4) [\[link\]](#); Exhibit B to *id.* at 17 (ECF No. 18-9, at 24-26) [\[link\]](#); Exhibit A to Decl. of Gabriel Lezra, at 1-7, (emphasis added) *Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt.*, 3:25-cv-01780 (ECF No. 39-5, at 5-11) (emphasis added) [\[link\]](#), and video obtained by plaintiffs in *id.* [\[link\]](#) (last visited Mar. 9, 2025); Decl. of Krista Finlay, at 2, 10 *Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt.*, 3:25-cv-01780 (Mar. 6, 2025) (ECF 70-9, at 4-5) [\[link\]](#); Exhibits A & B to *id.* (ECF 70-9, at 6-9) [\[link\]](#).

²⁵² See *Von Zemenszky v. Dep't of Veterans Affs.*, 80 M.S.P.R. 663, 676 (1999) ("As noted above, it is undisputed in the record as currently developed that the appellant's separation does not arise out of a question of her professional conduct or competence, but was directed at eliminating her position due to a 'staff adjustment . . . necessitated by a reduction in the projected level of resources available to support the [agency's] Coatesville Center activities.' IAF, Tab 3, subtab D. These circumstances alone indicate strongly that the appellant's separation is a RIF action."), *aff'd by split vote*, 85 M.S.P.R. 655 (2000) and *aff'd sub nom.* *James v. Von Zemenszky*, 284 F.3d 1310 (Fed. Cir. 2002).

²⁵³ Attach. B to Decl. of Charles Ezell, at 1, *Am. Fed'n of Gov't Emps. v. U.S. Off. of Pers. Mgmt.*, 3:25-cv-01780 (Feb. 14, 2025) (ECF No. 37-1) ("After actioning, please update the previous probationary employee spreadsheet you've sent us to include the information below. Please resend the updated version to tracking@opm.gov with Amanda Schales and Jamie Sullivan on cc by 8:00pm EST Monday. . . . Please continue providing these reports daily through at least the end of the week." (bold text omitted)) [\[link\]](#).

²⁵⁴ See, generally, *McClure v. Fed. Emergency Mgmt. Agency*, 32 M.S.P.R. 672 (1987) (barring agency from circumventing RIF regulations).

²⁵⁵ *Calhoon v. Dep't of Treasury*, 90 M.S.P.R. 375, 378 (2001). See also *Miller v. Dep't of Homeland Sec.*, 111 M.S.P.R. 325, 333 (2009), *aff'd sub nom.* *Miller v. Merit Sys. Prot. Bd.*, 361 F. App'x 134 (Fed. Cir. 2010).

reorganization.”²⁵⁶ A “competing employee” is any “employee in tenure group I, II, or III.”²⁵⁷ Probationary competitive service employees are in Tenure Group II,²⁵⁸ as are excepted service employees who are serving a trial period or whose tenure is equivalent to a career-conditional appointment in the competitive service.²⁵⁹ Removal from a position during a probationary period constitutes release from a competitive level—and, if done as part of a reorganization, constitutes an appealable RIF.²⁶⁰

The removed probationary employees are similar to the two GS-15 attorneys in *Horne v. ICC*, who were summarily demoted by a manager who proceeded to hire 19 additional GS-15 attorneys over the next few months.²⁶¹ The D.C. Circuit held that MSPB should have required the agency to comply with RIF procedures.²⁶² While the attorneys in that case were not probationary employees, the RIF regulations do not exclude probationary employees.²⁶³

This is not merely a case in which the federal government is separating current occupants from their positions simply to make room for others to be installed in their place.²⁶⁴ The publicly available evidence indicates that the Trump administration did not make individualized determinations regarding the probationers it fired in February and March 2025, nor were the probationers removed simply to make room for new recruits; they were removed to reduce the size of the federal workforce.

The Trump administration is eliminating their positions. The purge of tens of thousands of probationary employees in a matter of weeks has been followed by reductions in force

²⁵⁶ 5 C.F.R. § 351.201(a)(2).

²⁵⁷ 5 C.F.R. § 351.203.

²⁵⁸ 5 C.F.R. § 351.501(b)(2).

²⁵⁹ 5 C.F.R. § 351.502(b)(2).

²⁶⁰ *Perlman v. Dep't of Army*, 23 M.S.P.R. 125, 126 (1984) (“The record is clear that the appellant was removed because of a reorganization which resulted in his position being converted from a term position to a permanent position and the agency’s decision to reassign an excess permanent employee to his position. The agency assured the appellant that his removal did not reflect upon him personally or on the performance of his duties while employed in that position. The Federal regulations at 5 C.F.R. § 351.201(a) require that an agency follow 5 C.F.R. Part 351 when it releases a competing employee from his competitive level by separation when the release is required because of reorganization. As an employee in tenure group III, the appellant is a competing employee covered by 5 C.F.R. Part 351. See 5 C.F.R. §§ 351.203(a) and 501(d). Part 351 therefore affords the appellant a right of appeal to the Board from his removal occasioned by a reduction in force (RIF).”). Under 5 C.F.R. § 351.201(a)(2), “[e]ach agency” is required to follow OPM’s RIF regulations “when it releases a competing employee from his or her competitive level by . . . separation . . . when the release is required because of lack of work; shortage of funds; insufficient personnel ceiling; [or] reorganization....” *Von Zemenszky v. Dep't of Veterans Affs.*, 80 M.S.P.R. 663 (1999) (“The appellant’s separation pursuant to a ‘staff adjustment’ necessitated ‘by a reduction in the projected level of resources’ constitutes the kind of action that is covered by the regulations”). *Cf. Marcheggiani v. Dep't of Def.*, 90 M.S.P.R. 212 (2001); *Hartman v. Dep't of Treasury*, 79 M.S.P.R. 576 (1998); *Mims v. Dep't of Def.*, 71 M.S.P.R. 74, 78 (1996).

²⁶¹ *Horne v. Merit Sys. Prot. Bd.*, 684 F.2d 155, 156-57 (D.C. Cir. 1982).

²⁶² *Id.* at 158 (“When the Board decided that the demotions required a RIF, the Board should have remanded the case for disposition pursuant to proper procedures.”).

²⁶³ 5 C.F.R. §§ 351.202(a) & (b), 351.501(b)(2), 351.502(b)(2), 351.901. *See also Bielomaz v. Dep't of Navy*, 86 M.S.P.R. 276 (2000).

²⁶⁴ Though this kind of surgical workforce modification program is rare in the federal government, one unique case analyzed involuntary firings in that context. *See Tippins v. United States*, 93 F.4th 1370, 1380 (Fed. Cir. 2024). In *Tippins*, the United States Coast Guard convened screening panels to individually select retirement-eligible enlisted service members for involuntary retirement—but did not eliminate any positions. *Id.* at 1371. Though limited to its particular facts regarding retirement of senior Coast Guard employees, *Tippins* provides an interesting contrast to the circumstances of the ongoing purge of probationers. There, a program was “authorized in 2010, when the Coast Guard became concerned about high retention among retirement-eligible enlisted personnel and the resulting lack of advancement opportunities for high-performing junior enlisted personnel.” *Id.* at 1372. Applying applicable law, panels convened to closely examine individualized performance issues; to involuntarily retire an individual, panels had to find either that a “member’s performance [was] below the standards the Commandant prescribe[d]” or that the member engaged in “professional dereliction.” 14 U.S.C. § 357 (2011) [[link](#) (Westlaw)]. And unlike the current probationary firings, the Federal Circuit found that this panel mechanism was not created as a workforce reduction or reorganization tool, but for the very narrow and agency-specific purpose of rebalancing the workforce; no positions were eliminated. *Tippins*, 93 F.4th at 1372.

separating non-probationary employees and ongoing efforts to launch “large-scale” reductions in force to achieve the administration’s declared policy of “dramatically reducing” the federal workforce.²⁶⁵ The administration has been clear that it removed the employees after having found their positions non-mission critical. The Department of Veterans Affairs, for example, announced that it removed “more than 1,400 employees in non-mission critical positions” who were probationers, touting that their removal “will save the department more than \$83 million per year, and VA will redirect all of those resources back toward health care, benefits and services for VA beneficiaries.”²⁶⁶ The phrase “per year” indicates the elimination of these positions was permanent. The Department of Defense has admitted that its removal of approximately 5,400 probationary workers was “part of [its] initial effort” to reduce “the Department’s civilian workforce by 5-8%,” signifying that their positions are no longer available to be filled.²⁶⁷ Even if agencies wanted to fill the positions previously held by the separated probationary employees, the President’s hiring freeze would prevent them from doing so.²⁶⁸ If that freeze is lifted in the future, Executive Order 14210 will limit them to hiring only one employee for every four employees who “depart.”²⁶⁹

The purge was a RIF, masked by the administration as adverse actions against tens of thousands of probationary employees for poor performance, without regard to the consequences to high performing employees falsely accused of poor performance. Compliance with the RIF rules is not optional for the Trump administration. Any claim that the RIF rules were too inconvenient to follow will not suffice as an excuse.²⁷⁰

IV. Conclusion

The extraordinary circumstances of this purge of probationary employees would lead any objective observer to conclude that the Trump administration has not removed the employees for reasons personal to them. Overwhelming evidence points to the conclusion that probationary employees were swept up in a frenetic drive by the administration to, in President Trump’s words, “dramatically reduce” the federal workforce, even at the expense of falsely accusing high performers of poor performance. Unlike adverse actions, which are focused on the personal performance or conduct of an individual, this enterprise has focused on the elimination of positions and constitutes a reduction in force.

²⁶⁵ Exec. Order No. 14,210, § 3(a). The Trump administration has refused to say how many probationary employees have been fired. One source estimated that, by February 26, 2025, the administration had fired 30,000 employees, though it is not clear how many were probationary. Will Peischel, *How Many Federal Workers Have Lost Their Jobs? All the firing, layoffs, and resignations so far.*, N.Y. MAGAZINE (Feb. 26, 2025) [\[link\]](#).

²⁶⁶ Press Release, U.S. Dep’t of Veterans Affairs, *VA dismisses more than 1,400 probationary employees* (Feb. 24, 2025) (emphasis added) [\[link\]](#) (last visited Mar. 6, 2025) [\[link\]](#) (internet archive)].

²⁶⁷ Press Release, U.S. Dep’t of Defense, *DoD Probationary Workforce Statement* (Feb. 21, 2025) [\[link\]](#) (last visited Mar. 6, 2025) [\[link\]](#) (internet archive)].

²⁶⁸ Donald J. Trump, *Hiring Freeze* (Jan. 20, 2025) (presidential memorandum), *reprinted in* 90 Fed. Reg. 8247 (Jan. 28, 2025) [\[link\]](#).

²⁶⁹ Exec. Order No. 14,210, § 3(c) (Feb. 11, 2025), *reprinted in* 90 Fed. Reg. 9669 (Feb. 14, 2025) [\[link\]](#).

²⁷⁰ *Robinson v. U.S. Postal Serv.*, 63 M.S.P.R. 307 (1994) (holding that the RIF rules “give employees rights that must be protected even when their protection is inconvenient for the agency”).

These allegations are serious and sufficiently supported by evidence to warrant an Administrative Judge or Administrative Law Judge of the MSPB granting any of the removed probationary employees a jurisdictional hearing with discovery.²⁷¹ The allegations are nonfrivolous because, if proven true, they would establish the board's jurisdiction.²⁷² The legal elements of a reduction in force, or a series of reductions in force, have been met. The administration is conducting a "reorganization" by undertaking the planned elimination, addition, or redistribution of functions or duties in an organization.²⁷³ In the course of that reorganization, the administration has released tens of thousands of competing probationary employees²⁷⁴ from their competitive levels, thereby triggering the RIF regulations.²⁷⁵

The government's late-stage effort to modify its messaging regarding the purge, including by altering a crucial document, cannot block the demand for a jurisdictional hearing.²⁷⁶ The retooled message that employees were removed based on performance and that "[f]rom now on" the employing agencies, rather than OPM and DOGE, would make the decisions serves more as an admission than a denial by the government.²⁷⁷ As for the appearance of central coordination without agency-level consideration of individual employee performance, it is impossible to ignore President Trump's warning that if the agencies do not remove employees, "then Elon will do the cutting."²⁷⁸ Aside from the raw implausibility of the government's claims, the mere contradiction of appellants' allegations would not suffice legally to override the need to hold a jurisdictional hearing.²⁷⁹ To the contrary, the evidentiary dispute serves as a basis for convening such a hearing.²⁸⁰

For the foregoing reasons, the Trump administration's mass removal of probationary employees constitutes a reduction in force that is subject to challenge by affected individuals because the administration failed to comply with the statute and regulations applicable to reductions in force.²⁸¹

²⁷¹ Wade v. Dep't of Interior, 79 M.S.P.R. 686 (1998).

²⁷² Pickens v. Soc. Sec. Admin., 88 M.S.P.R. 525 (2001) ("A nonfrivolous allegation is an allegation of fact that, if proven, could establish a prima facie case that the Board has jurisdiction over the appeal."). See also Bielomaz v. Dep't of Navy, 86 M.S.P.R. 276 (2000) (determining that appellant had raised nonfrivolous allegation that his demotion was a RIF warranting a jurisdictional hearing).

²⁷³ 5 C.F.R. § 351.203 (defining "reorganization").

²⁷⁴ 5 C.F.R. § 351.203 (defining "competing employee").

²⁷⁵ 5 U.S.C. § 3502; 5 C.F.R. § 351.201(a).

²⁷⁶ Andrea Hsu, *OPM alters memo about probationary employees but does not order mass firings reversed*, NPR (Mar. 4, 2025) [[link](#)].

²⁷⁷ Jonathan Swan and Maggie Haberman, *Inside the Explosive Meeting Where Trump Officials Clashed With Elon Musk*, N.Y. TIMES (Mar. 7, 2025) [[link](#)].

²⁷⁸ Emily Davies, Dan Diamond, Lena H. Sun, Hannah Natanson and Salvador Rizzo, *Trump tells Cabinet that they, not Musk, should 'go first' in cutting workers*, WASH. POST (Mar. 6, 2025) [[link](#)].

²⁷⁹ Bielomaz v. Dep't of Navy, 86 M.S.P.R. 276 (2000) (characterizing *Ferdon v. U.S. Postal Service*, 60 M.S.P.R. 325, 329 (1994) as establishing that, "in determining whether the appellant has made a nonfrivolous allegation of jurisdiction entitling him to a hearing, the administrative judge may consider the agency's documentary submissions; however, to the extent that the agency's evidence constitutes mere factual contradiction of the appellant's otherwise adequate prima facie showing of jurisdiction, the administrative judge may not weigh evidence and resolve conflicting assertions of the parties and the agency's evidence may not be dispositive").

²⁸⁰ Barry v. Fed. Lab. Rels. Auth., 74 M.S.P.R. 164 (1997) ("Because the agency's evidence on the reason behind the agency's 1996 reclassification downgrade of the appellants' positions constituted mere factual contradiction of the appellants' otherwise adequate prima facie showing of jurisdiction, the administrative judge erred in weighing the evidence and resolving the conflicting assertions of the parties and in finding the agency's evidence dispositive. See *Ferdon v. U.S. Postal Service*, 60 M.S.P.R. 325, 329 (1994). A remand is therefore necessary for a jurisdictional hearing on the issue of whether the reclassification downgrade of the appellants' positions was due to a correction of a previous classification error, or due to the agency's delayed recognition of the effects of the alleged 1986 reorganization.").

²⁸¹ 5 U.S.C. § 3502; 5 C.F.R. § 351.901.