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

23 AMERICAN FEDERATION OF
 24 GOVERNMENT EMPLOYEES, AFL-CIO;
 25 AMERICAN FEDERATION OF STATE
 26 COUNTY AND MUNICIPAL EMPLOYEES,
 27 AFL-CIO, et al.,

28 Plaintiffs,

v.

UNITED STATES OFFICE OF PERSONNEL
 MANAGEMENT, et al.,

Defendants.

Case No. 3:25-cv-01780-WHA

**PLAINTIFFS' OPPOSITION TO *EX*
PARTE MOTION TO STAY THE
 COURT'S MARCH 13, 2025,
 PRELIMINARY INJUNCTION PENDING
 APPEAL AND MOTION TO STRIKE
 DECLARATIONS**

1 Rather than comply with this Court’s March 13, 2025 preliminary injunction order,
2 Defendants have chosen to engage in further stonewalling and direct defiance of this Court’s
3 orders. Defendants’ filing *admits* they are not implementing this Court’s preliminary injunction.
4 Having failed to ask this Court yesterday morning for a stay of its “immediate” order, Defendants
5 instead return to the Court more than a day later, and ask for a stay of the orders they are failing to
6 implement. After deliberately refusing to bring any witnesses to the court where they could be
7 cross-examined, they have now submitted brand new declarations, declarations with untested
8 statements, that *inter alia*, attempt to relitigate the merits of the already issued preliminary
9 injunction.

10 As this Court explained yesterday: “The Government, I believe, has tried to frustrate the
11 Judge’s ability to get at the truth of what happened here and then set forth sham declarations to -- a
12 sham declaration -- they withdrew it, then substitutes another. That’s not the way it works in the
13 U.S. District Court.” [Dkt 120 at 8]. Defendants *chose* to make the preliminary injunction record
14 they made (including having never defended the lawfulness of terminating people based on a lie)
15 and cannot retroactively add to it now, while not implementing this Court’s unambiguous
16 preliminary injunction order.

17 And, without waiting for resolution by this Court, notwithstanding the Court’s briefing
18 schedule order, at 4:00 pm Defendants filed a motion for stay in the Ninth Circuit.

19 The record establishes there is clear ongoing irreparable harm to the plaintiffs in this case.
20 The government’s stay request should therefore be denied for the reasons previously considered by
21 this Court. And, the new untested evidence that Defendants seek to retroactively provide this
22 Court to support their opposition to the preliminary injunction should be stricken from the record.
23 Plaintiffs are available for any further hearing this Court wishes to hold regarding enforcement of
24 the Court’s orders.

25 **1. The Stay Should Be Denied.**

26 At yesterday morning’s hearing, this Court ordered Defendants to reinstate the probationary
27 employees that OPM had unlawfully ordered be terminated at six federal agencies, and to

1 communicate to those employees that their terminations had occurred unlawfully by order of the
2 Northern District of California. Dkt. 120 at 52-54. This Court could not have been clearer that its
3 order was “effective immediately.” *Id.* In particular, this Court specifically ordered that “relief
4 defendant Veterans Administration shall immediately offer reinstatement to any and all
5 probationary employees terminated on or about February 13th and 14th, 2025.” [Dkt. 120 at 52:8-
6 10]; that “relief defendant Veterans Administration shall cease any and all use of the template
7 termination notice provided by defendant OPM and/or Acting Director Ezell to the VA and to other
8 agencies on or about February 13th and 14th and shall immediately advise all probationary
9 employees terminated on or about February 13 and 14 that the notice and termination have been
10 found to be unlawful by the United States District Court for the Northern District of California.”
11 [Dkt. 120 at 52: 14-21]; that “relief defendant Veterans Administration shall cease any termination
12 of probationary employees at the direction of defendants OPM and Acting Director Ezell.” [Dkt.
13 120 at 52: 22-24]; and that the Court was “extending the same relief to the Department of
14 Agriculture, Department of Defense, Department of Energy, Department of the Interior,
15 Department of Treasury” [Dkt. 120 at 53:20-22]. The Court further ordered: “this is the order and
16 it counts effective immediately. Please don’t say, ‘Oh, I’m waiting for the written order.’ This is
17 the order from the bench.” Dkt. 120 at 54:7.

18 Defendants’ Ex Parte Motion makes abundantly clear that Defendants have chosen *not* to
19 comply with this Court’s order. They have not offered reinstatement to terminated employees and
20 have not informed them that their terminations were done unlawfully. Instead of complying,
21 Defendants spent the subsequent day collecting new declarations from new agency declarants
22 stating in essence, for the first time, that reinstating the unlawfully terminated employees would be
23 difficult to implement. Notably, none of these Declarants explain that it would be *impossible* or
24 that they *cannot* reinstate the employees and services they provide. Nor could they have made
25 such a representation. Of course, federal agencies can reinstate the employees they very recently
26 terminated without any notice (as discussed yesterday, the record evidence before this Court on
27 Plaintiffs’ preliminary injunction motion demonstrates that a few agencies have reinstated their
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1 employees). To the extent that Defendants seek to now present evidence of the difficulty in doing
2 so, this is retroactive opposition to this Court’s injunction and this Court should not hear it after the
3 fact. In any event, *none* of this outweighs the overwhelming balance of the equities and public
4 interest, irreparable harm, and likelihood of success on the merits that justified this preliminary
5 injunction.

6 Moreover, Defendants have the audacity to claim that reinstatement would cause
7 “confusion” for “terminated employees.” E.g., Dkt. 127-3 ¶12; 127-4 ¶7. To the extent
8 Defendants now profess concern that employees may be confused by these recent events,
9 Defendants cry crocodile tears. Defendants, not this Court’s order, are to blame for federal
10 employees’ difficult circumstances, and they must take all necessary steps to restore the status quo.

11 Finally, Defendants make barely veiled threats that they would continue to defy this Court’s
12 orders requiring them to comply with applicable laws, by suggesting that they may simply find
13 another way to terminate the same people. For example, Trevor Norris, from the Department of
14 Treasury threatens:

15 And even if the employees are reinstated prior to any reversal of the district court’s order,
16 the reinstated employees will remain on probation and *could again be terminated*.

17 Dkt. 127-4 ¶6.

18 All of the factors and legal arguments raised by Defendants in this Ex Parte Motion have
19 already been resoundingly rejected by this Court. For all the reasons previously briefed, and stated
20 by this Court in its February 27, 2025 oral TRO order, written February 28, 2025 TRO order, and
21 March 13, 2025 oral preliminary injunction order, this stay should be denied.

22 **2. The Court Should Reject Defendants’ Improper Retroactive Attempt to**
23 **Augment the Preliminary Injunction Record and Strike these New**
24 **Declarations.**

25 In the guise of supporting their stay application, and in support of their announcement that
26 they are not complying with this Court’s order and request that this Court relieve them of their
27 obligation to do so, Defendants now submit to this Court brand-new evidence of two kinds. First,
28 they submit declarations purporting to explain the alleged administrative logistics for putting

1 employees back to work, to justify why the preliminary injunction should not have been issued—
2 all of which should have been presented earlier, and some of which is not even offered from
3 personal knowledge, *see* Dkt. 127-2 (“Acting” Chief Human Capital Officer Trznadel, who admits
4 she was not “serving in this position” at the time of the January 20 OPM memo, and is relying on
5 her “understanding from managers”). Second, Defendants submit some declarations from agency
6 officials that, incredibly, *now* claim that the terminations were conducted for performance reasons
7 (with no supporting information or foundation whatsoever). *See* 127-1 ¶7 (Dill: Department of
8 Defense, claiming without foundation performance reviews were conducted); 127-3 ¶7 (Green:
9 Department of Interior, claiming without foundation performance reviews were conducted);¹
10 *compare with* 127-2 (Trznadel, Department of Energy) (*not* making this claim for the 555
11 employees terminated); 127-4 (Norris, Department of the Treasury: *not* making this claim for the
12 7,605 probationary employees terminated); 127-5 (Englebaum, Veterans Administration, *not*
13 making this claim for 500 terminated employees); 127-6 (Pletcher, USDA, *not* making this claim
14 for 5,714 terminated employees). Both of these categories of information are simply hindsight
15 attacks on the preliminary injunction; and the latter is not even conceivably relevant to the stay
16 request. This Court should not permit Defendants to augment the record in this impermissible and
17 highly prejudicial manner.

18 Remarkably, after this Court’s repeated instructions that it is not appropriate for Defendants
19 to submit declaratory testimony from witnesses they have refused to make available for cross-
20 examination, Defendants are doing exactly that, again. Dkt. 120 at 15: 22-24 (“You will not bring
21 the people in here to be cross-examined. You’re afraid to do so because you know cross-
22 examination would reveal the truth.”); *id.* at 16:1-3 (“This is the U.S. District Court. Whenever you
23 submit declarations, those people should be submitted to cross-examination.”); *id.* at 56:12-19
24 (“I’m tired of seeing you stonewall on trying to get at the truth. Instead of giving me snippets, I

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¹ In particular, one declarant (who Plaintiffs subpoenaed and Defendants refused to produce at the March 13, 2025 hearing) now asserts that the Department of the Interior reviewed the performance of over 1500 individuals without explaining how such review consistent with the law could have possibly have taken place. Dkt. 127-3.

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