

1 Scott A. Kronland (SBN 171693)  
 2 Stacey M. Leyton (SBN 203827)  
 3 Eileen B. Goldsmith (SBN 218029)  
 4 Danielle E. Leonard (SBN 218201)  
 5 Robin S. Tholin (SBN 344845)  
 6 James Baltzer (SBN 332232)  
 7 ALTSHULER BERZON LLP  
 8 177 Post Street, Suite 300  
 9 San Francisco, CA 94108  
 10 Tel. (415) 421-7151  
 11 Fax (415) 362-8064  
 12 skronland@altber.com  
 13 sleyton@altber.com  
 14 egoldsmith@altber.com  
 15 dleonard@altber.com  
 16 rtholin@altber.com  
 17 jbaltzer@altber.com

18 *Attorneys for Plaintiff Organizations*

19 [Additional Counsel not listed]

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' RESPONSE TO  
 DEFENDANTS' RESPONSE TO  
 THE COURT'S THIRD  
 REQUEST FOR INFORMATION**

1 Defendants are not complying with this Court’s preliminary injunction: by failing to  
2 communicate the information ordered by the Court; and by placing previously-terminated employees  
3 back only on “administrative leave” rather than returning to service.

4 On March 17, 2025, this Court asked Defendants to “state the extent to which any rehired  
5 probationary employees are being placed on administrative leave,” since doing so “is not allowed by  
6 the preliminary injunction.” ECF 138. In response, Defendants now concede that placing unlawfully  
7 terminated probationary employees into administrative leave status does not comply with this Court’s  
8 preliminary injunction. ECF 139. However, as detailed below, Defendants’ own declarations, as  
9 well as information gathered by Plaintiffs, confirm that Defendants have chosen not to comply with  
10 this Court’s orders.

11 Since the entry of the preliminary injunction order on March 13, 2025, Defendants have  
12 provided this Court with several sets of declarations from agency officials. First, on Friday, March  
13 14, rather than explaining to the Court how each agency has complied with this Court’s order,  
14 Defendants collected and submitted six declarations from agency officials stating why it would be  
15 difficult, in their view, to comply (ECF 127-1-6). Then, in response to this Court’s information  
16 request regarding administrative leave, on Tuesday, March 18, Defendants provided this Court with  
17 copies of declarations submitted in a separate action, *State of Maryland v. United States Department*  
18 *of Agriculture*, D. Maryland Case No. 1:25-cv-00748-JKB (*see* ECF 139, 139-3), which included  
19 declarations from five of the six departments subject to this Court’s injunction (Energy, Interior,  
20 Treasury, USDA, and the VA). Then, in response to the Court’s request for information on the  
21 Department of Defense (ECF 138), Defendants submitted an additional declaration regarding that  
22 department (ECF 139).

23 Defendants appear not to be complying with this Court’s preliminary injunction in at least two  
24 principal ways: not complying with this Court’s specific directives to offer reinstatement and tell  
25 terminated probationary employees that their terminations were unlawful, and reinstating terminated  
26 probationary employees only to administrative leave and not to active service.

27 1. None of Defendants’ declarations demonstrate compliance with the preliminary injunction  
28 order of this Court that required the six relief defendant agencies to:

1 (1) “*immediately offer* reinstatement to any and all probationary employees terminated on or  
2 about February 13th and 14th, 2025,” (ECF 120 at 52:7-10, 53:17-25); and

3 (2) “*immediately advise* all probationary employees terminated on or about February 13 and  
4 14 that the notice and termination have been found to be unlawful by the United States District Court  
5 for the Northern District of California.” (*id.* at 52:14-21, 53:17-25).

6 Defendants chose, instead of complying with these orders, to seek an administrative stay and  
7 stay pending appeal from this Court and from the Ninth Circuit, which has denied the administrative  
8 stay (Ninth Circuit Order of March 17, 2025). The declarations filed in the Maryland case do not  
9 state or explain that these agencies complied with these orders of *this* Court, and do not state, in  
10 particular, that Defendants have communicated the information required by this Court.

11 2. Defendants’ declarations and other available evidence gathered by Plaintiffs now show the  
12 widespread use of administrative leave status to sideline thousands of probationary employees rather  
13 than returning them to service:

- 14 • Department of Veterans Affairs (“VA”) placed 1,683 previously terminated  
15 probationary employees on administrative leave (Engelbaum Decl. ¶¶6, 10 (ECF 139-  
3 at p.60-61 of 67));
- 16 • Department of Agriculture (“USDA”) placed 5,714 previously terminated  
17 probationary employees on administrative leave (Pletcher Rice Decl. ¶5 (ECF 139-3 at  
18 p.57 of 67));
- 19 • Department of Energy (“DOE”) placed 555 previously terminated probationary  
20 employees on administrative leave (Trznadel Decl. ¶¶10-11 (ECF 139-3 at p.7 of 67));
- 21 • Treasury Department plans to place approximately 7,600 previously terminated  
22 probationary employees on administrative leave (Norris Decl. ¶¶10-11 (ECF 139-3 at  
23 p.55 of 67));
- 24 • Department of Defense will place the 364 previously terminated (or “separated”  
25 pending termination) employees on administrative leave, the vast majority of whom  
26 have not apparently been contacted (and are described as “pending notification”).  
27 (Dill Decl. ¶¶5-6 (ECF 141-1 at p.2 of 3)).<sup>1</sup>

28 Significantly, while counsel now represents to this Court that administrative leave “is merely  
a first part of a series of steps to reinstate probationary employees,” (ECF 139 at 1), the declarations

<sup>1</sup> Plaintiffs address the Department of the Interior (“DOI”) *infra* at 4-5.

1 do not all say that.

2 Treasury and the VA simply state that employees are being returned to administrative leave  
3 and make no further representations:

4 Treasury: “Upon reinstatement, Treasury will place each affected employee in  
5 Administrative Leave status.” Norris Decl. ¶10 (ECF 139-3 at p.55 of 67).

6 VA: “[H]as for all intents and purposes, reinstated all Affected Probationary Employees,  
7 placing them in an initial administrative leave status with full pay and benefits.” Engelbaum Decl.  
8 ¶10 (ECF 139-3 at p.61 of 67).

9 The Department of the Interior provides no information at all regarding how or in what  
10 capacity employees are being reinstated beyond “cancelling terminations.” Green Decl. ¶¶12-13  
11 (ECF 139-3 at p.31 of 67).

12 Even the three agencies that do refer to steps toward reinstatement to service have not  
13 provided any date by which a return to service will occur:

14 Energy: “All Affected Probationary Employees have been placed in a retroactive  
15 Administrative Leave status that will continue until their badging and IT access are restored, at  
16 which time they will be converted to an Active Duty status.” Trznadel Decl. ¶11 (ECF 139-3 at p.7  
17 of 67).

18 USDA: “As part of a phased plan for return-to-duty, upon returning to pay status, the  
19 Affected Probationary Employee will initially be placed on paid administrative leave. ... USDA is  
20 acting diligently to complete the administrative steps related to notifying the Affected Probationary  
21 Employees of their reinstatement, processing the reinstatements for purposes of all relevant USDA  
22 record systems, and returning the reinstated employees to duty status.” Pletcher Rice Decl. ¶7 (ECF  
23 139-3 at p.57 of 67).

24 DoD: Indicates that at least some “employees with pending termination notices” or  
25 “previously terminated employees who have been reinstated” will be on administrative leave until  
26 “the completion of their onboarding procedures.” Dill Decl. ¶6 (ECF 141-1).

27 None of this yet complies with this Court’s order. Counsel’s representation that  
28 “administrative leave is not being used to skirt the requirement of reinstatement” is not supported by  
Plaintiffs’ Notice in Response to the Court’s Third Request for Information, No. 3:25-cv-01780-WHA 3

1 these declarations.<sup>2</sup> ECF 139 at 1.<sup>3</sup>

2 3. The Interior Department is a special case. DOI's declarant (Green) does not explain  
3 what the Department is doing to return the approximately 1700 previously terminated probationary  
4 employees to service or comply with this Court's orders. DOI states only that it has "reinstated, by  
5 cancelling termination actions" and has "has notified or attempted to notify" the employees, without  
6 further explanation. Unlike the other agencies, DOI does not say that employees have been returned  
7 to administrative leave. Green Decl. ¶¶12-13 (ECF 139-3 at p.31 of 67). However, it has become  
8 apparent that DOI is primarily returning previously terminated probationary employees to  
9 administrative leave, not to active service.

10 On Monday, March 17, the AFGE local union president at the Gettysburg National Military  
11 Park was told by the Park Superintendent only that "she had received no guidance, plans, or authority  
12 from her supervisors to reinstate terminated probationary employees as required by the District  
13 Court's decision." Cochran Decl. ¶10; *see also id.* ¶8 (terminated probationary employees at  
14 Gettysburg National Military Park and the Eisenhower National Historic Site have not received any  
15 communications regarding reinstatement). The Superintendent subsequently informed him that there  
16 are two lists of previously terminated probationary employees at the Park Service: a "mission-  
17 critical" list who will be restored to active service, and a list who will only be restored to  
18 administrative leave. *Id.* ¶11.

19 Moreover, the law firms of undersigned counsel have received numerous e-mails and  
20 telephone calls from probationary employees terminated from the Interior Department who say they

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22 <sup>2</sup> Of the relief Defendants named in this case that are represented in the *State of Maryland* declarations  
23 (ECF 139-3), all except the Department of Transportation overwhelmingly have placed affected  
24 probationary employees on administrative leave without identifying a return-to-service date. *Id.*  
25 (Environmental Protection Agency, Department of Commerce, Department of Homeland Security,  
Department of Education, Department of Housing and Urban Development, Small Business  
Administration, General Services Administration, Department of Health and Human Services).

26 <sup>3</sup> At least some of Defendants' declarants also indicate that they believe administrative leave satisfies  
27 this Court's requirement of "reinstatement." *See* Norris Decl. ¶8 (ECF 139-3 at p.53 of 67) ("an  
28 appellate ruling could reverse the district court's order shortly after terminated employees have been  
reinstated (via administrative leave or otherwise) or have returned to full duty status."); Green Decl. ¶9  
(ECF 139-3 at p.30 of 67) ("an appellate ruling could reverse the district court's order shortly after  
terminated individuals have been reinstated through extended grants of administrative leave, complete  
restoration to full-duty status, or otherwise").

1 have not been reinstated or even contacted. For example, one terminated probationary employee was  
2 first contacted by her supervisor about reinstatement on March 19, and informed that “I was being  
3 placed on indefinite administrative leave. Finally, my supervisor told me that I had the option to  
4 remain on administrative leave or to voluntarily resign.” Hoover Decl. ¶7. Another, who had worked  
5 as a coastal geologist at the Assateague Island National Seashore, received an email from her  
6 supervisor on March 19 stating:

7           You may hear that other terminated probationary employees have been asked to return  
8 to the workplace. Only those employees that have been classified by NPS as “key to  
9 public safety, national security, and critical park operations” are being asked to return  
at this time. Unfortunately, your position was not included in this designated group.

10 Coffey Decl. ¶7 & Exh. B.

11           Plaintiffs await further instruction from the Court regarding how it wishes to proceed with  
12 respect to compliance and enforcement of the preliminary injunction.

13 DATED: March 20, 2025

14 Scott A. Kronland  
15 Stacey M. Leyton  
16 Eileen B. Goldsmith  
17 Danielle E. Leonard  
18 Robin S. Tholin  
19 James Baltzer  
20 ALTSHULER BERZON LLP  
21 177 Post St., Suite 300  
22 San Francisco, CA 94108  
23 Tel: (415) 421-7151

24 By: /s/ Danielle Leonard

25 *Attorneys for Plaintiff Organizations*

26 Norman L. Eisen (*pro hac vice*)  
27 Pooja Chadhuri (SBN 314847)  
28 STATE DEMOCRACY DEFENDERS  
FUND  
600 Pennsylvania Avenue SE #15180  
Washington, DC 20003  
Tel: (202) 594-9958  
Norman@statedemocracydefenders.org  
Pooja@statedemocracydefenders.org

By: /s/ Norman L. Eisen

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*Attorneys for Plaintiff Organizations*

Rushab Sanghvi (SBN 302809)  
AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES  
80 F Street, NW  
Washington, DC 20001  
Tel: (202) 639-6426  
Sanghr@afge.org

By: /s/ Rushab Sanghvi

*Attorneys for Plaintiff American Federation of  
Government Employees (AFGE)*

Teague Paterson (SBN 226659)  
Matthew Blumin (*pro hac vice*)  
AMERICAN FEDERATION OF STATE, COUNTY,  
AND MUNICIPAL EMPLOYEES  
1625 L Street, N.W.  
Washington, D.C. 20036  
Tel: (202) 775-5900  
TPaterson@afscme.org  
MBlumin@afscme.org

By: /s/Teague Paterson

*Attorneys for Plaintiff American Federation of State  
County and Municipal Employees (AFSCME)*

Tera M. Heintz (SBN 241414)  
Cristina Sepe (SBN 308023)  
Cynthia Alexander, WA Bar No. 46019 (*pro hac vice*)  
Deputy Solicitors General  
OFFICE OF THE WASHINGTON STATE  
ATTORNEY GENERAL  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104  
(206) 464-7744  
tera.heintz@atg.wa.gov  
cristina.sepe@atg.wa.gov  
cynthia.alexander@atg.wa.gov

By: /s/ Tera M. Heintz

*Attorneys for Plaintiff State of Washington*