

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 listed on signature pages]

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' NOTICE OF MOTION AND
 MOTION TO COMPEL COMPLIANCE
 WITH PRELIMINARY INJUNCTION OR
 TO HOLD DEFENDANTS IN CONTEMPT**

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE THAT at 8:00 a.m. on April 9, in Courtroom 12, 19th Floor, United States District Court, Northern District of California, located at 450 Golden Gate Avenue, San Francisco, CA, Plaintiffs will and hereby do move to compel compliance with the Court’s March 13, 2025 preliminary injunction, or to hold Defendants in contempt of this Court’s orders.

The Motion will be made on the grounds that Defendants are in violation of this Court’s March 13, 2025, preliminary injunction, Dkt. 120, in two ways: (1) by failing to communicate to unlawfully terminated employees the information ordered by the Court, and (2) by placing employees whom the Court ordered to be immediately reinstated only on “administrative leave” rather than returning them to active service. Defendants’ noncompliance is established in their own reporting to this Court, specifically Dkt. 127-1–127-6, Dkt. 139, Dkt. 139-3, Dkt. 141, and Dkt. 144-1–144-8.

Pursuant to this Court’s authority to enforce its own orders, Plaintiffs respectfully request that unless Defendants establish full compliance with the Court’s preliminary injunction by the date of their opposition brief (which the Court ordered to be filed by noon on March 31, 2025), the Court should enter an order setting a date certain for compliance by Defendants and requiring daily status reports until compliance is achieved; and if any Defendants fail to come into compliance by that date certain, to find those Defendants in contempt, and impose prospective, conditional civil sanctions for each day thereafter that those Defendants remain out of compliance.

This Motion is supported by the accompanying Memorandum in Support; all papers on file in this action; and such argument as may be heard by the Court.

DATED: March 26, 2025

Scott A. Kronland
Stacey M. Leyton
Eileen B. Goldsmith
Danielle E. Leonard
Robin S. Tholin
James Baltzer
ALTSHULER BERZON LLP
177 Post St., Suite 300
San Francisco, CA 94108

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Tel: (415) 421-7151

By: /s/ Danielle Leonard

Attorneys for Plaintiff Organizations

Norman L. Eisen (*pro hac vice*)
Pooja Chadhuri (SBN 314847)
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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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 on signature page]

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. 25-cv-01780-WHA

**PLAINTIFFS' MEMORANDUM IN
 SUPPORT OF MOTION TO COMPEL
 COMPLIANCE WITH PRELIMINARY
 INJUNCTION OR TO HOLD
 DEFENDANTS IN CONTEMPT**

TABLE OF CONTENTS

1 TABLE OF CONTENTS i

2 TABLE OF AUTHORITIES..... II

3 INTRODUCTION 1

4 BACKGROUND 2

5 ARGUMENT 7

6 I. Defendants Have Failed to Comply and Therefore Are In Contempt Of This

7 Court’s Preliminary Injunction..... 7

8 A. Legal Standard..... 7

9 B. Defendants Have Violated, and Continue to Violate, this Court’s

10 Preliminary Injunction..... 8

11 C. Defendants Have No Defenses to a Contempt Finding..... 10

12 II. This Court Should Order Compliance, and If Defendants Fail Again, Hold

13 Defendants in Civil Contempt. 12

14 CONCLUSION 13

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page(s)

Federal Cases

1

2

3

4 *AFGE v. OPM,*

5 No. 25-1677 (9th Cir. Mar. 14, 2025) 3, 4, 12

6 *Cahill v. Insider Inc.,*

7 --- F.4th ----, 2025 WL 838264 (9th Cir. Mar. 18, 2025)..... 7

8 *Coleman v. Newsom,*

9 --- F.4th ----, 2025 WL 851077 (9th Cir. Mar. 19, 2025)..... 8, 11, 12, 13

10 *Dietz v. Bouldin,*

11 579 U.S. 40 (2016) 7

12 *In re Dual-Deck Video Cassette Recorder Antitrust Litig.,*

13 10 F.3d 693 (9th Cir. 1993) 7, 8, 11

14 *In re Dyer,*

15 322 F.3d 1178 (9th Cir. 2003) 13

16 *Loc. 28 of Sheet Metal Workers’ Int’l Ass’n v. E.E.O.C.,*

17 478 U.S. 421 (1986) 13

18 *OPM v. AFGE,*

19 No. 24A904 (U.S. Mar. 24, 2025) 4

20 *Parsons v. Ryan,*

21 949 F.3d 443 (9th Cir. 2020) 7, 8, 12, 13

22 *Reno Air Racing Ass’n, Inc. v. McCord,*

23 452 F.3d 1126 (9th Cir. 2006) 13

24 *Spallone v. United States,*

25 493 U.S. 265 (1990) 7

26 *State of Maryland v. United States Department of Agriculture,*

27 No. 1:25-cv-00748-JKB (D.Md 2025) 4

28 *Stone v. City and County of San Francisco,*

 968 F.2d 850 (9th Cir. 1992) 7, 8

United States v. Ayres,

 166 F.3d 991 (9th Cir. 1999) 13

United States v. Yacoubian,

 24 F.3d 1 (9th Cir. 1994) 7

1 **INTRODUCTION**

2 Defendants are in violation of this Court’s March 13, 2025 preliminary injunction in two
3 ways: (1) they have failed to communicate to unlawfully terminated employees the information
4 ordered by the Court; and (2) they have placed employees that the Court ordered immediately
5 reinstated on “administrative leave” rather than returning them to service.

6 Defendants’ noncompliance is demonstrated by their own declarations and filings. This Court
7 has made clear that placing employees who were unlawfully terminated at the Office of Personnel
8 Management’s (“OPM”) direction and are covered by this Court’s preliminary injunction on
9 administrative leave does not satisfy the injunction’s requirement to immediately reinstate those
10 workers. Yet Defendants’ declarations and purported compliance lists establish that, as of several
11 days after the Court’s order, almost none of the tens of thousands of terminated employees had been
12 returned to service at their respective defendant agencies. Rather, those workers had been placed on
13 administrative leave by Defendants, with no indication when, if ever, they will be reinstated to their
14 jobs. Similarly, despite this Court’s order to notify those employees that the United States District
15 Court has held their termination was unlawful, Defendants’ purported compliance filings fail to make
16 any showing that four of the six relief agencies have made any effort whatsoever to notify their
17 employees as to the unlawfulness of the terminations, and admit that the two other relief agencies
18 have not yet notified all of their probationary employees as instructed by the Court.

19 The terms of the Court’s preliminary injunction were specific, definite, and clear. Defendants
20 have no defense for their apparent decisions not to comply with the order. Unless Defendants
21 establish full compliance with the Court’s preliminary injunction by the date of their opposition
22 (March 31, 2025), Plaintiffs respectfully request that the Court enter an order setting a date certain for
23 compliance by Defendants and requiring daily status reports until compliance is achieved. If any
24 Defendants fail to come into compliance by that date certain, Plaintiffs request that the Court hold
25 those Defendants in contempt and impose prospective, conditional civil sanctions for each day
26 thereafter that those Defendants remain out of compliance.

BACKGROUND

1
2 This case involves OPM’s unlawful direction to federal agencies to terminate all probationary
3 employees except those whom OPM allowed agencies to deem “mission critical,” which resulted in
4 the unlawful termination of tens of thousands of federal employees. Dkt. 90. On February 27, 2025,
5 this Court concluded that the “mountain” of evidence submitted by Plaintiffs supported the
6 conclusion that OPM had directed the terminations government-wide. Dkt. 45 at 8. The Court also
7 concluded that OPM lacked the authority and to give such direction, and its acts were therefore likely
8 ultra vires and violated the Administrative Procedures Act. Dkt. 44 at 5:1, 67:9-19; Dkt. 45 at 8, 21.

9 On March 10, 2025, this Court granted Plaintiffs leave to amend their Complaint to add the
10 federal agencies that implemented OPM’s unlawful orders as Rule 19 defendants for purposes of
11 effectuating relief for OPM’s unlawful acts. Dkt. 88; Dkt. 90. Plaintiffs were also granted leave to
12 add plaintiffs and to submit additional evidence in support of their motion for preliminary injunction,
13 scheduled to be heard on March 13, 2025. Dkt. 88 at 1; Dkt. 100. Both parties were provided the
14 opportunity to present witnesses in support of their factual position, and to cross-examine the other
15 side’s witnesses at that hearing; Defendants refused to produce any witnesses, notwithstanding an
16 attempt to “withdraw” one declaration and substitute another, and declined to cross-examine
17 Plaintiffs’ declarants. *See* Dkt. 75; Dkt. 86; Dkt. 89; Dkt. 96; Dkt. 97; Dkt. 110.

18 On March 13, 2025, after a lengthy hearing, this Court found again that the probationary
19 employees had likely been unlawfully terminated and issued a preliminary injunction that, as relevant
20 here, ordered six relief defendant agencies to:

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

23 (2) “*immediately advise* all probationary employees terminated on or about February 13 and
24 14 that the notice and termination have been found to be unlawful by the United States District Court
25 for the Northern District of California.” (*Id.* at 52:14-21, 53:17-25).

26 The relief agencies subject to this Order are the Department of Agriculture (“USDA”), the
27 Department of Defense (“DoD”), the Department of Energy (“DOE”), the Department of the Interior

1 (“DOI”), the Department of Treasury (“Treasury”), and the Department of Veterans Affairs (“VA”).
2 *Id.* at 52:7-24; 53:17-25.

3 The Court ordered the agencies to submit a compliance report within seven days, on March
4 20, 2025, providing “a list of all probationary employees terminated on or about February 13th and
5 14th with an explanation as to each of what has been done to comply with this order.” *Id.* at 53:13-
6 16.

7 The Court also concluded, and expressed several times, that Defendants’ actions with respect
8 to evidence and witnesses had frustrated the Court’s ability to find facts. *Id.* at 8:6-12 (“[T]he
9 Government, I believe, had tried to frustrate the Judge’s ability to get at the truth of what happened
10 here and then set forth sham declarations....”), 8:13-16 (“I had expected to have an evidentiary
11 hearing today in which these people would testify...[b]ut instead, we’ve been frustrated in that.”),
12 15:22-24 (“You will not bring the people in here to be cross-examined. You’re afraid to do so
13 because you know cross-examination would reveal the truth.”), 16:14-16 (“[Y]ou’re not helping me
14 get at the truth. You’re giving me press releases, sham documents.”), 25:9-17 (“[I]f you’re going to
15 give me an administrative record, let’s do an honest one and a complete one and not one that is
16 sanitized.”). In particular, in defending against Plaintiffs’ motion for preliminary injunctive relief,
17 Defendants submitted declarations only from two OPM officials (one of which, from Acting OPM
18 Director Charles Ezell, was subsequently withdrawn in an attempt to avoid deposition or hearing
19 testimony, in violation of this Court’s orders, Dkt. 97). Prior to the Court’s issuance of a preliminary
20 injunction, Defendants submitted no testimony from any agency witness. The Court therefore
21 concluded: “Virtually all the foregoing facts were uncovered by counsel for plaintiffs. Defendants
22 have provided virtually no transparency.” Dkt. 132 at 8.

23 Rather than comply with the preliminary injunction, on Friday, March 14, 2025, Defendants
24 sought a stay in this Court, supported by six new declarations from agency witnesses explaining
25 why they were not complying. Dkt. 127-1-6. Then, rather than wait for a ruling from this Court,
26 Defendants that same day sought a stay from the Ninth Circuit, relying on these new declarations
27 from the relief defendants. Emergency Motion for Stay Pending Appeal and Administrative Stay,
28 *AFGE v. OPM*, No. 25-1677 (9th Cir. Mar. 14, 2025). On Saturday, March 15, 2025, this Court

1 denied the requested stay. Dkt. 133. On Monday, March 17, 2025, the Ninth Circuit similarly
2 denied Defendants’ request for an administrative stay. Order Denying Administrative Stay, *AFGE*
3 *v. OPM*, No. 25-1677 (9th Cir. Mar. 17, 2025).¹

4 On March 17, 2025, this Court issued an order stating that it had come to the Court’s
5 attention that instead of being reinstated to their jobs, probationary employees were being “placed
6 on administrative leave *en masse*.” Dkt. 138. The Court stated: “This is not allowed by the
7 preliminary injunction, for it would not restore the services the preliminary injunction intends to
8 restore.” *Id.* The Court directed Defendants to provide an explanation. *Id.*

9 On March 18, 2025, Defendants submitted to the Court copies of declarations that had been
10 filed in a separate action, *State of Maryland v. United States Department of Agriculture*, D.
11 Maryland Case No. 1:25-cv-00748-JKB, *see* Dkt. 139, 139-3, which included declarations from
12 five of the six departments subject to this Court’s injunction (DOE, DOI, Treasury, USDA, and the
13 VA). *See* Dkt. 139, 139-3. The Court promptly ordered Defendants to provide the missing
14 explanation from the sixth relief defendant DoD, Dkt. 140, which Defendants submitted on March
15 19, 2025, Dkt. 141.

16 The Maryland declarations that were prepared for a different lawsuit and the additional
17 Department of Defense declaration neither state nor explain that the relevant defendant agencies
18 have complied with the orders of *this* Court. In particular, nowhere do those declarations state
19 that the six relief defendants have communicated to their probationary employees the information
20 required by this Court—namely, that their terminations have been found to be unlawful by the
21
22

23
24
25
26
27
28

¹ As of the filing of this motion, the Ninth Circuit has not ruled on Defendants’ motion to stay the preliminary injunction pending appeal, notwithstanding Defendants’ request on Thursday March 20, 2025, filed along with its reply, for a resolution by 12 p.m. on Friday, March 21, 2025 and statement that they intended to take the issue to the U.S. Supreme Court by Friday afternoon. Reply in Support of Motion for Stay Pending Appeal, *AFGE v. OPM*, No. 25-1677 (9th Cir. Mar. 20, 2025). On March 24, 2025, rather than waiting for the Ninth Circuit to rule on their pending stay request, Defendants filed a motion for an “immediate” administrative stay and stay pending resolution of the appeal from this Court’s preliminary injunction (or, if the Ninth Circuit denied a stay pending appeal, pending resolution of a certiorari petition) with the U.S. Supreme Court. Application for Stay, *OPM v. AFGE*, No. 24A904 (U.S. Mar. 24, 2025).

1 United States District Court for the Northern District of California, Dkt. 120 at 52:14-21, 53:17-
2 25, and that they are being offered reinstatement to their positions, *id.* at 52:7-10, 53:17-25.

3 Further, Defendants' declarations state that probationary employees at the relevant agencies
4 have indeed been placed on administrative leave rather than reinstated to their positions. Those
5 declarations establish that by March 17, 2025:

- 6 • The VA placed 1,683 previously terminated probationary employees on administrative
7 leave (Engelbaum Decl. ¶¶6, 10 (Dkt. 139-3 at p.60-61 of 67) (VA));
- 8 • USDA placed 5,714 previously terminated probationary employees on administrative
9 leave (Pletcher Rice Decl. ¶5 (Dkt. 139-3 at p.57 of 67) (USDA));
- 10 • DOE placed 555 previously terminated probationary employees on administrative
11 leave (Trznadel Decl. ¶¶10-11 (Dkt. 139-3 at p.7 of 67) (DOE));
- 12 • Treasury plans to place approximately 7,600 previously terminated probationary
13 employees on administrative leave (Norris Decl. ¶¶10-11 (Dkt. 139-3 at p.55 of 67)
14 (Treasury));
- 15 • DoD will place the 364 previously terminated (or "separated" pending termination)
16 employees on administrative leave, the vast majority of whom have not apparently
17 been contacted (and are described as "pending notification"). (Dill Decl. ¶¶5-6 (Dkt.
18 141-1 at p.2 of 3) (DoD)).

19 DOI's declaration failed to provide any information at all regarding how or in what capacity
20 the approximately 1700 previously terminated probationary DOI employees are being reinstated
21 beyond "cancelling termination." Green Decl. ¶¶12-13 (Dkt. 139-3 at p.31-32 of 67) (DOI).

22 On March 20, 2025, Plaintiffs submitted their response to Defendants' submissions to the
23 Court, which explained the ways that Defendants had failed to comply with this Court's injunction.
24 Dkt. 142. Plaintiffs also submitted additional evidence that DOI employees are primarily being
25 placed on administrative leave rather than returned to active service, Dkt. 142, including the
26 following:

- 27 • On March 17, 2025, the Park Superintendent at the Gettysburg National Military Park told the
28 AFGE local union president that "she had received no guidance, plans, or authority from her
supervisors to reinstate terminated probationary employees as required by the District Court's
decision." Cochran Decl. ¶10 (Dkt. 142-1); *see also id.* ¶8 (terminated probationary
employees at Gettysburg National Military Park and the Eisenhower National Historic Site

1 have not received any communications regarding reinstatement). The Superintendent
2 subsequently informed him that there are two lists of previously terminated probationary
3 employees at the National Park Service (“NPS”): a “mission-critical” list of employees who
4 will be restored to active service, and a list of those who will only be restored to
5 administrative leave. *Id.* ¶11.

- 6 • Another terminated probationary employee was first contacted by her supervisor about
7 reinstatement on March 19, 2025, and informed that “I was being placed on indefinite
8 administrative leave. Finally, my supervisor told me that I had the option to remain on
9 administrative leave or to voluntarily resign.” Hoover Decl. ¶7 (Dkt. 142-3).
- 10 • Another employee received an email from her supervisor on March 19, 2025, stating: “You
11 may hear that other terminated probationary employees have been asked to return to the
12 workplace. Only those employees that have been classified by NPS as ‘key to public safety,
13 national security, and critical park operations’ are being asked to return at this time.
14 Unfortunately, your position was not included in this designated group.” Coffey Decl. ¶7 &
15 Exh. B (Dkt. 142-2).

16 On March 20, 2025, Defendants submitted their Notice Filing of Certain Agency Declarations
17 and Redacted Agency Lists of Employees, as ordered by this Court’s March 13, 2025 preliminary
18 injunction. Dkt. 144. Defendants provided spreadsheets from all six agencies, but only three of those
19 addressed whether employees had been returned to administrative leave status or service. Dkt. 144-2
20 (DoD); 144-4 (DOI); 144-6 (VA). Those three agencies confirmed that to the extent they have
21 contacted employees and reinstated them as employed, they have placed them in administrative leave
22 status rather than returned to service. The other three agencies reported only whether employees had
23 been contacted, and told this Court nothing further about the employees’ actual employment status,
24 see Dkt. 144-1 (USDA); 144-3 (Energy); 144-5 (Treasury), despite admitting to this Court in the
25 Maryland declarations filed two days earlier that the employees *had* been placed on administrative
26 leave. Those spreadsheets and two accompanying new declarations (from USDA and DoD) reveal
27 that as of one week after this Court’s injunction, very few previously terminated probationary
28 employees, at only two of the six agencies, have actually been returned to service. Dkt. 144-4

1 (Interior: only 11 of 1875 probationary workers returned to service); Dkt. 144-2 and Dill Decl. (Dkt.
2 144-7) (DoD: only 4 of 178 DoD’s identified terminated probationary employees were confirmed to
3 have been restored to duty); *see also* Dkt. 144-6 (VA: not a single identified VA employee was
4 designated as having returned to duty under the column “On Duty Y/N.”).

5 On March 21, 2025, the Court set a briefing schedule for Plaintiffs to file “a proper
6 motion to compel compliance and/or to seek contempt of court” by Wednesday, March 26,
7 2025, at noon. Dkt. 152.

8 ARGUMENT

9 **I. Defendants Have Failed to Comply and Therefore Are In Contempt Of This Court’s** 10 **Preliminary Injunction**

11 **A. Legal Standard**

12 “The Supreme ‘Court has long recognized that a district court possesses inherent powers that
13 are governed not by rule or statute but by the control necessarily vested in courts to manage their own
14 affairs so as to achieve the orderly and expeditious disposition of cases.’” *Cahill v. Insider Inc.*, ---
15 F.4th ----, 2025 WL 838264, at *4 (9th Cir. Mar. 18, 2025) (quoting *Dietz v. Bouldin*, 579 U.S. 40, 45
16 (2016). “Those powers include the inherent authority of a court to enforce its orders by whatever
17 means.” *Id.* (quotation omitted); *see also United States v. Yacoubian*, 24 F.3d 1, 5 (9th Cir. 1994)
18 (“There is no question that courts have inherent power to enforce compliance with their lawful
19 orders.”) (citation omitted).

20 In particular, courts have “inherent power to enforce compliance with their lawful orders
21 through civil contempt.” *Spallone v. United States*, 493 U.S. 265, 276 (1990). Contempt is available
22 “when the district court finds by clear and convincing evidence that a party ‘violated a specific and
23 definite order of the court.’” *Parsons v. Ryan*, 949 F.3d 443, 454 (9th Cir. 2020) (quoting *Stone v.*
24 *City and County of San Francisco*, 968 F.2d 850, 856 n.9 (9th Cir. 1992). “The contempt need not be
25 willful, and there is no good faith exception to the requirement of obedience to a court order.” *In re*
26 *Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993) (quotation
27 omitted).

28 Upon a showing of a violation, the burden shifts to the defendant to show a defense to such
Pfls’ Mem. iso Mot. to Compel Compliance or to Hold Defs. in Contempt; No. 3:25-cv-01780-WHA

1 non-compliance. *Stone*, 968 F.2d at 856 n.9. A defendant will not be held in contempt if his action is
2 “based on a good faith and reasonable interpretation” of the court’s order. *Dual-Deck Video*
3 *Cassette*, 10 F.3d at 695. “Substantial compliance” is a defense only if a defendant establishes that it
4 has “taken all reasonable steps to comply with applicable court orders, resulting in merely technical
5 or inadvertent violations.” *Coleman v. Newsom*, --- F.4th ----, 2025 WL 851077, at *4 (9th Cir. Mar.
6 19, 2025) (quotation omitted). “[T]he impossibility defense arises only from *literal impossibility* that
7 disables the alleged contemnor from complying with the court’s orders.” *Id.* at *8 (italics in original).

8 **B. Defendants Have Violated, and Continue to Violate, this Court’s Preliminary**
9 **Injunction.**

10 The requirements of the preliminary injunction order are “specific and definite.” *Parsons*,
11 949 F.3d at 454. The Court ordered the six relief defendants to (1) “immediately offer reinstatement
12 to any and all probationary employees terminated on or about February 13th and 14th” and (2)
13 “immediately advise all probationary employees terminated on February 13 and 14 that the notice
14 and termination have been found to be unlawful” by the Court. Dkt. 120 at 52:7-21.

15 Yet the record before the Court clearly demonstrates that the six agencies did not
16 “immediately reinstate” their probationary employees as required by the Court’s order. *Supra* at 4-7.
17 Instead, Defendants’ own declarations and compliance productions expressly admit that they have
18 placed the vast majority of affected employees—potentially more than 15,000 employees in total—on
19 administrative leave. *See* Dkt. 139-3; Dkt. 144-1–144-6. This means those employees have not been
20 returned to their positions or resumed performing their job duties. *See* Coffey Decl. ¶7 (Dkt. 142-2)
21 & Exh. B (“At this time, we are not asking you to return to the workplace.”). Because administrative
22 leave does not “restore the services the preliminary injunction intends to restore,” this defies the
23 Court’s orders. Dkt. 138.

24 Although *counsel* for Defendants attempts to represent to the Court that administrative leave
25 “is merely a first part of a series of steps to reinstate probationary employees,” Dkt. 139 at 1, the
26 declarations submitted by the agencies themselves belie that assertion.

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

1 Treasury: “Upon reinstatement, Treasury will place each affected employee in Administrative
2 Leave status.” Norris Decl. ¶10 (Dkt. 139-3 at p.55 of 67) (Treasury); *see also* Dkt. 144-5
3 (Treasury).

4 VA: “[H]as for all intents and purposes, reinstated all Affected Probationary Employees,
5 placing them in an initial administrative leave status with full pay and benefits.” Engelbaum Decl.
6 ¶10 (Dkt. 139-3 at p.61 of 67) (VA); *see also* Dkt. 144-6 (VA).

7 DOI, in its list of terminated probationary employees, also revealed that nearly all these
8 employees were merely returned to administrative leave. Dkt. 144-4 (DOI).

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

11 DOE: “All Affected Probationary Employees have been placed in a retroactive Administrative
12 Leave status that will continue until their badging and IT access are restored, at which time they will
13 be converted to an Active Duty status.” Trznadel Decl. ¶11 (Dkt. 139-3 at p.7 of 67) (DOE); *see also*
14 Dkt. 144-3 (DOE).

15 USDA: “As part of a phased plan for return-to-duty, upon returning to pay status, the Affected
16 Probationary Employee will initially be placed on paid administrative leave. ... USDA is acting
17 diligently to complete the administrative steps related to notifying the Affected Probationary
18 Employees of their reinstatement, processing the reinstatements for purposes of all relevant USDA
19 record systems, and returning the reinstated employees to duty status.” Pletcher Rice Decl. ¶¶5-7
20 (Dkt. 139-3 at p.57 of 67) (USDA); *see also* Pletcher Rice Decl. ¶¶5, 11 (Dkt. 144-8) (USDA)
21 (same).

22 DoD: The declaration indicates that at least some “[e]mployees with pending termination
23 notices” or “[p]reviously terminated employees who have been reinstated” will be on administrative
24 leave until “their completion of onboarding procedures.” Dill Decl. ¶6 (Dkt. 141-1) (DoD).

25 None of this complies with this Court’s order requiring immediate reinstatement.

26 Moreover, while Defendants sought to convince the Court that reinstatement to duty would be
27 overly burdensome (which this Court correctly rejected in denying a stay, Dkt. 133), that claim is also
28 belied by the actions of some agencies following this Court’s TRO or the District of Maryland court

1 order, which was also issued March 13, 2025. In particular, in the four days between Thursday
2 March 13, 2025 and Monday, March 17, 2025, the Department of Transportation (“DOT”) notified
3 all 775 terminated probationary employees of their reinstatement, and by Thursday, March 20, 2025,
4 all impacted employees were returned to active service. Byrd Decl. ¶12 (Dkt. 139-3 at p.20 of 67)
5 (DOT). By the Monday after this Court’s temporary restraining order, the National Science
6 Foundation brought everyone back. Dkt. 90 at ¶142. If, as Defendants’ counsel claims,
7 administrative leave is just the first step, then there is no valid reason that Defendants cannot
8 promptly take the additional steps that are *required* by this Court’s order.

9 Additionally, Defendants’ declarations and submissions do not establish compliance with
10 Court’s order that the agencies “immediately advise” the probationary employees that their
11 termination has been found unlawful by this Court. As of March 20, 2025, the Department of
12 Defense declaration states that employees have yet to be notified (and “anticipates” they can
13 complete this “by the end of this week”). Dill Decl. ¶5 (Dkt. 144-7) (DoD); *see also* Dkt. 144-2
14 (DoD). The USDA March 20, 2025 declaration states that employees were notified via a press
15 release that was “updated” on March 19, 2025, and that “USDA is in the process of completing a
16 second notification to the probationary employees to be clear that this is based on the MSPB order
17 and this Court’s Order.” Pletcher Rice Decl. ¶¶ 5, 7 (Dkt. 144-8) (USDA); *see also* Dkt. 144-1
18 (USDA). Defendants submitted no declarations from other agencies addressing how they complied
19 with this order to notify employees.²

20 Given that Defendants’ violations of the preliminary injunction are established by
21 Defendants’ *own* declarations and filings purporting to show compliance, and that there is no contrary
22 evidence in the record to date, the “clear and convincing evidence” standard is easily satisfied here.

23 **C. Defendants Have No Defenses to a Contempt Finding.**

24 Defendants cannot contend that their actions are based on a “good faith and reasonable
25

26 ² The VA’s spreadsheet indicates that “recission notices” were conveyed by supervisors to some but
27 not all employees. Dkt. 144-6 (VA). Treasury’s spreadsheet indicates that “Email and Letter notice”
28 was conveyed to employees but provides no detail on the notice content. Dkt. 144-5 (Treasury). The
other agencies’ spreadsheets indicate no information regarding compliance with this order. Dkt. 144-
3 (DOE); 144-4 (DOI).

1 interpretation” of the preliminary injunction, *Dual-Deck Video Cassette*, 10 F.3d at 695, because
2 Defendants have already conceded that placing unlawfully terminated probationary employees into
3 administrative leave status does not comply with this Court’s preliminary injunction. Dkt. 139.
4 Rather than make any attempt to show compliance, Defendants have simply defied this Court’s
5 orders, submitting declarations to this Court that explained why they were *not* complying, Dkt. 127-
6 1-6; why they were complying *only* with a different court’s order and not this Court’s, Dkt. 139-3;
7 and providing incomplete information that does not establish compliance (and to the extent it does
8 provide information, confirms the mass placement of employees onto administrative leave), Dkt. 144-
9 1–Dkt. 144-8.

10 Putting what appears to be the vast majority of affected workers on administrative leave rather
11 than reinstating them to their jobs is not “substantial compliance” that results in merely “technical or
12 inadvertent” violations of the order to immediately reinstate the workers. *Coleman*, 2025 WL
13 851077, at *4. Despite multiple opportunities to update this Court on compliance, several defendant
14 agencies still appear to be using administrative leave status as an attempted loophole for nearly all of
15 the impacted employees, Dkt. 144-6 (VA); Dkt. 144-5 (Treasury); Dkt. 144-4 (DOI), while others
16 still maintain that administrative leave is a stepping stone to reinstatement at some hypothetical and
17 unidentified future date, but show limited progress to this end, Trznadel Decl. ¶11 (Dkt. 139-3 at p.7
18 of 67) (DOE); Dkt. 144-3 (DOE); Pletcher Rice Decl. ¶7 (Dkt. 139-3 at p.57 of 67) (USDA); Dkt.
19 144-1 (USDA); Pletcher Rice Decl. (Dkt. 144-8) (USDA); Dill Decl. ¶6 (Dkt. 141-1) (DoD); Dkt.
20 144-2 (DoD); Dill Decl. (Dkt. 144-7) (DoD). Even if administrative leave could be considered a
21 significant step towards immediate reinstatement (which it certainly is not), “merely taking
22 significant steps toward implementing a decree [still] falls far short of substantial compliance.”
23 *Coleman*, 2025 WL 851077, at *5 (quotation omitted). The substantial compliance defense is
24 available only where a defendant “has achieved *near-total compliance* through the exhaustion of all
25 reasonable efforts,” *id.* at *4 (italics in original)—which Defendants plainly have not done.

26 Having never previously contended that it would be *impossible* to comply with the
27 preliminary injunction (a claim belied by Defendants’ own declarations), Defendants cannot do so
28 now. A defendant asserting an inability to comply with an order cannot merely claim that

1 compliance would be “difficult or expensive,” but must show “categorically and in detail” that
2 compliance would be “factually impossible.” *Coleman*, 2025 WL 851077, at *7-8. But it is not
3 impossible for defendant agencies to reinstate these workers, all of whom were fully employed by
4 Defendants just five to six weeks ago. As the Ninth Circuit held, this is merely a “return to the status
5 quo ante.” Order Denying Administrative Stay, *AFGE v. OPM*, No. 25-1677 (9th Cir. Mar. 17,
6 2025).

7 For all of these reasons, it is fully appropriate for the Court to find that relief defendant
8 agencies are in violation of the preliminary injunction.

9 **II. This Court Should Order Compliance, and If Defendants Fail Again, Hold Defendants**
10 **in Civil Contempt.**

11 Unless Defendants’ March 31, 2025 response to this motion establishes their compliance, or
12 at the very least provides the Court with a date certain by which employees will be restored to service
13 by each agency, this Court should issue an order setting a final compliance deadline of five business
14 days following any order granting this motion, and compelling the relief defendant agencies to
15 comply with the Court’s March 13, 2025 preliminary injunction by that date certain. Plaintiffs also
16 respectfully request that the Court order Defendants to provide the Court with daily compliance
17 reports establishing their progress towards complete compliance.

18 If Defendants are not in compliance with this Court’s preliminary injunction by the date
19 certain set by this Court, Plaintiffs request that the Court find those non-compliant Defendants in
20 contempt, order that those Defendants come into immediate compliance with the preliminary
21 injunction, and impose a civil contempt sanction on each Defendant for each day that Defendant
22 remains out of compliance with the preliminary injunction, in an amount to be determined by the
23 Court.

24 A civil contempt sanction is one that “coerces compliance with a court order or is a remedial
25 sanction meant to compensate the complainant for actual losses.” *Parsons*, 949 F.3d at 455. Where
26 the fine is intended to coerce compliance, a court must consider “the character and magnitude of the
27 harm threatened by continued contumacy, and the probable effectiveness of any suggested sanction in
28 bringing about the result desired.” *Coleman*, 2025 WL 851077, at *11. “Prospective, conditional

1 fines” like those Plaintiffs propose are “the paradigmatic coercive contempt sanction.” *Parsons*, 949
2 F.3d at 455; *see United States v. Ayres*, 166 F.3d 991, 995 (9th Cir. 1999).

3 The Court has already found that the organizational Plaintiffs have suffered irreparable harm
4 from the immediate impairment of public services caused by the unlawful termination of relief
5 defendant agencies’ employees. Dkt. 120 at 57:5-8; 59:5-10; Dkt. 132 at 1, 13. Those irreparable
6 harms have continued as a result of Defendants’ noncompliance, because placing workers on
7 administrative leave “does not restore the services the preliminary injunction intends to restore.”
8 Dkt. 138. Fining the agencies for each day of noncompliance would therefore be appropriate to “spur
9 Defendants’ compliance” with the injunction in order to restore these vital services. *Parsons*, 949
10 F.3d at 457. Imposing a daily sanction is likely to be an “effective and short-lived tool that creates
11 compliance” with the preliminary injunction. *Id.* This sanction would also be appropriately
12 conditional, as it allows each agency Defendant to avoid the imposition of any fine at all by
13 individually coming into compliance with the injunction by the date set by the Court. *See Coleman*,
14 2025 WL 851077, at *9.

15 Finally, if the Court holds Defendants in contempt, Plaintiffs request that the Court award
16 Plaintiffs their attorneys’ fees and costs incurred in litigating this Motion to Compel Compliance.
17 *See e.g., Loc. 28 of Sheet Metal Workers’ Int’l Ass’n v. E.E.O.C.*, 478 U.S. 421, 444 n.23 (1986)
18 (attorneys’ fees are a common contempt sanction to compensate plaintiff for losses sustained in
19 enforcing compliance); *Reno Air Racing Ass’n, Inc. v. McCord*, 452 F.3d 1126, 1130 (9th Cir. 2006)
20 (same); *In re Dyer*, 322 F.3d 1178, 1195 (9th Cir. 2003) (“attorneys’ fees are an appropriate
21 component of a civil contempt award”).

22 CONCLUSION

23 For the foregoing reasons, Plaintiffs respectfully request that this Court grant Plaintiffs’
24 Motion to Compel Compliance or to Hold Defendants in Contempt for their non-compliance with this
25 Court’s preliminary injunction.
26
27
28

1 DATED: March 26, 2025

2 Scott A. Kronland
3 Stacey M. Leyton
4 Eileen B. Goldsmith
5 Danielle E. Leonard
6 Robin S. Tholin
7 James Baltzer
8 ALTSHULER BERZON LLP
9 177 Post St., Suite 300
10 San Francisco, CA 94108
11 Tel: (415) 421-7151

12 By: /s/ Danielle Leonard

13 *Attorneys for Plaintiff Organizations*

14 Norman L. Eisen (*pro hac vice*)
15 Pooja Chadhuri (SBN 314847)
16 STATE DEMOCRACY DEFENDERS
17 FUND
18 600 Pennsylvania Avenue SE #15180
19 Washington, DC 20003
20 Tel: (202) 594-9958
21 Norman@statedemocracydefenders.org
22 Pooja@statedemocracydefenders.org

23 By: /s/ Norman L. Eisen

24 *Attorneys for Plaintiff Organizations*

25 Rushab Sanghvi (SBN 302809)
26 AMERICAN FEDERATION OF GOVERNMENT
27 EMPLOYEES
28 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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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