UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William Alsup, Judge

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, et al.,	)	
Plaintiffs,	)	
VS.	)	**NO. 25-cv-01780-WHA**
UNITED STATES OFFICE OF PERSONNEL MANAGEMENT, et al.,	)	
Defendants.	)	

San Francisco, California
Thursday, March 13, 2025

TRANSCRIPT OF PROCEEDINGS

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Thursday - March 13, 2025 **8:01 a.m.**

P R O C E E D I N G S

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THE COURTROOM DEPUTY: All rise. Court is now in session. The Honorable William Alsup is presiding.

THE COURT: Good morning, everyone.

ALL: Good morning, Your Honor.

THE COURT: Please be seated.

THE COURTROOM DEPUTY: Calling Civil Action 25-1780, American Federation of Government Employees, et al. v. U.S. Office of Personnel Management, et al.

This hearing -- people on the Zoom -- attendees -- no recording, whether by audio or video or screenshot, is allowed. It's prohibited -- it's prohibited.

THE COURT: That was unclear. You said "allowed."

THE COURTROOM DEPUTY: No. No recording.

THE COURT: You said "prohibited." Which is it?

THE COURTROOM DEPUTY: No recording, audio or screenshots, are allowed.

Counsel, please approach the podium and state your appearances for the record, beginning with counsel for plaintiffs.

MS. LEONARD: Good morning, Your Honor. Danielle Leonard, Altshuler Berzon, for the plaintiffs. With me at counsel table are Stacey Leyton and Eileen Goldsmith from

Altshuler Berzon, Norm Eisen from the State Democracy Defenders Fund, and Tera Heintz from the Attorney General's Office of the State of Washington.

THE COURT: Welcome.

MR. HELLAND: And good morning, Your Honor. Assistant United States Attorney Kelsey Helland for the Government.

THE COURT: Thank you. Welcome.

All right. We're here on a motion for preliminary injunction, and we'll hear some argument.

Are there any other items that we need to address? Let's hear first from plaintiffs.

MS. LEONARD: Thank you, Your Honor.

I'm happy to provide argument on the preliminary injunction. I do think that there are some additional items to address that we can --

THE COURT: Well, just --

MS. LEONARD: -- get to after we --

THE COURT: -- let me hear what -- let's make a list of whatever it is you have in mind. I don't want to hear the arguments on them yet, but let's -- tell me what needs to be decided.

MS. LEONARD: We have a pending request that a certain additional declaration be struck from the record that was filed yesterday.

We also --

THE COURT: Is that Noah Peters?

MS. LEONARD: Yes, Your Honor.

THE COURT: All right. So let's -- what else?

MS. LEONARD: There is also the issue of Mr. Ezell's failure to appear in response to your court order that he appear on Monday.

THE COURT: What else? There was some --

MS. LEONARD: That's --

THE COURT: -- somebody from the IRS wanted to come and testify but wanted immunization, which I can't give. So I -- is that person here and wants to testify or is that moot?

MS. LEONARD: So it's not moot, Your Honor. But just for clarification, it wasn't necessarily immunization. It was just a court order enforcing the subpoena to provide --

THE COURT: No, you don't need a court order to enforce a subpoena. That's what the subpoena itself is.

MS. LEONARD: Your Honor, there's --

THE COURT: No. I'm not going to do that.

MS. LEONARD: Okay.

THE COURT: I know what's going on there. Some lawyer wants to be able to say that Judge Alsup has immunized her and given her a blank check to say whatever she wants and not be punished for it. No. If she wants to come and testify, I will hear what she has to say. But, no, you don't need a court order. I'm not going to do that.

MS. LEONARD: Okay. I very much appreciate that clarification, Your Honor, but I also for -- just to clarify, that the person wanted protection against retaliation.

THE COURT: I can't give her that in advance.

MS. LEONARD: Okay.

THE COURT: Do you understand that?

MS. LEONARD: I --

THE COURT: This is a sideshow. Why are you going of into a sideshow?

MS. LEONARD: Because we --

THE COURT: All right. Is she here and does she want to testify?

MS. LEONARD: She's not here today.

THE COURT: Okay, then it's moot. All right. Let's move on.

What else is on your list?

MS. LEONARD: I think that's it, Your Honor.

THE COURT: All right. We will deal with Noah Peters and Ezell's failure to appear in the course of general argument. You get to go first.

MS. LEONARD: Thank you, Your Honor.

Your Honor, many of the issues that are raised by our request for a preliminary injunction have already been addressed in your Court's -- in the orders thus far in the case, including the order resolving the TRO and the recent --

more recent order on granting leave to amend.

And so those legal issues I'm happy to address further if there is a need, but I'm going to try to keep this focused on the issues that are still in play.

And what we have before the Court is record evidence that conclusively establishes that OPM directed the terminations at issue. We have a very unusual circumstance where the Government has not mounted -- has attempted to say they factually dispute that. But as Your Honor is very familiar with the course of events here, have actually withdrawn the declaration by which they were attempting to dispute that. And there is no record evidence on the other side by which they've disputed this fact and the mountain of evidence that Your Honor recognized at the TRO stage.

THE COURT: Well, but then they substituted Noah Peters. So what is the -- your opinion on that and what is the law that backs it up?

MS. LEONARD: So they have not substituted Mr. Peters' declaration, Your Honor, because he -- that testimony was not presented for cross-examination and should not be considered by the Court. It was presented with an *ex parte* motion to stop this hearing today, Your Honor. That is the purpose for which they presented that declaration, to slide it into the record.

Out of an abundance of caution, we asked them to withdraw that declaration because they are not making Mr. Peters

available to be cross-examined, just like all of the other Government witnesses that we tried to present to the Court to have the truth of what has happened come out and that they have refused and blocked from appearing here. They have not presented --

THE COURT: I tend to agree with you on that. And the Government, I believe, has tried to frustrate the Judge's ability to get at the truth of what happened here and then set forth sham declarations to -- a sham declaration -- they withdrew it, then substitutes another. That's not the way it works in the U.S. District Court. I'm going to talk to the Government about that in a minute.

I had expected to have an evidentiary hearing today in which these people would testify. And if they wanted to get your people on the stand, I was going to make that happen too. It would be fair. But, instead, we've been frustrated in that.

But I still -- we're here on a preliminary injunction. And if you want me to just wait until months go by, until we ever get the evidentiary hearing, I will do that. But we do have a record here, and I'd like to hear your views on what relief should be issued today -- T-O-D-A-Y -- today.

MS. LEONARD: Thank you, Your Honor.

We are aligned in wanting that to happen, as well, and believing that these issues are a distracting sideshow, however important the truth is.

The record before Your Honor absolutely supports the issuance of a preliminary injunction today. And the reason is, even if the Peters' declaration's considered, which it shouldn't be for all those reasons, it's not credible. There's a mountain of evidence before the Court that OPM directed it. OPM's actions were unlawful. The plaintiffs have standing. And there is irreparable harm that is occurring every minute. And it is snowballing.

So the real question here, Your Honor, is remedy. And we are happy to go straight to that point rather than repeating some --

THE COURT: All right. Tell me what remedy you want.

MS. LEONARD: Okay. So my colleague, Ms. Leyton, is actually going to address the remedy issues, so I'm going to turn it over to her.

THE COURT: Okay.

MS. LEYTON: Thank you, Your Honor.

As a remedy, we would request vacatur of the OPM action, rescission of the directive to the agencies, and rescission of the terminations that were carried out pursuant to that directive.

OPM issued the directive. Our belief is that the evidence in the record establishes that. There is no credible contrary evidence that it's caused the widespread loss and deterioration of Federal Government services, including, as documented by the

declarations, habitat and conservation harms, national parks harms, veterans' services, a variety of harms that are illustrated by the tens of declarations that we have submitted. And it's causing injury to a variety of plaintiffs.

So the only appropriate relief is to order both OPM to rescind its directives and the agencies to rescind the actions that they took pursuant to the unlawful directive in implementation of that directive.

The voluntary cessation cases, which we cited in our reply brief, provide some guidance. There, the question there is whether the Government has done enough that the Court should no -- no longer need act in order to remedy the relevant injuries.

The first prong of the voluntary cessation injury is about a different subject. It's about whether we can be assured --

THE COURT: All right. Well, let me ask you --

MS. LEYTON: Yes.

THE COURT: -- this.

Are there -- I've read through some of the papers submitted to me that some of the people who were terminated were rehired; is that true?

MS. LEYTON: Yes, Your Honor. After this Court issued an order, some were rehired pursuant to that, and then there has been some public outcry over things like the loss of the nuclear safety people.

THE COURT: All right. But have there been others who were terminated who have not yet been rehired?

MS. LEYTON: Most have not been rehired, Your Honor.

THE COURT: Can you give me some examples?

MS. LEYTON: The examples where they were rehired included the Department of Labor rescinded the terminations that had not taken effect. All of the other agencies that we have documented -- the Forest Service, the Department of Agriculture, the Department of Education, the Department of Labor -- most of the agencies have not rehired people.

The ones where we are aware, where the probationary employees were rehired, were the National Science Foundation, which occurred fairly quickly after this Court's order; the CDC rescinded some of the terminations; the Department of Labor rescinded terminations that had not yet happened; the Department of Agriculture has taken steps but has not yet rescinded the -- has not yet brought people back to work, is our understanding. And that was addressed in some of the declarations that we submitted earlier this week.

THE COURT: All right. Where does it stand with relief being sought from the Merit Systems Protection Board by terminated employees?

MS. LEYTON: The Merit Systems Protection Board initially addressed six individual employees and ordered those employees back to work. Then there was a class of Department

of Agriculture employees -- 6,000 Department of Agriculture employees -- who were ordered back to work. That's what our most recently submitted declarations address.

Our understanding is that those people are not yet back to work. The Office of Special Counsel, Hampton Dellinger, was terminated after that order issued, after he sought that class relief, and so we are not aware that those individuals have actually been brought back to work to restore the services that they were providing, which is the injury that this Court is seeking to redress.

THE COURT: I'm going to have some more questions later about that whole process, but I want to hold up for a moment and stick with the main things.

Okay. What else by way of relief are you seeking today?

MS. LEYTON: That is the key relief.

We would also ask that there be a compliance report from the Federal Government. Our understanding, as this Court noted in its order, is that OPM should have a list of all of the probationary employees who were terminated. And so we would like confidential reports from OPM as to which probationary employees have been brought back to their job so that those Government services can be restored. We would ask for a timeline and for reports to this Court.

Under either our *ultra vires* claim or the APA claim, the appropriate remedy is to restore the status quo. Vacatur is

supposed to unwind the unlawful agency action, and injunctive relief is available under both the APA and our *ultra vires* claim in order to redress the injuries that have occurred.

And in order to do that, this Court needs to be assured that those actions that were taken pursuant to the unlawful order have been fully unwound, meaning that people have been brought back to work so that the services can be restored.

THE COURT: All right. Thank you.

Let's hear from the Government.

MS. LEYTON: Thank you, Your Honor.

MR. HELLAND: Thank you, Your Honor.

I didn't hear counsel address any of the evidence that we submitted yesterday, including contemporaneous statements from agency heads saying that they were the ones who made the decision to terminate probationary employees.

We submitted, yesterday, press releases from the VA, from the Department of Defense, from the USDA, including statements from the Senate-confirmed officials or high-ranking career officials in those departments saying these were tough decisions, but ultimately it's the right thing to do. Or the USDA press release. USDA is pursuing an aggressive workforce optimization plan.

This is set against the backdrop of the February 11th Executive Order, where the President directed agencies to dramatically improve workforce efficiency to shrink

the size of the Federal Government, and the White House fact sheet from that same date, February 11th, that said that shrinking the size of the federal workforce is one of the Administration's top priorities.

At the TRO hearing, Your Honor was, I think, looking for a reason, other than OPM's mandate, that all of these agencies would be taking this same action at the same time. I submit that this backdrop, including the evidence that we submitted yesterday, shows the obvious alternative explanation.

This was a priority for the Administration. The political leadership of these agencies were taking this action themselves. In fact, we previously pointed out to Your Honor that on February 7th, before the OPM communications that plaintiffs have put at the center of this case, the SBA had already started terminating probationary employees. That was reported in the media.

I don't think plaintiffs have yet acknowledged this evidence that these were the actions of the political leadership of these agencies in response to a priority -- a clearly communicated public priority -- of the Administration rather than an order from OPM.

That's first, Your Honor. Your Honor, has -- may I speak to a couple of questions that Your Honor had?

THE COURT: Go ahead.

MR. HELLAND: So, first, Your Honor, with respect to

the MSPB actions, it's my understanding that there's not just one class petition pending, but there are several from almost -- I don't know if it's almost all, but many of the agencies that are here. There's a website, in fact, that lists the class petitions by agency. So many of the agencies involved here are covered by those.

As far as I know, Your Honor, the MSPB has not yet decided whether to accept those as class actions, but those requests are pending. There's still time for that to play out.

And then going to the probationary employees who were reinstated, Your Honor, I think NSF here is the exception that proves the rule. All of these other agencies -- after receiving Your Honor's order, after OPM amended its guidance on March 4th to clarify that it hadn't been and still was not directing terminations -- virtually all of them decided not to bring back the probationary employees that their leadership had decided to terminate. NSF did bring them back. That was within its prerogative do so. But virtually no other agency did. Maybe a couple others. So I think that that actually shows that --

THE COURT: Well, maybe that's why we need an injunction that tells them to rehire them. You will not bring the people in here to be cross-examined. You're afraid to do so because you know cross-examination would reveal the truth.

MR. HELLAND: Respectfully --

THE COURT: This is the U.S. District Court. Whenever you submit declarations, those people should be submitted to cross-examination, just like the plaintiffs' side should be. And we -- then we get at the truth of whether that's what -- your story is actually true. I tend to doubt it. I tend to doubt that you're telling me the truth whenever we hear all the evidence eventually.

Why can't you bring your people in to be cross-examined or to be deposed at their convenience? I said two hours for Mr. Ezell, a deposition, at his convenience. And you withdrew his declaration rather than do that? Come on. That's a sham.

Go ahead. I'm -- it upsets me. I want you to know that. I've been practicing or serving in this court for over 50 years, and I know how we get at the truth. And you're not helping me get at the truth. You're giving me press releases, sham documents.

All right. I'm getting mad at you and I shouldn't. You're trying to do your best, and I apologize.

All right. Go ahead. I do have a question, though. I want you to answer on the --

MR. HELLAND: Thank you, Your Honor.

THE COURT: Just a minute. I'm going to let you respond.

But all of those -- see, they give me so much stuff, I can't find the thing that I wanted now. But the letter that --

that template letter, which I don't have here anymore -- the template letter said to the employees that got terminated that "You may" -- it didn't say "you do," it said, "You may have rights to appeal to the MSP." "You may have" -- I'll quote it now. I have it here. Quote, "You may have a right to file an appeal with the Merit Systems Protection Board" -- may have -- "on the limited" -- limited -- "grounds set forth in 5 C.F.R. 315806."

Well, I looked at that to see what that was, and it is limited to circumstances that existed prior to their employment. Did you realize that when you told me that they had the right to go to the MSPB?

MR. HELLAND: Well, Your Honor, these probationary employees -- many of them -- are going to the MSPB, including on grounds that --

THE COURT: Yes, but the letter -- your own letter says that they have only a right to do so on grounds that things that existed prior -- if the termination was based on something prior to their employment.

MR. HELLAND: I cannot speak to whether the letter that you're referring to is limited in advising these --

THE COURT: Here. I'll let you look at it. It is limited. Take a look at it. The appeal rights that were referred to there just call out that one thing. And when you actually look at the regulation, it has nothing to do with this

case. It's a sham, in my opinion.

Now, it could be that some employees are trying -- it is true that some employees have tried to go to the MSPB. That is true. And some relief -- and, by the way, the President fired the special counsel; true?

MR. HELLAND: I believe that's true.

THE COURT: Yeah, he fired him. So there is no special counsel anymore for the MSPB. And then one of the -- one of the members was either fired or retired.

In the prior Administration in 2017 to 2022 -- or 2020 -- there was not a quorum of the MSPB. Do you remember that? So there was no way to get relief from the MSPB during that four-year period. I have a feeling that's where it's headed now, is to decimate the MSPB, get rid of the special counsel, and these employees will have no recourse even under that limited sentence.

That troubles me. It makes me wonder whether I got misled on saying there was no jurisdiction because I relied on you. You said there was a remedy at the MSPB; and, therefore, I said the unions didn't have subject-matter jurisdiction. I question that. I'm going to ask for briefing on that after today, because I believe I got misled by the U.S. Government on the efficacy of the MSPB.

Yes, in statute theory, it may be. But based on that regulation and based on that letter and based on the

cannibalization of the Office of Special Counsel and the MSPB today, I -- there's not much of a remedy there. Possibly I'm wrong, but I'm going to ask for briefing on it.

But I'll let you give me your response to that concern. Please go ahead.

MR. HELLAND: Thank you, Your Honor.

I am aware that employees have been reinstated pursuant to MSPB orders. I believe there was a widespread stay issued as against the Department of Agriculture that affected a large number of probationary employees at that agency. So I do not think it is the case that the MSPB is without ability to grant relief to affected probationary employees. I think that's happening.

I do not know what's going to happen down the road. And that may well be an appropriate subject for further briefing or reconsideration. But as it stands now, Your Honor, I think the MSPB is capable of granting this relief.

I --

THE COURT: Just a minute. Just a second.

The Administration has -- the member of the -- on March 5th, 2025, board member, Cathy Harris, granted a second 45-day stay request on probationary employees at USDA. So you're correct about that; however, the President has attempted to fire her, but Judge Rudolph Contreras granted summary judgment in her favor and held that the removal by the

Administration was unlawful. Is that correct?

MR. HELLAND: I have no reason to doubt that.

THE COURT: Well, we won't decide the efficacy of the MSPB today, but we're going to have to look at that again. And maybe we do have subject-matter jurisdictions after these unions if there's -- if the channel through which Congress sought to move those grievances by employees has been decimated.

MR. HELLAND: Your Honor, briefly.

THE COURT: Yes.

MR. HELLAND: The unions, of course, would go through the FLRA, not the MSPB, so --

THE COURT: Not the unions, yes, but the employees --

MR. HELLAND: Sure.

THE COURT: -- the employees who they represent.

Okay.

MR. HELLAND: May I respond to Your Honor's concerns about the declarations and --

THE COURT: Please, yes. I'd like to hear it.

MR. HELLAND: Thank you.

Your Honor, I respectfully disagree that we have submitted false evidence or have withdrawn evidence in an attempt to frustrate Your Honor's efforts to find the truth.

We prepared the Ezell declaration within the two days that we had to respond to the TRO thinking that that would be an

authoritative statement of the agency's position of what happened.

If you review that declaration again -- I understand that it's stricken. I'm not relying on it for its truth. But if you review that declaration again, he says, in the opening paragraph, that the materials reflected therein were based on his personal knowledge as well information provided to him. We were presenting it in his capacity as the acting director of that agency.

The paragraphs in that declaration talking about the February communications do not say that Mr. Ezell personally said anything or took any action. Those paragraphs are framed as coming from OPM. That's in contrast to the January 20th memo that he did personally author and send out. So, again, we put that forward in the TRO context on expedited briefing.

We understood coming out of the TRO hearing that Your Honor wasn't interested in the agency's summary of what happened. Your Honor wanted to know what was actually communicated on the February 13th call or February 14th call.

Well, Mr. Ezell was not on those calls. He was not on the February 13th call at all. And from what we understand, he was at the beginning of the February 14th call and then left. So he is not the person with firsthand knowledge of those events. Others are, and we -- I -- I expect Your Honor will be frustrated to hear this, but we continue to look forward to

presenting our case in terms of what was actually communicated on those calls.

But this is an APA case, Your Honor. There's a procedure for generating an administrative record, which we are working on and have started to submit to Your Honor, including the February 12th email, which I understand was basically read as a script on the February 13th call.

THE COURT: You know, your Noah Peters declaration -- nowhere does he -- does he ever say he was personally present during the call?

MR. HELLAND: Noah Peters is on the list of participants of the February 13th call that we shared with plaintiffs' counsel.

THE COURT: That's not the same thing. Does he say under oath that he was on the call? No.

MR. HELLAND: Honestly, Your Honor, I thought that he did. And it may not be in that declaration.

THE COURT: Oh, maybe I read it too quickly.

MR. HELLAND: So, Your Honor, we are in the process of compiling the administrative record. The procedure in APA cases is for the agency to prepare a record, for gaps in that record to be litigated, to be supplemented by oral testimony if necessary. The Government believes that that's the procedure to follow here.

We're not trying to frustrate the ability to find the

truth. We think that this is an APA case. And the way the record is developed in APA cases is through the process that I just described.

THE COURT: Yes, but you haven't given me any administrative record, and I -- so I have to go based -- they need emergency relief.

And I have a few words to say about administrative records. Would you like to hear those?

MR. HELLAND: I will just submit, Your Honor, that we have said the things that we filed yesterday as documentary evidence will be in the administrative record, including the February 12th email, the February 14th email, the FAQs that followed those. This is the essence of the administrative record that is being compiled.

THE COURT: I'm going to tell you, I think this is a good point because this is a recurring problem in APA cases -- about the administrative record. The rest of -- I see people in the gallery -- their eyes are glazing over because they hear something called "administrative record" and it just puts them to sleep. Well, it's exceedingly important.

It is generally true that under the Administrative Procedure Act, if you sue to set aside agency action, the agency provides the record on which the decision was made, and then the Court looks at that and decides -- rules according to the law based on that record. And there -- that is the normal

rule. And sometimes you get to go outside that and take additional discovery, but most cases are decided on the administrative record.

Now, back when I was in the Justice Department -- this was in '78, '79, and '80, in the Stone Age -- I was in the Solicitor General's Office. I reviewed a lot of administrative records. And then, in those days, everything that was before the agency or at least those people -- not just the decision-maker but the people reporting to the decision-maker -- even the bad memos -- those -- or deliberative memos -- those were all included. Now, as time goes on, though, that became inconvenient to very -- in future years.

And to fast-forward, in recent years, sometimes the Government lawyers present a sanitized record. It only has the good stuff that supports the agency action. It omits all of the bad stuff.

You think I'm making this up. It's absolutely true.

Now, whenever President Obama was President, I had a case. And it just -- and there was a question about the adequacy of the record. And it turned out that your department, the Justice Department, had actually put out a good memo that required the agencies to include much more than just the stuff that the decision-maker saw. I don't know, that's probably been deep-sixed by now. But that was the rule back around

2008. And so that gave a little bit of sunshine into what had actually happened in the agency.

But after that, we went back to the Dark Ages, and there's nothing -- these agency records are just sanitized to allow the decision to be upheld with only the documents that support it and none of the other material that would undercut the agency action that was in play in the agency at the time the thing was being decided.

So I say to you, I have -- I want you -- if you're going to give me an administrative record, let's do an honest one and a complete one and not one that is sanitized. That's my advice to the Government.

And that history, I believe you'll find, is actually 100 percent true as I have -- so I have some frustration with administrative records. And I'm skeptical of them, because I think they go to some trouble to sanitize and not give me the true administrative record.

Okay. But right now, even if you gave me a perfect administrative record, you have it. And these people over here want immediate relief. And they are entitled to get a ruling on the record that I do have. So that's the answer on that part.

MR. HELLAND: May I speak to that briefly, Your Honor?

THE COURT: Yes, you may. Please go ahead.

MR. HELLAND: We, as you know, have offered to

stipulate to continue the TRO pending further development of the factual record.

So, furthermore, our position being that OPM didn't and hasn't been, since the TRO, direct these terminations. We don't see the urgency demanding relief that plaintiffs are putting forward. We think that the Court's order from the TRO is clear, that agencies have been complying with it, and that provides time for further factual development.

THE COURT: Well, that's not quite true. I don't quite agree with what you just said.

All right. What else would you like to say?

MR. HELLAND: I want to pause just for one more moment on Acting Director Ezell, just because I think the agency's reasons for not wanting him to submit to a deposition are broader than just the limited facts of the TRO that we put forward.

Every Presidential Administration in modern history has jealously guarded their agency heads against being forced to give testimony. That's since the *Morgan* case about 80 years ago now. So that is not something unique to this Administration. It is not something about Secretary Ezell's testimony. That is just an Executive Branch prerogative to --

THE COURT: Is he a secretary?

MR. HELLAND: He's an acting director.

THE COURT: Director -- acting director -- but he's

not a secretary of the Department?

MR. HELLAND: No, correct.

THE COURT: Okay.

MR. HELLAND: But I think he is the highest-level official at that Department.

THE COURT: At that agency?

MR. HELLAND: At that agency.

THE COURT: Yes, okay. All right.

MR. HELLAND: The only other thing, then, I --

THE COURT: Yes, but you chose to submit his declaration.

MR. HELLAND: Yes, in the context of the TRO.

THE COURT: And then you said, "No, but he can't be cross-examined." So you must submit -- you can't just give me -- you can't just say, "Here's the declaration. You have to accept it without question whenever there is a question."

MR. HELLAND: Absolutely, Your Honor. And so the -- as you know, the purpose of a TRO is an expedited process. Both sides put together what evidence they can in a very short time frame. And then the period between the issuance of the TRO and the further preliminary injunction is supposed to flesh out the facts.

So that is the stage that we are in now. We're compiling the administrative record. We've publicly filed several of the documents that would go into that administrative record.

Our purpose, again, for submitting the declaration for the TRO was to submit an authoritative statement from the agency in very expedited circumstances. But it is not supposed to shield the agency from review of its actions. It's to articulate and provide some evidence for a TRO decision on a couple days' notice.

I note my opposing counsel discussed relief very briefly, Your Honor, and I want to speak to that.

THE COURT: I want to hear your argument. Please go ahead.

MR. HELLAND: Thank you.

Well, so, first of all, again, we have stipulated that the TRO can continue as a preliminary injunction as is. So we agree already, to that extent, of further relief.

I don't think that ordering the rescissions of the terminations is an appropriate thing either on this record or for Your Honor to be granting. Again, the MSPB, the FLRA -- those administrative agencies have the authority to stay terminations, to order reinstatements, to issue that form of relief. I don't think that that's appropriate there. I certainly don't think it's appropriate when the agencies that were added as parties two days ago have not had the chance to file any briefing or to -- plaintiffs have not even moved for relief against those new defendants. They moved against OPM two weeks ago.

So I think there's a further process that would have to happen, which would include briefing on the authority for Your Honor to even issue that relief.

To the extent any further relief beyond the TRO is appropriate in the near term, we would submit that it should be limited to something like each agency performing an independent review of the decisions previously made, reaffirming that they were done under the agency's authorities, not OPM's direction. I think that's more appropriate and consistent with Your Honor's authority and jurisdiction as well as the factual record here.

THE COURT: Okay.

Response?

MS. LEONARD: The terminations were not done at the agency's discretion, and they were not done properly in accordance with the law on the basis of performance, Your Honor.

The suggestion that opposing counsel just made, that somehow the agency should be able to rereview the decision to fire probationary employees on mass at the direction of OPM is somehow an appropriate remedy is divorced from reality and the record that's before this Court.

But to address some specific -- to pointedly address some of the specific points that -- and quickly -- that opposing counsel made, there was an exchange about appeal rights to the

MSPB. And I think this is incredibly important, Your Honor, because from the very first moment -- on the first day of this Administration -- that OPM started directing agencies through the January 20th memorandum to collect and list -- something that had never happened before in the history of this country -- compile and submit to OPM a list of all your probationary employees so you can get ready to fire them. They told them they don't have appeal rights. "We are firing them because they don't have appeal rights." That's how insidious this action was.

THE COURT: Read that -- where do you get that? I'm trying to remember where I saw that before. Read that to me again.

MS. LEONARD: Yes. That's in the January 20th memo, which was originally attached, Your Honor, as an attachment to the now withdrawn Ezell declaration. But they've just resubmitted all the documents that he submitted without a declaration. But we don't contest that that's actually what --

THE COURT: Read to me the sentence you're talking about.

MS. LEONARD: [As read]:

> "Probationary periods are an essential tool for agencies to assess performance. Employees on probationary periods can be terminated during that period without triggering appeal rights to the Merit

Systems Protection Board."

That is Mr. Ezell --

THE COURT: Is that an exact quote?

MS. LEONARD: That is an exact quote.

THE COURT: From the January 20 memo by who?

MS. LEONARD: By Mr. Ezell, OPM, to the agencies. This has been the plan from the very beginning: Fire them all because they can't appeal, Your Honor. That is what OPM has consistently said to the agencies in every single communication that's before this Court.

It was not just a February 13th phone call and a February 14th CHCO meeting. And they say, "Oh, but Mr. Ezell was not on that." We don't know if that's true or not, Your Honor. We would like to get to the truth. But what's in front of this Court is every single communication, including the ones that they have now belatedly tried to say are the administrative record.

They have said: Terminate everyone who's not mission critical because they cannot appeal. That's the plan. That's what OPM has done here, and that is profoundly --

THE COURT: How many employees -- probationary employees -- were terminated on or about February 14th?

MS. LEONARD: We don't know, Your Honor. We believe --

THE COURT: Give me an estimate.

MS. LEONARD: I believe it is far higher than 10,000 employees, Your Honor. We know that at least by February 14th, more than five agencies had terminated. On February 13th, the VA terminated.

And the press releases that they have cited -- they were in our complaint, Your Honor. He said we are not addressing them? They were in our complaint, Your Honor, because they actually show that this was a centralized effort.

The VA press release that they're saying shows agency discretion says, I quote [as read]:

> "The dismissals announced today are part of a government-wide Trump Administration effort to make agencies more efficient, effective, and responsive to the American people."

OPM told them to do this, Your Honor. And we have proven it on the record. They have not put anything in, in response to that, other than press releases that actually support plaintiffs. It's profoundly unlawful, Your Honor.

And with respect to the representations regarding the -- that's the importance of the appeal rights. It's twofold. It's both a factual matter to show how centralized this was and the reasons for it, which are incredibly disturbing, frankly, for the U.S. Government to be terminating these employees because they have no appeal rights.

But also it goes straight to the point that Your Honor is

raising about channeling. And we welcome -- and I was prepared here to try to -- try to -- try to beg for one more chance, Your Honor, to address this issue, because I think it is absolutely right -- what Your Honor raised at the TRO hearing -- the question about these mass actions with respect to so many employees.

Is that really what Congress intended when it set up these agencies? And now that it is, these agencies are being dismantled. And, by the way, the President has fired the members of the FLRA too. They say, "Oh, the unions can go to the FLRA." The President fired them too.

THE COURT: How many members -- I didn't know about that part.

MS. LEONARD: It's --

THE COURT: How many members are there on the FLSB or whatever it is?

MS. LEONARD: So the MSPB I believe the President removed one so that there is not a majority -- so it's a one-one split. And that --

THE COURT: Well, that person --

MS. LEONARD: Got put back.

THE COURT: -- demoted them but did not remove them. Demoted them from vice chair; right?

MS. LEONARD: But one was removed. That's now tied up. And the Government is fighting in the D.C. Circuit to off

them.

And then the FLRA, I believe it's also one additional member has been -- has been --

THE COURT: And one --

MS. LEONARD: I'm looking at my cocounsel, Mr. Eisen, who might have better facts than I do on this.

But one member has been removed by the President to stymie that agency from actually doing anything, Your Honor. And they're fighting that in the D.C. Circuit. They're opposing the orders that have -- that is an unlawful order. They're fighting those orders to put those people back. The OSC is gone.

THE COURT: All right. One out of three? One out of five? How many -- how many?

MS. LEONARD: Three. One out of three removed.

THE COURT: All right. And this is the FL --

MS. LEONARD: RA. The Federal Labor -- the Federal Labor Relations Authority, Your Honor, which is the board set up by the FSLMRS, which is the labor relations statute for federal employees. So they removed them.

The OSC is gone. The pattern is very clear. This is all centralized action, of course, from this Administration. The pattern is clear to -- there is no channel, Your Honor. There is no channel.

THE COURT: All right. But let me ask you, Congress

did pass the Reduction in Force Act, which, by definition, contemplates that there can be a reduction in force within an agency; isn't that true?

MS. LEONARD: That's part of this -- there are reduction in force statutes as part of the CSRA, absolutely. But they're ignoring them and eviscerating them, Your Honor.

THE COURT: Well, I know you say they have not been followed. And possibly that's true. But I wouldn't want anyone listening to this call on the Zoom to think that this case is about stopping the termination of anybody from the Government, even when it's in the hundreds, because there is a statute that allows that, called the Reduction in Force Act, if the steps that are required by statute are followed.

MS. LEONARD: Absolutely, Your Honor.

THE COURT: That's true; isn't it?

MS. LEONARD: It is for agencies to decide to do reduction in force. And what we have here absolutely, Your Honor, on the record before the Court, is not agencies' decisions to terminate anything. It's OPM's. And that's a question for another day, whether OPM can order RIFs. That's a question for another day, Your Honor. And maybe that day is coming very soon. OPM cannot order those either. But agencies can make those decisions. But OPM here ordered this.

THE COURT: All right. Maybe. But if it's done right, there can be a reduction in force within an agency.

That has to be true.

MS. LEONARD: There's -- absolutely. There's a statute that allows it and regs that set up the many steps, including notice and notice to states and local governments who are affected. There are many steps. And it requires -- it takes years of planning, actually, Your Honor. It can't be done in a day.

THE COURT: It can't be done in one day, but there's a lot of ground between one day and years. So I -- okay. But that, as you say, is for another day.

But Congress itself has said you can have -- an agency can do a reduction in force if it's done correctly under the law. So I -- I want everyone to be aware of that.

Your lawsuit is not challenging that proposition. Your lawsuit is saying these terminations were in violation of other laws and *ultra vires*, and that's a separate point.

All right.

MS. LEONARD: That is right.

THE COURT: What else would you like to say?

MS. LEONARD: Just one second to make sure I'm covering all the -- I did want to clarify one other factual point that I feel like we, in our TRO papers, perhaps didn't present as clearly as we could have to the Court. And I think it's incredibly important and don't want it to be lost.

It's not just employees who were hired right out of

college or at the outset of their careers who were affected by these unlawful terminations. Anyone who received a promotion is a probationary employee. Directors of entire departments were gone in a day, Your Honor.

This action by OPM made swiss cheese of the federal agencies at every level. That is why that is directly connected to the level of harm that this is causing. Because it's not just new folks -- they can go find a career somewhere else -- it is -- they're the future of the American workforce, and I don't mean to undermine their importance. But it is people with decades of federal service. The most experienced people. If they have been promoted from acting director to director of their particular division, they were gone. That is --

THE COURT: All right. You mean --

MS. LEONARD: -- the problem here.

THE COURT: -- they don't go back to their original position? They're just terminated?

MS. LEONARD: They're gone, Your Honor, within hours.

THE COURT: How long were they terminated?

MS. LEONARD: Turn in your keys.

THE COURT: Even though they worked for 30 years?

MS. LEONARD: Even though they worked for 30 years, Your Honor. That is why the harm is so widespread and so profound. It is -- this action was intended to cripple these

agencies, and that is what it has done. And it is profoundly problematic.

And we didn't want that to be lost on the Court, because I think, in our TRO papers, we didn't -- we didn't make that as prominent as we, perhaps, should have. And that is absolutely established in the record here.

"Probationary" means -- and the formal director of OPM, who submitted a declaration in support of this preliminary injunction -- it's in that dec., as well, and other declarations we've submitted in support -- it's anyone who was new to their position, Your Honor, not just to the Federal Government.

THE COURT: I did not appreciate that point. Thank you.

What else would you like to say?

MS. LEONARD: One more point of clarification about the OSC because I think there's been a further implication, perhaps, from something that opposing counsel said. Only the OSC, who isn't there anymore --

THE COURT: OSC?

MS. LEONARD: Office of Special Counsel.

THE COURT: Oh, all right.

MS. LEONARD: -- can initiate a stay request with the MSPB. Only the OSC can do that. The only class stay request -- "stay" meaning reinstate the employees pending

resolution -- the only class one that was actually initiated by Hampton Dellinger before he was fired was U.S. -- well, during his period of reinstatement before he was then fired again by the D.C. Circuit -- was with respect to USDA.

He did not -- the other six -- the other five agencies of the original six employees -- there were not class requests that had been filed yet. So the idea that those are pending before the MSPB is not correct, Your Honor. There were no class stay requests.

And with respect to the USDA, I want the record to be very clear about what's happened. They are not complying with the MSPB's order to reinstate. What they did was they put people back on pay -- they just announced this, I believe, yesterday, in a press release, a week after the reinstatement order -- they put people back on pay, but they haven't put them back in their position.

So what they've done is they're waiting out the 45 days. It's a temporary stay. It's going to expire. There's no OSC to ask for it to be extended.

This is the announcement. This is the Forest Service directly to the union: On March 5th, the MSPB issued a 45-day stay of the termination of U.S. Department of Agriculture probationary employees.

By Wednesday, March 12th, the Department will place all terminated probationary employees in pay status and provide

them with backpay.

That's great. Happy about that.

The Department will quickly develop a phased plan for the return to duty. And while those plans materialize, all probationary employees will be paid.

We do not believe that they are going to return any of these employees to actual service, Your Honor. They certainly haven't yet. This is the record before the Court. They haven't restored the services, Your Honor, when they were directly ordered by the MSPB to reinstate those employees to service.

THE COURT: In the Office of Special Counsel, are -- they got rid of Dellinger; right?

MS. LEONARD: Yes.

THE COURT: But are there other acting special counsels that are --

MS. LEONARD: There's been one appointed, Your Honor, and he is the head of the VA. The head of an agency is the new whistleblower protector.

THE COURT: The head of the what?

MS. LEONARD: The Veterans Administration.

THE COURT: Has been moved over to be -- and is no longer the head of the VA?

MS. LEONARD: No. He's also still the head of the VA.

THE COURT: All right.

MS. LEONARD: I don't understand how it could possibly be that the head of the defendant agency is the person who is supposed to protect the whistleblowers, Your Honor. But that is what this Administration has done.

THE COURT: Are there subordinate lawyers in that unit?

MS. LEONARD: In the OSC?

THE COURT: Yeah.

MS. LEONARD: I am sure that there are. He -- I'm sure the OSC has people who work for him. They've probably actually had all of their probationary employees fired too, just like the FLRA did and the MSPB did.

But setting that aside, Your Honor -- that's true --

THE COURT: You don't know that --

MS. LEONARD: I --

THE COURT: You're just guessing at that.

MS. LEONARD: They're on the list. They're on the list of people who had probationary employees, but -- and they're on the CHCO directive from February 14th. There's a representative of the small agency counsel -- the FLRA, MSPB, OSC -- they're all part of that.

THE COURT: Well, are they -- were there -- were there lawyers who were non-probationary working in the unit?

MS. LEONARD: I am sure that there are, Your Honor.

THE COURT: All right.

MS. LEONARD: I'm sure that there are. But they don't have the authority to move for a stay. Only the OSC has that.

THE COURT: So you're telling me that a probationary employee in some random agency cannot directly go to the MSPB? Is that true?

MS. LEONARD: They can. They can file their individual -- they can file their individual action against their employer agency at the MSPB. Some of them can. Some of the probationary employees -- this is very complicated. It's -- who has the appeal rights where is exceptionally complicated, depending on the category of service. Some of them can only go to the OSC. A big portion of them can only go to the OSC.

THE COURT: Well, what's the difference between those that can only go to the OSC versus those that can go straight to the Merit Systems Protection Board?

MS. LEONARD: It depends on the category of service, Your Honor, and the reason that they're invoking. And the best -- the best place that I have seen summarizing this -- people have been writing a lot of material about -- to try to explain this. The best place is the OSC intake -- it's like -- as a union lawyer, I'm very familiar with the unfair labor practice form at the NLRB where you check the boxes. The OSC has the same thing.

And so the OSC has an intake form where -- it's like

three pages long -- where you have to identify all the sort of ins and outs whether you qualify to go to the OSC or not. So I cannot recite that here today, Your Honor, full candor. It depends on whether you're in competitive service or in what category and what you're basing your allegations on, if it's discrimination or not. It's an incredibly complicated sort of if then, who gets to go there or not. Some -- at a highest level, some can go to the OSC, and that's their only avenue, and now that avenue is gone.

We are very happy to brief this further if Your Honor would like further briefing on -- particularly as you've invited on the channeling issues, whether it's at this point. We obviously do not want to delay any injunction. And what I would -- we would propose is there is no need, Your Honor, for purposes of this preliminary injunction, to reach the channeling issue, even with respect to the unions.

We would invite and ask for another chance to convince Your Honor that the channeling argument that was presented by the Government and the representations were not correct. And that the claims against OPM are not channeled, Your Honor, even for my union clients. And we would invite another chance to convince Your Honor of that.

But for purposes of the PI today, the other organizations and the State of Washington have standing -- irreparable harm -- more than enough to issue that PI without reaching and

making further law with respect to the channeling.

I would -- one further point about that, Your Honor. I do believe that your TRO order actually extends the law further than it has been in the Ninth Circuit. Not just applying it, but extends it. No case has ever channeled a claim against OPM over a Government-wide rule in the Ninth Circuit. No case has ever channeled a procedural APA claim in the Ninth Circuit. Your TRO order was the first, and we would respectfully welcome another chance.

And we don't want that TRO decision to take on a life of its own, Your Honor, and we would welcome another chance to try to convince you that these claims are not channeled. Because, as Your Honor has indicated here today, the channel's gone, Your Honor.

THE COURT: Let me give the defendants a chance to respond. You had a long talk there.

Go ahead. Please, let's hear from the defense.

MR. HELLAND: Thank you, Your Honor.

Taking the very last point first, I think the "in the Ninth Circuit" caveat there is doing a lot of work. There's of course many decisions from outside the Ninth Circuit, including the D.C. Circuit, the Federal Circuit, the First Circuit. These have been, you know, addressed in the papers on the TRO briefing.

To the extent Your Honor is reconsidering its initial

channeling decision, we agree further briefing would be appropriate.

THE COURT: Yeah, that's -- I'm not going to do it today, but I want to raise the issue and ask for briefing. So I agree with you on that.

Go ahead.

MR. HELLAND: Thank you.

I come back to a point I made at the outset. The press releases that we've submitted show that the independent political appointment -- the political leadership of these agencies were taking credit publicly for the decisions.

We do not deny that OPM had a role in coordinating these efforts. I think the documents that we've put forward are very clear about that.

But plaintiffs' theory of this case isn't just that OPM coordinated this; it's that OPM ordered it. That the agencies didn't think that they had the authority not to do it. Well, if that's the case, why would the leaders of these agencies be issuing press releases the same day or shortly after these decisions were made? They wouldn't. The reason --

THE COURT: Well, I would like to see some depositions taken on that, but you stonewalled me on it. I would like to know -- maybe -- maybe the press release was an orchestrated thing. It wouldn't be the first time.

MR. HELLAND: It starts to sound a bit

conspiratorial --

THE COURT: Yeah.

MR. HELLAND: -- to think that these press releases coming out of multiple agencies when, again, the Administration has just put out Executive Orders and fact sheets making clear that this is an agenda priority for the Administration.

I think the pretty obvious alternative explanation is everybody knew the new Administration was prioritizing this. And the political appointments wanted to comply with that Administration priority.

THE COURT: Okay.

MR. HELLAND: Finally, Your Honor, the additional documents that we put forward, which, again, will be part of the administrative record in this case, including specifically the February 12th email, I invite you to look closely at the language of that. I think you'll see it is not an OPM order. The language of that reflects that OPM had asked agencies to prepare lists and asked them, with a please, "Separate those that you know you want to separate by a date certain." Right? It put it to the agencies, "those that you know you want to separate."

This was not an order from OPM. The Administration record will show, and it does show on the record that we've put before Your Honor, that OPM was coordinating this, was asking for information, was asking that action be taken by certain times,

but the decisions on these employment actions were made by the agencies and were fully endorsed by their political leadership.

Thank you, Your Honor.

THE COURT: Okay. Give me a moment.

The Court is going to grant some additional relief by way of preliminary injunction. I want to give some background.

Congress, in the Reduction in Force Act, makes it clear that an agency can engage in a reduction in force. So I want everyone to be completely aware that if an agency decides to do a reduction in force, it can do so, so long as it complies with the several requirements of the Reduction in Force Act.

So this should not -- the words that I give you today should not be taken as some kind of criticism that a wild and crazy judge in San Francisco has said that the Administration cannot engage in a reduction in force. I'm not saying that at all. Of course, if it does, it has to comply with the statutory requirements, the Reduction in Force Act, the Civil Service Act, the Constitution, maybe other statutes. But it can be done if it's done in accordance with the law.

This case is not about that. What this case is about is really an attempt to do a reduction in force, but to force it through the OPM, Office of Personnel Management, to have the OPM direct agencies to terminate probationary employees as an easy way to get a reduction in force underway.

Because, as counsel pointed out, its own memo says they

don't have appeal rights -- probationary employees don't have appeal rights -- and so let's get started with the process by just terminating all probationary employees except those that are mission critical.

Now, I went through the evidence last time. I'm not going to go through it quite as extensively, but I am going to touch on some of the points. Something new came in by the -- from the plaintiffs. It involved the Forest Service.

On February 13th, 2025, a Forest Service briefing paper from Human Resources Management at the Forest Service says this -- or said this -- quote [as read]:

> "All" -- that's spelled A-L-L -- "All federal agencies, including the Department of Agriculture, were notified on February 12th, 2025, by the Office of Personnel Management to terminate all employees who have not completed their probationary or trial period."

That then led to the termination of a lot of people, but one in particular I'll give as an example. Leandra Bailey was a physical science info specialist in Albuquerque. In September of last year, she had received a performance review in which she was, quote, "fully successful," closed quote, in every category. Not just some; every category. On February 13th, she was terminated using the OPM template letter.

In addition to directing these terminations, OPM gave a proposed letter. The letter said -- I'm reading from it -- Memorandum for Leandra Bailey, February 13, from Deedra Fogle, Director Human Source Management, U.S. Forest Service. This is just one sentence, quote [as read]:

"The agency finds, based on your performance, that you have not demonstrated that your further employment at the agency would be in the public interest," closed quote.

This despite the fact that her most recent review was fully successful in every category.

Now, how could it be, you might ask, that the agency could find that based on her performance when her performance had been stellar? The reason that OPM wanted to put this based on performance was, at least in part, in my judgment, a gimmick to avoid the Reduction in Force Act. Because the law always allows you to fire somebody for performance.

So OPM was thinking: Okay, if we tell them to use this template letter, then that will give us an argument against the Reduction in Force Act or maybe some other act -- Civil Service Reform Act.

Now, this -- what I'm about to say is not the legal basis for what I'm going to order today, but I just want to say, it is sad -- a sad day -- when our Government would fire some good employee and say it was based on performance when they know

good and well that's a lie.

Excellent in all -- fully -- what was the phrase? I don't want to misstate it. "Fully successful in every category," yet they terminate her based on performance. That should not have been done in our country. It was a sham in order to try to avoid statutory requirements.

It also happens to be that whenever you fire somebody based on performance, then they can't get unemployment insurance. So that makes it even worse, doesn't it?

And then it makes it even worse because the next employer is going to say, "Well, have you ever been terminated based on performance?" They're going to have to say, "Yes," to thousands of people.

Now, the reason this is not a basis for the ruling today is that the -- that is a grievance that goes to the employee, and the -- and we still haven't decided -- I mean, I have decided but I'm going to take another look at it, as to whether they're channeled -- that grievance has to be channeled through the Merit Systems Protection Board.

But it is illustrative of the manipulation that was going on by OPM to try to orchestrate this Government-wide termination of probationary employees.

I'm going to go back to what I read [as read]:

"All" -- this is from the Forest Service -- "All federal agencies, including the Department of

Agriculture, were notified on February 12th by the Office of Personnel Management to terminate all employees who have not completed their probationary or trial period."

Now, there's more evidence than that. Some of that I went over last time.

Department of Energy sent a termination letter saying [as read]:

"Per OPM instructions, Department of Energy finds your further employment would not be in the public interest."

Another termination letter from the Bonneville Power Administration per OPM instructions, Civilian Personnel Policy Counsel, Department of Defense in accordance with direction from OPM and before Congress, Chief Human Capital Officer for the Veterans Administration testified under oath recently, February 25th [as read]:

"QUESTION: So nobody ordered you to carry out these terminations? You did it on your own?

"WITNESS: There was direction from the Office of Personnel Management, the USDA."

Quote, [as read]:

"Agencies were directed to begin providing termination notices."

So the Court finds that OPM did direct all the agencies to

terminate probationary employees with the exception of mission-critical employees. The Court rejects the Government's attempt to use these press releases and to read between the lines to say that the agency heads made their own decision with no direction from OPM.

The relief that's going to be granted as is follows:

The temporary restraining order well be extended. In addition, relief defendant Veterans Administration shall immediately offer reinstatement to any and all probationary employees terminated on or about February 13th and 14th, 2025.

This order finds that all such terminations were directed by defendants' OPM and Acting Director Ezell and were unlawful because OPM and Ezell had no authority to do so.

Further, relief defendant Veterans Administration shall cease any and all use of the template termination notice provided by defendant OPM and/or Acting Director Ezell to the VA and to other agencies on or about February 13th and 14th and shall immediately advise all probationary employees terminated on or about February 13 and 14 that the notice and termination have been found to be unlawful by the United States District Court for the Northern District of California.

Relief defendant Veterans Administration shall cease any termination of probationary employees at the direction of defendants OPM and Acting Director Ezell.

To repeat, this order holds that OPM and Acting

Director Ezell have no authority whatsoever to direct, order, or require in any way that any agency fire any employee.

Now, given the arguments and the facts in this case, namely, that defendants have attempted to recast these directives as mere guidance, this order further prohibits defendants from giving guidance as to whether any employee should be terminated.

Any terminations of agencies' employees must be made by the agencies themselves, if made at all, and must be made in conformity with the Civil Service Reform Act and the Reduction in Force Act and any other Constitutional or statutory requirement.

In seven calendar days, relief defendant VA shall submit a list of all probationary employees terminated on or about February 13th and 14th with an explanation as to each of what has been done to comply with this order.

Now, this order so far has only mentioned the Veterans Administration, but the same relief is extended -- and I'm not going to repeat it, but I rely on the good faith of the Government -- I'm extending the same relief to the Department of Agriculture, Department of Defense, Department of Energy, Department of the Interior, Department of Treasury. And those are the ones where I believe the record is the strongest that relief is necessary. And so it's the VA plus those other agencies.

And this is without prejudice to extending the relief later in the future to other agencies and it's without prejudice to shrinking the relief in the future upon a proper showing.

Okay. I will try to get out a short memorandum opinion that elaborates on this order, but this is the order and it counts effective immediately. Please don't say, "Oh, I'm waiting for the written order." This is the order from the bench.

Okay. I want -- I'm giving the plaintiffs authority promptly to depose, in Washington, Noah Peters, who submitted this other declaration. I am -- discovery is now open. And, within reason, you can, on both sides, take depositions and ask for documents, but be reasonable.

The easiest mistake you plaintiffs can make is to be unreasonably broad in your discovery. I promise you, I won't allow that. But narrowly directed, reasonable discovery is in order in this case to get at the truth because the Government is saying one thing and you're saying another.

Right now your record is the strongest, and I think that your position is correct on the facts. But it deserves to be tested by discovery.

Finally, I believe that the channeling argument -- I believe that the channeling argument that I relied on that says that all employee grievances should be channeled through the

MSPB might have been in error because -- I'm not making a ruling now -- I'm going to invite briefing -- because the whole point of the January 20 memorandum was to say the probationary employees have no appeal rights. And the letter that was sent -- the template letter -- said, "You may have a right to file an appeal with the Merit Systems Protection Board on the limited grounds set forth in 5 C.F.R. 315806," which I looked up, and that has nothing to do with this case. It gives you a right to appeal if you get terminated based on something that happened before your employment. Let's say that you were a convicted felon and didn't disclose that. Well, that's not this case.

So if there is no ability to appeal and get not just some limited -- I mean, a real effective way to undo the harm to these individual employees, I don't see how this could be channeled. So the -- to the extent that the unions here were seeking to vindicate the rights of their employees, you know, like I thought you were, I may have made an error.

Now, I did rely upon the Government's representations that the MSPB was an effective remedy. I thought it was. And I'm not yet ready to say it wasn't. But I didn't know all this at the time I made that ruling.

So I would like to give you each an opportunity to brief this. I'll give you, say, one week to brief this. I'll give you until the end of next week, to Friday at noon, to brief

whether or not the unions have standing based upon the fact that the channel has been destroyed. So no channeling because no channel -- no effective channel.

Now, this -- and then if you want to make the same argument for the Federal Labor Relations Board -- or Authority --

MS. LEONARD: Authority.

THE COURT: -- whatever it is, you can brief that too, all within the 10 pages.

I'm ordering the Government to make this guy, Noah, available soon, within the next two weeks.

If you want to appeal to the Court of Appeals, God bless you. I want you to because I'm tired of seeing you stonewall on trying to get at the truth. Instead of giving me snippets, I want somebody to go under oath and tell us what happened in these phone calls and at other times was it really an agency -- so you can depose some people in the agencies if they really are claiming they did it on their own and was not influenced by OPM. We should get it, but be reasonable in the discovery.

The only one I'm ordering for sure is Noah Peters within the next two weeks. You've got to go to Washington to take his deposition. And it can be two hours. All right?

So, see, the way the Government does it, they want to come in with an *ex parte* and just stall, stall, stall. Just go ahead and take your appeal. We've got a preliminary injunction

now. I've ordered some discovery. Just go ahead and put it up there on appeal and see if the Court of Appeals feels that what I have done here today by way of relief is unjustified. I'm -- that's fine.

I'm doing the best I can with the record I got, and this is a quick-moving time frame. These people have been terminated. I want to make it clear that, right now, I'm just ruling based on services -- these organizational plaintiffs -- and I'm not considering the State of Washington.

The organizational plaintiffs that got the TRO are complaining about the deprivation of services by these agencies and resources that they count on, and that is still the basis for their standing and the basis for the subject-matter jurisdiction. But I am raising the question whether or not the additional subject-matter jurisdiction exists because the channel that Congress wanted to be effective has been ruined.

All right. Anything further today?

MS. LEONARD: Yes, Your Honor. Two points of clarification.

First of all, I believe Mr. Peters is a lawyer, and I would ask for three hours, Your Honor. We all know how hard it is to depose lawyers.

THE COURT: Three hours.

MS. LEONARD: Thank you.

THE COURT: Okay. But the three hours of airtime, all

right?

MS. LEONARD: Thank you. For our questioning?

THE COURT: For your questioning.

MS. LEONARD: Thank you, Your Honor.

But more seriously, actually, not that that's not a serious issue, to clarify, the evidence that plaintiffs have presented with respect to other agencies and the harm -- and I know Your Honor's very familiar with the record -- I just want to clarify because there is extensive irreparable harm with respect to NOAA, NIH, FAA that is incredibly urgent. How do we get in front of you the -- I have a list that we have prepared. I'm happy to give to the Government a copy of every agency and every plaintiff that they're connected with. And we're happy to give you the declarations --

THE COURT: Can I see what you're talking about?

MS. LEONARD: Sure. It's every agency and every plaintiff that has shown harm through the declarations with respect to that agency.

And we're happy to submit this by later today with the declaration cites. I believe we already have that prepared as well. This was just my cheat sheet, Your Honor, if that would assist you.

THE COURT: Well, does counsel object if I keep this cheat sheet?

MR. HELLAND: No.

THE COURT: Thank you.

I -- this is not good enough for -- I mean, you'd have to connect the dots better than this, but I see where you're going.

You can submit more, but I am not promising -- I'm basing it based on my understanding of the present record of who has standing and who is suffering irreparable harm, so -- but I could be wrong on one or two. I was wrong last time on one issue, so I -- you can submit something more and we'll consider it.

MS. LEONARD: Thank you very much, Your Honor.

THE COURT: Anything on your side?

MR. HELLAND: No. Thank you, Your Honor.

THE COURT: All right.

All right. I want to make it clear that I don't think counsel for the Government has done anything dishonorable. I've given him a hard time. He's doing the best he can with the case he's got. And thank you for your service in the Justice Department.

Okay. I think we're done for today.

THE COURTROOM DEPUTY: Court is adjourned.

(Proceedings adjourned at 9:30 a.m.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

DATE: Thursday, March 13, 2025

Kendra Steppler

Kendra A. Steppler, RPR, CRR

Official Reporter, U.S. District Court