UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

Lindsay Young, *et. al,* individually and on behalf of all others similarly situated, Appellant, v. General Services Administration; and Department of Government Efficiency, Agencies.	DOCKET NUMBER: DATE: May 28, 2025

APPEAL of TERMINATIONS
and REQUEST FOR PROCESSING AS CLASS APPEAL

Appellants Lindsay Young, Miatta Myers, Christian Crumlish, James Tranovich, Kate Fisher, and a class of similarly situated employees[1] of the General Services Administration (GSA) were unlawfully targeted by Elon Musk, the Department of Government Efficiency (DOGE), Office of Management and Budget (OMB), Office of Personnel Management (OPM), and the General Services Administration (GSA) for separation by Reduction in Force (RIF). Appellants and about eighty (80) other members of a putative class of GSA employees were part of what was known as 18F or 18F Office.[2]

At the direction of Elon Musk, DOGE, OMB, and OPM, GSA issued RIF

[1] Appellants and the putative class members were a mix of term and permanent employees who completed more than one year of continuous service. Several 18F employees were classified as permanent employees.
[2] 18F's name comes from the address of GSA's headquarters, which is 1800 F Street, NW, Washington, DC.

notices to Appellants and their colleagues in 18F on February 28, 2025, giving them notice that GSA would separate them from employment in sixty days. GSA lacks a valid reason pursuant to 5 C.F.R. § 351.201(a)(2) for the RIF targeting 18F. The group was targeted to retaliate against them because of their (a) perceived political affiliations or beliefs, (b) First Amendment protected speech and actions supporting diversity, equity, and inclusion (DEI), and (c) actions to resist and blow the whistle on management's improper handling and transition of control concerning sensitive data and systems.

Appellants appeal their removal and the removal of the putative class members from their positions of record and from federal service and request a hearing. *See* Exhibit 1, Lindsay Young Form 185; Exhibit 2, Miatta Myers Form 185; Exhibit 3, Christian Crumlish Form 185; Exhibit 4, James Tranovich Form 185; and Exhibit 5, Kate Fisher, Form 185. Appellants request adjudication as a class under 5 C.F.R. § 1201.27(a), as Appellants are representative of this putative class of 18F office employees and this class appeal is the fairest and most efficient way to adjudicate the appeal. Appellants will adequately protect the interests of all class members. The filing of this putative class action tolls deadlines for filing individual appeals for the 18F employees encompassed by the class defined above. 5 C.F.R. §§ 1201.27 (a-b).

I. EXECUTIVE ORDERS AND THE OMB AND OPM DIRECTIVE

The Appellants and putative class members all received specific reduction in force memoranda citing to three Executive Orders purportedly supporting their

terminations. The Executive Orders provide no legal authority or appropriate bases for the action taken against the Appellants and putative class members. As discussed more fully below, the Executive Orders prompted the Office of Management and Budget (OMB) and the Office of Personnel Management (OPM) to direct agencies to conduct widespread RIFs of employees, including the Appellants and other 18F staff members.

On January 20, 2025, the President issued an Executive Order entitled *Hiring Freeze*. With few exceptions, this Order stopped the creation of any new positions and prevented hiring in "all executive departments and agencies regardless of their sources of operational and programmatic funding." Order at 1.[3]

On February 10, 2025, the President issued an Executive Order entitled *Eliminating the Federal Executive Institution*.[4] This Order states, in part:

> [T]he Federal Executive Institute, which was created by the Administration of President Lyndon B. Johnson more than 50 years ago, is a Government program purportedly designed to provide leadership training to bureaucrats. But bureaucratic leadership over the past half-century has led to Federal policies that enlarge and entrench the Washington, D.C., managerial class, a development that has not benefited the American family. The Federal Executive Institute should therefore be eliminated to refocus Government on serving taxpayers, competence, and dedication to our Constitution, rather than serving the Federal bureaucracy.

Order § 1. The overriding purpose of this Order was purportedly to "treat taxpayer dollars responsibly and advance unifying priorities like a stronger and safer America." *Id*.

The next day, on February 11, 2025, the President issued another Executive Order. This Order was entitled *Implementing The President's "Department of Government Efficiency"*

[3] On April 17, 2025, the President issued an order entitled *Extension of Hiring Freeze.* This Order "extend[ed] through July 15, 2025, the freeze on the hiring of Federal civilian employees within the executive branch, as initially directed in the Presidential Memorandum of January 20, 2025 (Hiring Freeze)." Order at 1.

[4] The Executive Orders and OMB-OPM memorandum referenced in this section are attached as Exhibits 6, 7, 8, 9 and 10.

Workforce Optimization Initiative. This DOGE Optimization Initiative ordered GSA and other agencies to initiate "large-scale reductions in force (RIFs)." Order § 3(c). Specifically slated for RIF were employees engaged in "agency diversity, equity, and inclusion initiatives." *Id*. The Order requires the United States DOGE Service (USDS) Administrator to "submit a report to the President regarding implementation of this order, including a recommendation as to whether any of its provisions should be extended, modified, or terminated." Order § 3(f). With this Executive Order, the unlawful hunt to root out those working on DEI and related initiatives began in earnest.[5]

On February 26, 2025, the Administration made its intentions known concerning the rationale for implementing mass scale terminations of federal employees. In a Memorandum to Heads of Executive Departments and Agencies, OMB Director Russell Vought and Acting Director of OPM, Charles Ezell, stated, in part, that the "federal government . . . is not producing results for the American public. Instead, tax dollars are being siphoned off to fund unproductive and unnecessary programs that benefit radical interest groups while hurting hard-working American citizens." They then referred to the federal bureaucracy as "bloated" and "corrupt" and invoked the DOGE Optimization Initiative as commencing "critical transformation of the Federal bureaucracy." OMB-OPM Memo § I.[6]

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[5] One court recently issued a temporary restraining order (TRO) and preliminary injunction concerning the directives contained in this Executive Order. "The Court finds plaintiffs have shown a likelihood of success on the merits of Claim One, which alleges that Executive Order 14210 usurps Congress's Article I powers and exceeds the President's lawful authority. *Am. Fed'n of Gov't Emps., AFL-CIO v. Trump*, No. 25-CV-03698-SI, 2025 WL 1358477, at *19 (N.D. Cal. May 9, 2025). Although the Administration is seeking a stay of the TRO and subsequent preliminary injunction, the court's finding raises significant concerns about the legality of the RIF that cost the Appellants and putative class members their jobs.

[6] No evidence is provided or referenced in the memo to support the claims made.

The referenced Executive Orders, the OMB-OPM Memorandum, and the insertion of DOGE operatives in GSA and other agencies caused the Appellants' terminations and violated longstanding legal requirements for determining the proper scope and methods of implementation used in legitimate reductions in force. The terminations of the Appellants and putative class members should be reversed.

II. APPELLANTS' AND PUTATIVE CLASS MEMBERS' UNLAWFUL REMOVAL FROM FEDERAL SERVICE

In 2014, GSA founded 18F office, and in its latest configuration consisted of about ninety employees. 18F helped other government agencies build, buy, and share technology products. They worked transparently and collaborated with other agencies to fix technical problems, build products, and improve public service through technology.

18F has completed more than 450 projects for over forty agencies, including the Executive Office of the President, the Library of Congress, the U.S. House of Representatives, and the Judicial Branch, as well as state and local jurisdictions across the country. The 18F team is composed of non-partisan civil servants, many having served during both Democratic and Republican administrations.

18F, which was led by Ms. Young, was comprised exclusively of account managers, product advisors, designers, procurement and acquisition specialists, and engineers. All 18F staff were GS-14 and GS-15 employees who all, either directly or indirectly, were engaged in improving government agency performance through technology. 18F was operated from and managed in Washington, DC, but had employees based in over a dozen other states.

In February 2025, 18F staff billed other government agencies $250 an hour for their

services. 18F generated millions of dollars in revenue. At the time the RIF notices were issued, 18F had unfilled partner engagements worth tens of millions of dollars and millions more of high impact, public facing projects in the pipeline. Demand for 18F services far outpaced staff capacity.

18F staff valued and engaged in continuous dialogue concerning issues of diversity and inclusion. This dialogue not only created a welcome space for a talented and diverse staff, but it also helped them identify and problem solve around issues of access, understanding, and utilization of technology and technology-driven services. Their approach to creating tech-driven solutions and troubleshooting technological problems in a manner that improves the lives of all Americans was viewed as the gold standard both within and outside of GSA. 18F's commitment to diversity and inclusion was exemplified in their Diversity Guild and corresponding Slack channel[7] which provided a forum for discussing diversity and related issues.[8]

On January 22, 2025, the Trump Administration appointed Stephen Ehikian as GSA Acting Administrator with the stated goal of working closely with DOGE. Two days later, the Administration appointed Thomas Shedd as the Federal Acquisition Service (FAS) Deputy Commissioner and Director of Technology Transformation Services (TTS) at GSA. For eight years preceding his appointment, Mr. Shedd worked for Elon Musk at Tesla.

And on January 26, 2025, Ehikian ordered the shutdown of the Diversity Guild and

[7] Slack is a cloud-based team communication platform. A channel is a dedicated space for a project or team.

[8] The Diversity Guild started in 2015 as grassroots, employee-led space to work on ways to help make 18F an inclusive place that valued everyone, and to work on ways to build a more diverse applicant pool. Later, guilds were reorganized under TTS rather than 18F, and TTS leadership at the time recognized the value of the Diversity Guild so they offered to pay 50% of Guild leads' time out of administrative overhead. Guild work was considered a part of GSA work. More Diversity Guild leaders were from 18F than any other parts of TTS.

the removal of the corresponding Slack channel. 18F staff openly opposed these actions and raised concerns to GSA management, former TTS Deputy Director Mukunda Penugonde, and TTS Director Shedd about restrictions on free speech and the threat of reprisal for discussing topics like diversity, equity, and inclusion.

On January 29, 2025, Shedd mandated that some 18F staff engage in one-on-one meetings with people purportedly employed by DOGE. Most DOGE interviewers would not provide the 18F staff with their full names and some invitations to the DOGE meetings came from non-government email addresses with no information identifying the person sending the invitation. Through their Slack channel and in individual communications, 18F staff raised concerns with Shedd about meetings with unknown people who might not be government employees about federal government projects. They also raised concerns about not including ASL interpreters for staff who needed them.

On January 30, Elon Musk met at GSA headquarters with the new leadership.

On January 31, 2025, GSA leadership advised 18F that the pronoun features in their Slack channel would be removed, per a new government-wide policy.[9] 18F staff opposed this change.

Also on January 31, *The Daily Wire,* a media company that supports the current Administration and many of its causes, published a story about 18F stating, in part, "[t]he federal government's central computer programming office was one of the most defiantly left-wing units in all of government, but an Elon Musk lieutenant has taken the reins, and the unit - which engaged in far-left self-indulgence throughout the first Trump

[9] Slack offers the ability to display pronouns in user profiles, helping to foster an environment of respect and understanding in workplace interactions.

administration – is coming to heel."[10] The article provided the names, pictures, and other information about many of the 18F's LGBTQ+ staff.

In the early morning hours of February 1, 2025, Elon Musk retweeted *The Daily Wire's* 18F article and posted "Deleted." Musk later responded to another tweet, "The nightmare is over, "and reaffirmed in his next tweet that 18F was "deleted." Still later on February 1, 18F's account on X (Twitter) was suspended. On February 3, 2025, Musk again responded to tweets about 18F commenting, "That group has been deleted."

On February 10, 2025, Thomas Shedd sought full access to TTS systems, including those administered by 18F. Administrative or root access to systems is not normally part of a director's responsibilities. There are protective protocols in place that require vetting and following procedures to become an Authorizing Official or System Owner. Shedd had not completed these steps nor had the DOGE personnel who also wanted access. Through messages on Slack, email, and direct communications with Shedd, 18F opposed Shedd and DOGE gaining elevated access without having a role that required it, such as Authorizing Official or System Owner, and without providing a business need for such access. This violates guidelines laid out by the Federal Information Security Management Act (FISMA). FISMA is an effort to standardize and consolidate security review and report across agencies. Contrary to these protocols and standards, the Information System Security Officer (ISSO) ordered access and instructed TTS security personnel to comply with elevated access requests from Shedd and any DOGE staff.

Beginning in late-February 2025, Shedd and other managers began taking steps to

[10] Rosiak, L. (2025, January 31). 'Triggered' No More: Federal Tech Arm Deletes 'Inclusion Bot' After Musk Takeover: Federal office overrun by "they/thems" surrenders after resisting in Trump's first term. *The Daily Wire*.

transfer some 18F employees within GSA before the RIF was implemented. Management instituted sixteen reassignments. Of the sixteen reassigned, eleven (almost 70%) were white men.

On February 21, 2025, the debate about system access continued. 18F staff also raised concerns about Shedd failing to support 18F. One message stated:

> If we're looking to identify things that have damaged the TTS brand, it might be worthwhile to examine the information and narratives that have been promoted by the very members of 'leadership' you are attempting to appease. In addition to being incorrect, these rather far-reaching posts directly disparage, mischaracterize, and even villainize the incredible work civil servants at TTS have done and continue to do despite every attempt to demoralize and demotivate them (aka put them all 'in trauma'). Last but certainly not least, one of these posts promoted content from an article cruelly referencing and displaying the personal information and photos of TTS employees - putting their lives and families directly at risk. The information shared in those two posts alone has done more to hurt TTS, its products and people, than any slack message about what systems you may or may not have access to ever could. My point is @Thomas Shedd, if you are genuinely interested in promoting the success of TTS and truly concerned about what is 'hurting' this agency, it might be time for you to deliver a little upward feedback or perhaps even devise a better strategy for managing up because leadership would seem to be working against you here. I truly wish you all the best if your efforts to support the success of this incredible agency, its products and its people, are in good faith.

Two screenshots of Elon Musk's deleted tweets were attached. Many 18F personnel registered their support for this message.

Throughout late February 2025, 18F staff continued to call out and push back on selective employee transfers, the loss of recently terminated probationary employees, losses of partner opportunities because of staff reductions, and uncertainty about future staffing and organization configurations.

On February 28, 2025, 18F was "deleted." All 18F employees were issued RIF notices and placed on administrative leave effective immediately. On March 2, 2025, Elon Musk tweeted "Deleted" again in response to his past retweet on January 31, 2025.

From March 2 - 7, 2025, 18F staff requested the RIF documentation in at least three emails. The requested documentation included a competitive area definition and retention register per 5 C.F.R. §§ 351.402(c) and 351.505(c). On April 23, 2025, someone from the GSA RIF Team advised in an unsigned email that "this RIF was conducted under liquidation provisions, where there is no consideration given to retention standing." No name or further explanation was provided. 18F staff could not use procedures like "bump and retreat."[11]

GSA did not provide any reason for terminating all 18F staff. The RIF notices to all staff simply say their positions are being abolished.[12] The abolition of 18F served no purpose other than to terminate dedicated federal employees. GSA lost money and continues to do so because on-going projects that involved 18F staff and those in the pipeline will not be maintained or completed. 18F's work mostly paid for itself. GSA and the federal government have also lost significant expertise that cannot be quickly or easily replaced.

Moreover, within about thirty days after the RIF notices were issued, FAS posted some positions on USA Jobs that are much like those held by some 18F staff. This step by GSA management is completely contrary to the claim that all positions within the 18F program were abolished. It appears that some positions were moved to other parts of GSA, while the employees who occupied the positions were not.

[11] Bump and retreat rights allow an employee who the agency releases from a competitive level to a continuing position on a different competitive level held by another employee with lower retention standing.
[12] Exhibits 11, 12, 13, 14, and 15 (RIF notices delivered to each of the class representatives).

III. APPELLANTS ON BEHALF OF THEMSELVES AND PUTATIVE CLASS MEMBERS APPEAL THEIR UNLAWFUL REMOVAL FROM FEDERAL SERVICE

As the forgoing partial description of events leading to the termination of all 18F staff establishes, there are many reasons why their removal from the federal service was unlawful and must be reversed.

A. The Agencies Violated Well-Established RIF Requirements

First, GSA lacks a valid reason pursuant to 5 C.F.R. § 351.201(a)(2) for the RIF. No reason other than abolishing positions was provided to the Appellants and putative class members. GSA cannot meet its burden to establish a valid basis for the RIF eliminating all 18F staff.[13] The agency must also establish by preponderant evidence that the RIF regulations were properly applied to the Appellants' competitive area and competitive level and that they afforded proper assignment rights. 5 U.S.C. § 7701(c)(1)(B).

Second, the RIF was directed by the issuance of the above-referenced Executive Orders, OMB-OPM Memorandum, Elon Musk, and DOGE. The RIF was not initiated by GSA as required by 5 C.F.R. § 351.201(a)(1) (Each agency is responsible for determining the categories within which positions are required, where they are to be located, and when they are to be filled, abolished, or vacated. This includes determining when there is a

[13] "[T]he burden is on the agency to support its 'decision' by a preponderance of the evidence. The application of the regulations set out in 5 C.F.R. Part 351 determines the nature of a covered employee's entitlement under 5 U.S.C. § 3502(a) to continued employment. It is the determination of an employee's entitlement by application of those regulations which is appealable to the Board. 5 C.F.R. § 351.901[5] This determination constitutes the agency "decision" which is to be sustained only if supported by a preponderance of the evidence, § 7701(c)(1)(B). As such, that decision necessarily embraces the proper invocation of RIF regulations under 5 C.F.R. § 351.201(a) as well as the specific application of those regulations to the individual employee. The agency's evidentiary burden, therefore, includes proof that the RIF regulations were properly invoked due to management considerations of the character appropriately committed to agency discretion." *Losure* v. I.C.C., 2 M.S.P.R. 195, 201 (1980).

surplus of employees at a particular location in a particular line of work."). GSA made no independent assessment of "the categories within which positions are required, where they are to be located, and when they are to be filled, abolished, or vacated," as required by that regulation. *Id.* Because GSA failed to make the appropriate determinations justifying a RIF, it cannot meet its burden to establish by preponderant evidence that it invoked the RIF regulations for one of the legitimate management reasons under 5 C.F.R. § 351.201(a). *See, e.g.*, *Losure v. Interstate Commerce Commission*, 2 M.S.P.R. 195, 201-202 (1980) (citing the evidentiary burden required under 5 U.S.C. § 7701(c)(1)(B)).

Third, the RIF improperly limited the competitive area to "18F, Office of Technology Transformation." This restriction left the Appellants and putative class members with no ability to compete for comparable positions across TTS or GSA.

Fourth, GSA did not establish appropriate retention registers for each competitive level involved in the RIF in violation of 5 U.S.C. §§ 3501-3504 and 5 C.F.R. Part 351. And it failed to conduct first or second round RIF competitions.

Fifth, GSA did not allow 18F staff to exercise bump or retreat rights to a continuing position on a different competitive level, within the competitive area, held by another employee with lower retention standing.

B. The Agencies Initiated Adverse Actions Against 18F Staff in the Guise of a RIF

The Agencies targeted 18F to eliminate each member of the group personally—not their positions—from federal service. The Agencies used the RIF procedures to appear as though they were acting with neutrality. On the contrary, the Agencies were acting at the behest of Elon Musk and others who sought to eliminate 18F because of the group's

diversity, adherence to DEI principles, and whistleblowing about DOGE's improper access to systems and personnel and influence over GSA management.

Over forty years ago, the MSPB made clear that a RIF cannot be used to circumvent appropriate adverse action procedures and processes. "While agencies have discretion in the organization of their operations, *Wilmot v. United States*, 205 Ct.Cl. 666 (1974), the Board will not allow the circumvention of adverse action procedures where the 'reorganization' has no substance and is in reality a pretext for summary removal." *Losure v. I.C.C.*, 2 M.S.P.R. 195, 200 (1980). The principles articulated in *Losure* have been followed in many subsequent cases where the validity of the bases claimed by an agency for a RIF were challenged.

> Since *Losure,* the Board has rigorously applied the evidentiary principles announced therein. For example, in *Rosen v. Interstate Commerce Commission,* 20 M.S.P.R. 574 (1984), the Board found that, while the agency's RIF notice was admissible, it was not sufficient to establish by preponderant evidence that the agency's claimed shortage of work was the reason underlying the RIF. *Id.* at 577. Rather, the Board said that it would "examine all of the evidence under *Losure* to determine if the agency failed to meet its burden of showing that the RIF was based upon a shortage of work." *Id.* In doing so, the Board rejected the agency's claim of shortage of work, finding it to be undermined by the fact that the agency was creating positions in the appellant's division at the same time that it was conducting the RIF. *Id.* at 577–78. The Board also found that a conclusory statement by the agency's Director of Personnel to the effect that the RIF was undertaken in response to a reduced regulatory role of the Commission was not sufficient to carry the agency's burden in the face of the appellant's challenge. *Id.* at 578; *see Douglas v. Department of the Interior,* 41 M.S.P.R. 575, 580 (1989) (agency submission of document setting forth its authority to conduct a RIF is insufficient to meet burden of proof).

Chandler v. Dep't of Treasury, 123 M.S.P.R. 163, 184, 2013 WL 5273920 (M.S.P.B. Sept. 18, 2013). *See, also*, *Green v. Gov't of D.C.*, 6 M.S.P.R. 102, 105-106 (1981) (agency abolition of employee's position was pretext); *Liguori v. U.S. Mil. Acad.*, 4 M.S.P.R. 6, 8 (1980) ("appellant's allegation that a reduction-in-force was in reality a subterfuge to conceal his

demotion goes directly to the question of the bona fides of the reduction-in-force when the allegation is supported by a showing that the action may have been based upon an improper motive"); *Carter v. Dep 't of the Army,* 62 M.S.P.R. 393, 398 (1994) (discussing that the focus of a RIF is on positions, while adverse actions are focused on personal characteristics of individuals); *see also Tippins v. United States,* 93 F.4th 1370, 1375 (Fed. Cir. 2024) ("We have consistently defined a 'reduction in force' as an 'administrative procedure by which agencies eliminate jobs and reassign or separate employees who occupied the abolished positions.'"); *James v. Von Zemenszky,* 284 F.3d 1310, 1314 (Fed. Cir. 2002) ("A RIF is an administrative procedure by which agencies eliminate jobs and reassign or separate employees who occupied the abolished positions. A RIF is not an adverse action against a particular employee but is directed solely at a position within an agency.") (internal citations omitted); *Gabriel v. Dep 't of Labor,* 108 M.S.P.R. 186, 189 (2008) ("As a matter of civil service law, a RIF taken for reasons personal to an employee is an adverse action.")

C. The Agencies' Unlawful RIF/Terminations Violated Merit System Principles, and Constitute Multiple Prohibited Personnel Practices

Appellants and putative class members were subjected to improper treatment in violation of merit system principles defined in 5 U.S.C. § 2301. The standards violated include:

- Failing to provide "fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights." 5 U.S.C. § 2301(b)(2).

- Subjecting 18F staff to "arbitrary action, personal favoritism, or coercion for partisan political purposes." 5 U.S.C. § 2301(b)(8)(A).

- Failing to protect 18F from reprisals for challenging suspected violations of laws, rules, regulations and for exposing mismanagement, abuse of authority, and gross waste of funds. 5 U.S.C. § 2301(b)(9).

Violations of these principles led to the perpetration of prohibited personnel practices (PPPs) against the Appellants and putative class members, including, but not limited to, the following:

(1) The personnel action was taken based on perceived political affiliation. 5 U.S.C. § 2302(b)(1)(e). 18F was viewed as a "left-wing" group that Elon Musk thought necessary to delete.

(2) The action taken was intended to punish advocacy antithetical to the values espoused by the President and his supporters. 5 U.S.C. § 2302(b)(3). The Administration's anti-DEI messaging and focus on personnel employed in DEI supporting roles or engaging in DEI activities fueled 18F's termination.

(3) The personnel action taken was retaliatory, violating 5 U.S.C. § 2302(b)(8)(A) because 18F staff –

(a) Opposed interference and improper access to personnel and sensitive systems and information by those carrying out the DOGE agenda

(b) Challenged the violation of procedures for providing Administrator and root access to systems administered by 18F staff.

(c) Opposed discriminatory transfer actions that favored white males.

(d) Contested the elimination of the Diversity Guild and corresponding Slack channel.

(e) Spoke out about the gross waste of government funds and gross

mismanagement caused by reductions in staffing that prevented completion of on-going projects and prevented the initiation of projects that would have improved government functions and brought millions of dollars in revenue to GSA.[14]

(4) The personnel action discriminated against 18F because it was based on conduct that did not adversely affect their performance or the performance of others. 5 U.S.C. § 2302(b)(10).

(5) The personnel action violated merit system principles, including those described in 5 U.S.C. §§ 2301(b)(2), (b)(8)(A), and (b)(9). 5 U.S.C. § 2302(b)(12).

The Agencies' commission of multiple PPPs to terminate all 18F staff requires that their action be reversed and 18F staff be reinstated with full back pay and benefits.

D. Musk, DOGE, OMB, and OPM Acted Beyond the Scope of any Lawful Authority when they Directed or Influenced the Elimination of 18F

(1) Musk acted unlawfully

Appellants assert that Musk's communications, those that have been made public as well as those that occurred privately, unlawfully targeted 18F for elimination. Musk has

[14] The facts will show that many but not all 18F staff were involved directly in making protected whistleblower disclosures. The facts will also demonstrate that 18F was perceived as a group of whistleblowers and that everyone in the group associated with whistleblowers. It is well-settled that employees who are subjected to reprisals because they are associated with or perceived to be a whistleblower are protected. *See*, *Duda v. Dep't of Veterans Affs*., No. CH122190W0634, 1991 WL 251628 (M.S.P.B. Nov. 26, 1991) (WPA prohibits an agency from taking a personnel action against one person because of his relationship with another employee who has made a protected disclosure.); *Thompson v. Farm Credit Admin*., No. DC04328810407, 1991 WL 255873 (M.S.P.B. Dec. 3, 1991) (being perceived as a whistleblower is protected); *Di Pompo v. Dep't of Veterans Affs*., No. NY3443920331-I-3, 1994 WL 138114 (M.S.P.B. Apr. 13, 1994) (victim of reprisal because of a relationship with the whistleblower is protected); *Zimmerman v. Dep't of Hous. & Urb. Dev.*, No. DA-1221-93-0223-W-1, 1994 WL 59883 (M.S.P.B. Feb. 24, 1994) (reprisal due to perception that one is a whistleblower is protected); *Juffer v. U.S. Info. Agency*, No. DC-1221-97-1072-W-1, 1998 WL 718184 (M.S.P.B. Oct. 2, 1998) (same).

acted as an Officer of the United States without the authority to do so.[15]

> The undisputed record evidence supports the district court's view that Musk does far more than merely advise President Trump. DOGE's actions and Musk's statements on X show that he has exercised operational control over USAID and other agencies, even in the absence of a formal grant to do so, and even in light of his title as advisor. *See id.* at *2–3, *14, *17 (discussing Musk's actions toward USAID, CFPB, National Weather Service, United States Department of Agriculture, National Nuclear Security Administration, and Federal Emergency Management Agency). Many of Musk's directives "thwart th[e] chain of command" necessary to close congressionally-created agencies, as he instead acts unilaterally. *Lofstad v. Raimondo*, 117 F.4th 493, 500 (3d Cir. 2024). Musk has publicly spoken on behalf of DOGE at a joint press conference with the President on February 11 and in a joint interview with the President on February 18. *Does 1-26*, 2025 WL 840574 at *2, *17.

Does 1-26 v. Musk, No. 25-1273, 2025 WL 1020995, at *14 (4th Cir. Mar. 28, 2025) (Circuit Judge Gregory, concurring only in the result). Musk's lack of authority and his influence over 18F's elimination requires that the RIF be reversed and that Appellants be reinstated.[16] But regardless of whether Musk had the authority or not to direct the elimination of 18F, the actions taken were unlawful.

(2) DOGE, OMB, and OPM's actions to eliminate 18F were *ultra vires*

DOGE, OMB, and OPM all played roles in the termination of all 18F staff and many other federal employees. Their actions in mandating or triggering the RIF that eliminated 18F were beyond any legitimate authority.

> [N]o statute gives OPM, OMB, or DOGE the authority to direct other federal agencies to engage in large-scale terminations, restructuring, or elimination of itself. Such action is far outside the bounds of any authority that Congress vested in OPM

[15] "Musk has been given and does exert significant authority, and his position as head of DOGE and de facto USDS Administrator is robust and ongoing. He therefore acts as an Officer of the United States. But he does so without the required congressional authorization—either in the form of a Senate confirmation or a congressionally created office. Accordingly, Defendants have likely violated the Appointments Clause." *Does 1-26 v. Musk*, No. 25-1273, 2025 WL 1020995, at *17 (4th Cir. Mar. 28, 2025) (Circuit Judge Gregory, concurring only in the result).

[16] Musk's actions are "harmful error," based on . . . prohibited personnel practice[s]," and/or "not in accordance with law." 5 U.S.C. § 7701(c)(2). Further, the violation of § 7701(c)(2) is a violation of law that directly concerns merit system principles because Musk has directed or influenced a RIF/terminations unlawfully. Appellants and the putative class have been subjected to a prohibited personnel practice. 5 U.S.C. § 2302(b)(12).

> or OMB, and, as noted, DOGE has no statutory authority whatsoever. "[A]n agency literally has no power to act ... unless and until Congress confers power upon it." *La. Pub. Serv. Comm'n v. F.C.C.*, 476 U.S. 355, 357, 106 S.Ct. 1890, 90 L.Ed.2d 369 (1986).

Am. Fed'n of Gov't Emps., AFL-CIO v. Trump, No. 25-CV-03698-SI, 2025 WL 1358477, at *20 (N.D. Cal. May 9, 2025). In a subsequent decision granting a preliminary injunction against the widespread RIFs, the Court reaffirmed that OPM, OMB, and DOGE had no authority to direct GSA or other agencies to terminate employees on a mass scale. *Am. Fed'n of Gov't Emps., AFL-CIO v. Trump*, No. 25-CV-03698-SI, Order Granting Preliminary Injunction, Dkt. 124 at 35-36, (N.D. Cal. May 22, 2025).[17] The unlawful actions by DOGE, OMB, and OPM that caused or influenced 18F's elimination cannot sustain the RIF/terminations. 5 U.S.C. § 7701(c)(2). Conducting a RIF/termination unlawfully constitutes a prohibited personnel practice because it violates merit system principles, which serves as an independent basis for reversal. 5 U.S.C. § 2302(b)(12).

E. The Agencies and Elon Musk Violated Protections Provided Under the First Amendment and Civil Rights Statutes when they Orchestrated the RIF/Termination of 18F

The evidence available thus far indicates that 18F staff were also the victims of a conspiracy resulting in the entire group being terminated because of perceptions about their political beliefs, the diversity of their team, and the effort they made in their work to be openly inclusive and supportive of the differences between the people they worked with and served. That conspiracy involved Elon Musk, other non-governmental

[17] The Court concluded "[t]he President has the authority to seek changes to executive branch agencies, but he must do so in lawful ways and, in the case of large-scale reorganizations, with the cooperation of the legislative branch. Many presidents have sought this cooperation before; many iterations of Congress have provided it. Nothing prevents the President from requesting this cooperation-as he did in his prior term of office. Indeed, the Court holds the President likely *must* request Congressional cooperation to order the changes he seeks, and thus issues a preliminary injunction to pause large-scale reductions in force and reorganizations in the meantime." *Am. Fed'n of Gov't Emps.,* Dkt. 124 at 51.

employees employed or controlled by Musk, DOGE employees, and other federal employees controlled or influenced by Musk, including Musk's former employee Thomas Shedd – who became 18F's second line supervisor.

What members of 18F said and what their viewpoints were on DEI, the diversity of their team, and other matters affecting the proper operation of GSA is protected speech under the First Amendment. "Even though respondents work for the Government, they have not relinquished 'the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest.'" *United States v. Nat'l Treasury Emps. Union*, 513 U.S. 454, 465 (1995), quoting *Pickering v. Board of Ed. of Township High School Dist. 205, Will Cty.*, 391 U.S. 563, 568 (1968). The retaliation the 18F staff experienced also implicated rights beyond the protections afforded by the First Amendment.

The Reconstruction Era Civil Rights statutes were intended in part to protect federal employees from people bent on interfering with their duties or their ability to retain their positions. *See, e.g.*, 42 U.S.C. §§ 1985 and 1986.[18] "The statute, in short, proscribes conspiracies that, by means of force, intimidation, or threats, prevent federal officers from discharging their duties or accepting or holding office. A party injured by such a conspiracy can sue any coconspirator to recover damages. *Id.* § 1985(3)." *Thompson v. Trump*, 590 F. Supp. 3d 46, 62 (D.D.C. 2022), *aff'd sub nom. Blassingame v. Trump*, 87 F.4th 1 (D.C. Cir. 2023).

While the *Thompson* case focused primarily on clauses within § 1985(1) that require

[18] "Persons who have knowledge of activity made illegal under § 1985 and who are in a position to prevent harm but fail to do so, can be sued for damages under § 1986." § 3:18. Remedies, 2 State and Local Government Civil Rights Liability § 3:18.

force, intimidation, or threats, other sections of the statute protect federal employees from injury for carrying out their duties. The statute states: "If two or more persons in any State or Territory conspire to . . . injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties." 42 U.S.C. § 1985(1) (clauses 4 and 5).[19] These clauses within § 1985(1) have been interpreted to protect a federal official's right to execute the functions of and maintain their jobs. "A conspiracy to injure an official's person or property on account of the discharge of his duties or to prevent him from doing so, however, interferes directly and substantially with the federal interest in the effective formulation and execution of federal policy and functions, regardless of whether force, intimidation, or threat are used." *Stern v. U.S. Gypsum, Inc.*, 547 F.2d 1329, 1337 (7th Cir. 1977).[20]

Musk targeted the 18F team in response to articles claiming 18F staff were radical and left-wing. Musk assured the public through his Tweets on X that 18F would be "deleted." Musk's former employee, Thomas Shedd took over GSA's TTS and began to reassign white, male engineers out of 18F as DOGE was conducting interviews to implement staff cuts. The 18F team raised concerns about speaking with DOGE interviewers, canceling their Diversity Guild, and corresponding Slack channel, and the

[19] The statute bars any "conspiracy to interfere with federal actors in the performance of their duties . . ." *Smith v. Trump*, No. 21-CV-02265 (APM), 2023 WL 417952, at *4 (D.D.C. Jan. 26, 2023), *aff'd*, No. 23-7010, 2023 WL 9016458 (D.C. Cir. Dec. 29, 2023).

[20] "Discriminatory animus is not, however, an element of a § 1985(1) claim. *Bryant v. Mil. Dep't of Mississippi*, 597 F.3d 678, 688 (5th Cir. 2010) ('A cause of action under § 1985(1) requires no allegation of racial or class-based discriminatory animus.'); *Stern v. U.S. Gypsum, Inc.*, 547 F.2d 1329, 1340 (7th Cir. 1977) (rejecting assertion that a § 1985(1) claim requires pleading and proving 'invidious animus')." Smith v. Trump, No. 21-CV-02265 (APM), 2023 WL 417952, at *4 (D.D.C. Jan. 26, 2023), *aff'd*, No. 23-7010, 2023 WL 9016458 (D.C. Cir. Dec. 29, 2023).

improper takeover and demands for access to protected systems and data, including TTS employment data and data contained on Tock (a time tracking system). 18F also raised concerns about access protected systems and data in Notify and Login.gov and noted that these access and security issues implicated protections under the Privacy Act of 1974.

In the thread to Musk's tweets, people replied with screenshots of 18F's GitHub[21] that included individual names of the team which resulted in some of the team removing themselves from social media, purchasing subscriptions to remove their information from online sites. On February 3, 2025, 18F asked Shedd in Slack about the doxxing that 18F staff are experiencing due to Musk's tweets and the Daily Wire article, and the deleted 18F Twitter account, and received no response. On February 4, 2025, 18F leadership notified GSA's Office of Mission Assurance (OMA) of doxxing and threats to employees days prior but staff was not contacted by OMA, which was contrary to policy and practice.

These events provide a sufficient basis to assert a conspiracy to remove them from their jobs.

> "A civil conspiracy is defined as an agreement between two or more people to participate in an unlawful act or a lawful act in an unlawful manner." *Hobson v. Wilson*, 737 F.2d 1, 51 (D.C. Cir. 1984). The agreement can be either express *or* tacit. *Halberstam v. Welch*, 705 F.2d 472, 476 (D.C. Cir. 1983). So, a plaintiff "*need not* show that the members entered into any express or formal agreement, or that they directly, by words spoken or in writing, stated between themselves what their object or purpose was to be, or the details thereof, or the means by which the object or purpose was to be accomplished." 3B Fed. Jury Prac. & Instr. § 167:30, Westlaw (database updated Jan. 2022) (quoting federal standard jury instruction for claims brought under § 1985(3) (emphasis added)). It is enough "that members of the conspiracy in some way or manner, or through some contrivance, positively or tacitly[,] came to a mutual understanding to try to accomplish a common and unlawful plan." *Id.* All coconspirators must share in the general conspiratorial objective, though they need not know all the details of the plan or even possess the same motives. *Hobson*, 737 F.2d at 51. They need not know the identities of other

[21] GitHub is a cloud-based platform to store, share, and work together with others to write code.

> coconspirators. *Id.* In short, a civil conspiracy requires a showing "that there was a single plan, the essential nature and general scope of which were known to each person who is to be held responsible for its consequences." *Id.* at 51–52 (cleaned up). And, to be actionable, there must be an overt act in furtherance of the conspiracy that results in injury. *Id.* at 52.

Thompson v. Trump, 590 F. Supp. 3d 46, 97 (D.D.C. 2022), *aff'd sub nom. Blassingame v. Trump*, 87 F.4th 1 (D.C. Cir. 2023).[22] Here there is significant evidence of a conspiratorial agreement between Musk, Shedd, governmental or non-governmental members or associates of DOGE, and other unknown members of the Trump Administration.[23] They conspired to "delete" 18F because of the group's perceived political leanings and focus on diversity, equity, and inclusion.

Removing the Appellants and putative class members from federal service through a purported RIF because they were perceived to be left-wing, radical, or affiliated with DEI activities violates their First Amendment rights (a violation of 5 U.S.C. § 2302(b)(12)), violates Merit Systems Principles in 5 U.S.C. § 2302(b)(1)(e) and § 2302(b)(3), abuses the laws and regulations governing RIFs to punish perceived political opponents and to coerce conformity with their values and political positions, and violates federal civil rights statutes.

[22] 3B Fed. Jury Prac. & Instr. § 167:30 (6th ed.), 3B Fed. Jury Prac. & Instr. § 167:30 (6th ed.) (discussing how conspiracy under § 1985(3) can be proven).

[23] "The plain text of the statute . . . provides a private right of action against 'persons' and 'conspirators.' 42 U.S.C. § 1985. And the Supreme Court has said about the similarly worded § 1985(3), "the words of the statute fully encompass the conduct of private persons." *Griffin v. Breckenridge*, 403 U.S. 88, 96 (1971). The same must be true for § 1985(1)." *Smith v. Trump*, No. 21-CV-02265 (APM), 2023 WL 417952, at *4 (D.D.C. Jan. 26, 2023), aff'd, No. 23-7010, 2023 WL 9016458 (D.C. Cir. Dec. 29, 2023).

IV. Processing Appellants' Appeal as a Class Appeal is the Fairest and Most Efficient Way to Adjudicate this Case

Appellants bring this appeal challenging an unlawful RIF and termination of their employment as federal civil servants on behalf of themselves and the putative class of all other 18F staff members. Regulations governing the MSPB provide for class adjudication of appeals. 5 C.F.R. § 1201.27. A single Appellant may file an appeal as representative of a class of employees. 5 C.F.R. § 120 l.27(a). The regulations state that "[t]he judge will consider the appellant's request and any opposition to that request and will issue an order within 30 days after the appeal is filed stating whether the appeal is to be heard as a class appeal." 5 C.F.R. § 1201.27(b). The Administrative Judge "will hear the case as a class appeal if he or she finds that a class appeal is the fairest and most efficient way to adjudicate the appeal, and that the representative of the parties will adequately protect the interests of all parties." 5 C.F.R. § 120 l.27(a). The judge will decide "within 30 days after the appeal is filed" whether it is appropriate to treat an appeal as a class action, "guided but not controlled by the applicable provisions of the Fed. R. Civ. P." 5 C.F.R. § 1201.27(b), (c).

Federal Rule of Civil Procedure 23(a) lays out four prerequisites to class certification. They are: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). Rule 23 also requires a proposed class to satisfy one of the three provisions of Rule 23(b). The proposed class meets all prerequisites for class

certification under Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3).

Numerosity. There are approximately eighty members of the 18F group. Courts generally conclude that any class of more than forty people is sufficiently numerous to satisfy the 23(a)(1) requirement. *See, e.g, Allen v. Ollie's Bargain Outlet, Inc.*, 37 F.4th 890, 896 (3d Cir. 2022); *In re Zetia (Ezetimibe) Antitrust Litig.*, 7 F.4th 227, 234 (4th Cir. 2021). Here, processing about eighty separate individual appeals would be unnecessarily time-consuming.

Common questions of law and fact. The entire 18F group was issued RIF notices on the same day, February 28, 2025, via the same memorandum from Thomas Shedd for the same purported reason that their positions were being abolished, without any reference to a reorganization or other valid reason for a RIF. As a result, their claims give rise to a host of common questions, including, but not limited to, were they really eliminated because they were perceived as too liberal? Because they were perceived as having too few white males? Because they were perceived as opposed to the Administration's elimination of DEI programs? Because they exercised their First Amendment rights to speak out on DEI and other issues? If they were terminated for any of these reasons, was their termination illegal under any of the statutes identified above?

Typical claims and defenses. The claims being asserted herein by the Appellants are the same as those that will be raised by the rest of the 18F staff. There is no anticipated distinction between claims of one member of 18F versus another.

Fair and adequate representation of the class. Each of the Appellants have agreed to serve as class representatives and to put the welfare of the class before their individual interests. They also have retained counsel experienced in handling and with the resources

to handle employment class action litigation.

Rules 23(b)(2) and (b)(3). Appellants also satisfy the requirements of Rule 23(b)(2) and 23(b)(3). Certification under Rule 23(b)(2) is appropriate when "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole. Here, the Agencies took the challenged action – terminating all 18F employees – for reasons that "apply generally to the class." This entitles all members of the class to the injunctive relief of reinstatement to their former positions. Appellants also seek back pay and benefits for the period between their termination and their reinstatement, along with attorneys' fees, but that relief is incidental to the primary relief—reinstatement.

But if the incidental monetary relief sought precludes use of Rule 23(b)(2), Appellants also satisfy the certification requirements of Rule 23(b)(3). That rule applies when "the questions of law or fact common to class members predominate over any questions affecting only individual members, and . . . a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." It also identifies four considerations in addressing the superiority issue. The nature of the termination, in which all class members were terminated in one fell swoop, means that all liability questions, including those identified above, will be common to all class members. So will the questions of whether reinstatement and backpay are appropriate remedies. The only individualized question will be how much backpay each class member is entitled to, and the answer will be determinable based on the same damages methodology applied to the payroll data for 18F members. The "black letter rule" recognized in every circuit is that "individual damage calculations generally do not defeat a finding that common issues

predominate." *Brown v. Electrolux Home Prods., Inc.*, 817 F.3d 1225, 1239 (11th Cir. 2016) (quoting William B. Rubenstein, Newberg on Class Actions § 4:54 (5th ed.)).

A class action also will be superior to any other means of deciding this matter. Upon information and belief, the vast majority of 18F employees have not filed individual actions, they have no economic interest in individual actions against defendants who have shown over the past few months no willingness to settle disputes over the terminations of federal employees. The law mandates that appeals of terminations of federal employees be filed in the MSPB and combining the appeals of all 18F employees in a single action avoids the risk of inconsistent adjudications. In short, the fairest and most efficient means to adjudicate the unlawful RIF/termination of the 18F group is a class appeal.

CONCLUSION

The Appellants have more than sufficiently stated bases to challenge their unlawful terminations and proceed to adjudicate their claims as a class. We urge the Board to promptly certify this appeal as a class appeal and issue an acknowledgment order allowing the case to promptly move forward.

Dated: May 28, 2025

Respectfully submitted,

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