IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Patsy Widakuswara, *et al.*, *Plaintiffs,* –v.– KARI LAKE *et al.*, *Defendants.*	Case No. 25-cv-1015-RCL
MICHAEL ABRAMOWITZ *et al.*, *Plaintiffs,* –v.– KARI LAKE *et al.*, *Defendants.*	Case No. 25-cv-00887-RCL

PLAINTIFFS' JOINT REPLY IN SUPPORT OF MOTION TO PAUSE REDUCTIONS IN FORCE IN SERVICE OF ENFORCING PRONG (3) OF THE PRELIMINARY INJUNCTION

In the five months since this Court entered a preliminary injunction requiring Defendants to "restore VOA programming such that USAGM fulfills its statutory mandate," ECF No.99 at 1-2, Defendants have resisted compliance with this Court's mandate and have made minimal progress toward providing the services that they are required by law to provide. Recently completed depositions demonstrate that Defendants have put inadequate effort into their obligation to this Court. Simply put, they are not in compliance and have no plans to come into compliance at this time.

Now, after having failed to answer this Court's direct questions regarding compliance and having been found on the verge of warranting a contempt trial, Defendants argue that this Court has no authority to pause the dramatic reduction in force that is proposed to go into effect September 30, and which would frustrate Defendants' ability to comply with the preliminary injunction (which they have not done to date). This Court does indeed have broad discretion to enforce its prior order, including by temporarily pausing the terminations until Defendants demonstrate to the Court that they have a plan to come into compliance, and it should do so now.

ARGUMENT

As discussed in Plaintiffs' opening brief, district courts have broad power to enforce a preliminary injunction, including by issuing additional orders to protect against the "risk of inadequate compliance." *Gomez v. Trump*, 486 F. Supp. 3d 445, 450 (D.D.C. 2020); *see also Nat'l L. Ctr. on Homelessness & Poverty v. U.S. Veterans Admin*., 98 F. Supp. 2d 25, 26 (D.D.C. 2000) (Lamberth, J.).

Since late May, Plaintiffs have argued to this Court that Defendants are not complying with prong (3) of the preliminary injunction. Defendants' failure to do so, moreover, has prevented plaintiffs from receiving "'all relief required' by" the preliminary injunction. *S.*

Poverty L. Ctr. v. U.S. Dep't of Homeland Sec., No. CV 18-760 (CKK), 2022 WL 19037214, at *3 (D.D.C. June 30, 2022) (quoting *Heartland Hosp. v. Thompson*, 328 F. Supp. 2d 8, 11 (D.D.C. 2004)).

This Court has already granted Plaintiffs' motion for an order to show cause and has expressed its view that it has "no clear understanding of how the defendants intend to fulfill VOA's statutory mandates" and ordered further proceedings to discern the answer to that question. ECF No. 62 at 10.[1] This Court should now exercise its discretion to enforce its preliminary injunction by pausing the RIF until Defendants can show they have complied with the preliminary injunction—which, as shown by the depositions ordered by the Court, Defendants have failed to do and have no plan to do in the future. Pausing the RIF is an appropriate exercise of this Court's discretion. *See, e.g.*, *Nat'l Treasury Emps. Union v. Vought*, 778 F. Supp. 3d 144, 150 (D.D.C. 2025) (*NTEU I*) ("[T]he Court finds it necessary to enjoin the planned RIF to preserve the existing conditions and the subject of plaintiffs' motion until it can determine how to proceed."), *appeal dismissed,* No. 25-5091, 2025 WL 1385557 (D.C. Cir. May 12, 2025).[2] Moreover, given the broad discretion this Court enjoys to enforce its prior order,

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[1] For ease of reference and unless otherwise noted, ECF citations are to Case No. 1:25-cv-1015 and page number references are to the file-stamped page numbers in the upper right-hand corner of the document.

[2] Defendants accuse Plaintiffs of "neglect[ing] to mention the relevant procedural history" of the proceeding in *NTEU I*. Defs. Br. at 10. That accusation is both false and beside the point.

It is false because Plaintiffs cited and discussed the opinion vacating the underlying injunction in that case in our opening brief. *See* Pls. Br. at 9. In doing so, Plaintiffs explained how the merits decision in *NTEU II* does not bar relief here—we also expand upon that argument in this brief. *See infra* part II.

And it is beside the point because the D.C. Circuit did not have before it the enforcement order in *NTEU I* and did not pass on its validity. The appeal of the enforcement order was dismissed, as noted in our opening brief and above. *See* Pls. Br. at 7. Moreover, it is far from clear that the analysis in *NTEU II* would have dictated vacatur of the enforcement order in *NTEU I*, given, for instance, that the panel in *NTEU II* proceeded to the merits of claims brought by

Defendants' suggestion—which informs much of their brief—that this is necessarily a motion for a new preliminary injunction or temporary restraining order is misguided and should be rejected.

I. DEFENDANTS HAVE FAILED TO RESTORE VOA PROGRAMMING AS MANDATED BY PART (3) OF THE PRELIMINARY INJUNCTION, AND PAUSING EFFECTUATION OF THEIR PLANNED MASS RIF IS NECESSARY FOR DEFENDANTS TO COME INTO COMPLIANCE

Until now, throughout nearly four months of proceedings during which Plaintiffs have sought to enforce prong (3) of the Court's preliminary injunction through motions practice, Plaintiffs have consistently maintained that, by all appearances, Defendants are not in compliance, but that further information and testimony from Defendants would provide an opportunity for Defendants to generate a plan to come into compliance moving forward. *See, e.g.,* ECF No. 136 at 2, 9-10. Unfortunately, the three depositions ordered by this Court—each of which took place *after* Plaintiffs filed the instant motion on September 8—have demonstrated conclusively that despite the Court ordering Defendants to show cause why they are not in violation of prong (3) of the preliminary injunction, Defendants remain in violation of the injunction and have no plan to come into compliance at this time.

In issuing its July 30 Order to Show Cause ("OSC"), the Court concluded that, based on the record of VOA broadcasting activity before it as of that date, Defendants "appear to be violating numerous statutory provisions." ECF No. 62 at 7. Specifically, the Court stated:

> The defendants represent that they are "broadcasting in . . . Mandarin, Farsi, Dari, and Pashto." Second Suppl. Mem., Attach. 1, Decl. of Kari Lake ¶ 14. But the defendants have never actually reported any *radio* or *television* broadcasting in Mandarin. *See* Soltani Decl. ¶ 7, ECF No. 117-1 (describing only minimal web and social media content in Mandarin). As far as this Court can tell, the defendants are using the term "broadcasting" as a catch-all term to refer to radio, television, and online distribution, without disaggregating which types of broadcasting and media

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non-federal employee plaintiffs, necessarily concluding they are not channeled under the CSRA. *See infra* part II.

> are occurring in which languages, and for how long. Given that the International Broadcasting Act requires VOA to "communicat[e] directly with the peoples of the world *by radio*," 22 U.S.C. § 6202(c) (emphasis added), it is crucial that the Court receive detailed, accurate information about VOA's activities in each relevant medium….
>
> In attempting to explain why VOA has whittled down to a paucity of coverage in only Dari, Pashto, Farsi, and Mandarin, the defendants fail to engage with the additional statutory provisions regarding required language programming. *See, e.g.*, Further Consolidated Appropriations Act 2024, 138 Stat. 813 (including funds to "maintain broadcasting hours into North Korea at levels not less than the prior fiscal year"); Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, Pub. L. No. 102-138, § 234 ("As soon as practicable but not later than one year after enactment, the Voice of America Kurdish language programming pursuant to this section shall be broadcast for not less than 1 hour each day."); *id.* § 233 ("The Director of the United States Information Agency shall establish distinct Croatian and Serbian programs within the Yugoslavian section of the Voice of America.").

ECF No. 62 at 7-8.

Defendants' opposition brief and deposition testimony show that the agency continues to violate all the same statutory provisions that the Court identified in its OSC. Defendants' opposition states that VOA "is currently broadcasting in short wave radio transmissions, produces daily web stories, and produces content (both written and digital) in four languages (i.e. Mandarin, Dari, Pastho, and Farsi)" and is also "taking steps to restore Korean-language and Russian-language broadcasting." Defs. Br. at 5. But that summary obscures the paucity of the Agency's traditional broadcasting, as confirmed by the recent deposition testimony.

As this Court observed, "the International Broadcasting Act requires VOA to "communicat[e] directly with the peoples of the world *by radio*," 22 U.S.C. § 6202(c) (Court's emphasis). Yet the *only* radio content Defendants have presented evidence of, after having been given the opportunity during three depositions, consists of a single "30-minute live radio program, broadcast five days per week, of which 15 minutes is presented in Dari and 15 minutes in Pashto." ECF No. 153-1 at ¶ 6(d). There is no radio or television broadcasting in Mandarin,

only digital (i.e., internet). Wuco Tr. 129:10-130:19; Soltani Tr. 184:1-184:10.[3] And while the sole declaration submitted with Defendants' opposition states that "USAGM is taking steps to restore Korean-language news coverage" and "Russian-language news coverage," ECF No. 153-1 at ¶¶ 6(f), 6(g), the deposition testimony of that same declarant confirmed that Korean-language and Russian-language programming is not only not yet operational, but is also only planned to be digital (internet) content as of now. Wuco Tr. 151:4-152:22 (Korean), 161:12-163:6 (Russian). Nor are there any plans to broadcast in any additional languages. Wuco Tr. 170:16-171-1. The result is that VOA is not meeting its statutory mandates, it has no plans to do so in the future, and allowing the RIF to be effectuated will interfere with the Court's ability to remedy that noncompliance.

i. Violation of Statutes Identified in the OSC: Korean, Kurdish, Croation, and Serbian

VOA's minimal broadcasting violates each of the statutory mandates identified by the Court in its OSC. First, as the Court's OSC noted, the Agency's 2024 Appropriations Act required that USAGM "maintain broadcasting hours into North Korea at levels not less than the

[3] Following this Court's order granting Defendants' Unopposed Motion for Reconsideration of the Parties' Joint Motion Regarding Procedure for Filing Deposition Transcripts, ECF No. 157, Plaintiffs have met and conferred with Defendants regarding the filing of Ms. Soltani's and Mr. Wuco's deposition transcripts, as well as Plaintiffs' citations thereto in this public filing. Plaintiffs understand that Defendants plan to file both Ms. Soltani's transcript and Mr. Wuco's transcript under seal prior to the Court's hearing on the instant motion this coming Monday, September 29. In the case of Ms. Soltani, the Parties have agreed (and the Court has ordered) that Plaintiffs may cite from Ms. Soltani's deposition testimony without restriction, and Plaintiffs have done so here. In the case of Mr. Wuco, Defendants have made Plaintiffs aware of certain portions of Mr. Wuco's deposition transcript that Defendants intend to request the Court's leave to be redacted, Plaintiffs have agreed not to contest those redactions, and Defendants have agreed that Plaintiffs may cite from Mr. Wuco's deposition testimony without restriction so long as Plaintiffs do not reference the portions of Mr. Wuco's transcript that Defendants plan to seek the Court's leave to redact. The parties are also in the process of submitting minor errata to Mr. Wuco's deposition transcript, which Plaintiffs understand may delay Defendants' filing of Mr. Wuco's transcript.

prior fiscal year." 138 Stat. 813. That is not happening now—VOA is not broadcasting to Korea currently—and VOA's current plan for Korea is to produce only internet content, even though in the last fiscal year VOA broadcast into North Korea via radio. ECF No. 16-13 ¶ 19. The gravity of VOA's non-compliance respecting Korea is especially concerning given that the 2004 North Korea Human Rights Act states that USAGM should adopt a "12-hour-per-daybroadcasting to North Korea" goal. 22 U.S.C. § 7813(a). This 12-hour-per-day broadcast naturally refers to radio, especially in North Korea where, as Plaintiff RSF has reported, the North Korean government "has developed technical measures which allow it to completely control communications within the country's intranet" and "North Koreans can still be sent to a concentration camp for looking at an online media outlet based outside the country."[4]

Second, this Court's OSC referenced other appropriations acts requiring broadcasts specifically in Kurdish, Croation, and Serbian. *See* Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, Pub. L. No. 102-138, § 234 ("As soon as practicable but not later than one year after enactment, the Voice of America Kurdish language programming pursuant to this section shall be broadcast for not less than 1 hour each day."); *id*. § 233 ("The Director of the United States Information Agency shall establish distinct Croatian and Serbian programs within the Yugoslavian section of the Voice of America."). However, deposition testimony confirms that USAGM has no plans to resume VOA broadcasts in any additional languages, which would necessarily mean no plans to resume broadcasting in Kurdish, Croation, or Serbian. *See* Wuco Tr. 170:1-171:1. Yet Defendants have still not provided the Court any reason for their failure to broadcast in these languages, despite Defendants relying on a similar appropriations act from

[4] Reporters Without Borders, *North Korea*, https://rsf.org/en/country/north-korea

prior years as their reason for broadcasting in Farsi. *See* ECF No.117 at 4 (citing Pub. L. 111-84 (2009), which appropriated funds for Farsi broadcasts).

ii. Violation of Other Statutory Mandates

Plaintiffs months ago set forth the myriad statutory mandates Defendants are violating, *see, e.g.,* ECF No. 120 at 2-14, but deposition testimony has also confirmed that Defendants are violating additional statutory mandates beyond those naming specific countries or languages. Of particular note, the depositions showed that Defendants are violating their duties to broadcast (1) "a variety of opinions and voices from within particular nations and regions prevented by censorship or repression from speaking to their fellow countrymen," 22 U.S.C. § 6202(a)(7); and (2) "information about developments in each significant region of the world," 22 U.S.C. § 6202(b)(6).

In her deposition, VOA Director of Programming Leili Soltani stated that at least the following are nations where residents are "prevented by censorship or repression from speaking to their fellow countrymen": China, Afghanistan, Iran, North Korea, Russia, Cuba, Venezuela, Azerbaijan, Turkey, Sudan, and the Democratic Republic of Congo. Soltani Tr. 261:21-269:6. Yet there is no factual dispute in this case that VOA is not creating, and has zero plans to create, content for multiple of those countries, even though it did so in the past. *See* ECF No. 120 at 8 (describing past broadcasts respecting Democratic Republic of Congo, Mali, and Sudan, among other countries lacking a free press). And VOA is already expressly required to broadcast by statute in Kurdish (as the Court has recognized), which is widely spoken in Turkey; Kurds are Turkey's largest ethnic minority,[5] and the U.S. State Department's most recent country report on

[5] United Kingdom Government, *Guidance: Country policy and information note: Kurds, Turkey* (July 2025), https://www.gov.uk/government/publications/turkey-country-policy-and-information-notes/country-policy-and-information-note-kurds-turkey-october-2023-accessible

Turkey notes that "Journalists affiliated or formerly affiliated with pro-Kurdish outlets faced significant government pressure, including incarceration" and the Turkish "government routinely denied press accreditation to Turkish citizens working for international outlets or for any association (including volunteer work) with private Kurdish language outlets."[6]

Similarly, Defendant Lake acknowledged in her deposition that South America and Central America are each a "significant region of the world." Lake Tr. 286:9-287:10; *see also* Lake Tr. 282:16-282:20 (asking Lake about statutory requirement from 22 U.S.C. § 6202(b)(6)). But Defendant Lake pointed only to "Cuba broadcasting" as "making it to parts of South America," not to broadcasting by VOA or about any developments particular to those regions apart from Cuban affairs. Lake Tr. 286:20-287:7; s*ee also* Wuco Tr. 227:4-227:13 ("Occasionally" Office of Cuba Broadcasting broadcasts "a story that is the result of any sort of political or otherwise nexus between Havana" and other Latin American countries). In contrast, VOA Spanish, as distinct from Cuba Broadcasting, previously broadcast about significant developments in the region through multiple programs reaching an approximately weekly audience of 66.7 million according to VOA, including a program specific to Venezuela[7]—one of the countries identified by Ms. Soltani as prevented by censorship or repression from free and open communication among residents.

iii. Defendants' Deposition Testimony Shows Their Efforts to Comply with the Preliminary Injunction Thus Far Have Been Inadequate

That Defendant have failed to comply with the preliminary injunction as described above is reinforced by deposition testimony showing the relevant decisionmakers have given

[6] U.S. Dep't of State, *2024 Country Reports on Human Rights Practices: Turkey*, https://www.state.gov/reports/2024-country-reports-on-human-rights-practices/turkey

[7] *See* Voice of America, *VOA Broadcasting in Spanish to Latin America*, https://www.insidevoa.com/p/6373.html.

inadequate thought to their duties to the Court—including whether the RIF in question aligned with those duties, rather than just Defendants' current programming—and include "contradictory representations to the Court" despite the Court's admonition in the OSC. ECF No. 62 at 9.

Defendant Lake testified that despite this Court specifically noting that "defendants have never explained the decision to exclude Africa from their plan to run VOA," ECF No. 126 at 4, she has not "given it a lot of thought" whether Africa is a "significant region of the world." Lake Tr. 285:2-19; *but see* 22 U.S.C. § 6202(b)(6) (requiring USAGM broadcast to include "information about developments in each significant region of the world"). Lake similarly does not "have an opinion" on "[w]hich countries in Asia lack adequate sources of free information," other than China. Lake Tr. 247:9-15, 249:3-250:9; b*ut see* 22 U.S.C. § 6201(4) (requiring broadcasting to "the People's Republic of China and other countries of Asia which lack adequate sources of free information"). And she hasn't "given it much thought" whether there are "other places other than Cuba where the United States interests are served by communicating by radio." Lake Tr. at 289:1-16; *but see* 22 U.S.C. § 6202(c). Defendant Lake also testified on September 9 that the agency was already broadcasting to Russia and Korea, but Frank Wuco testified on September 18 that even digital content to North Korea had not yet started and would begin "sometime within the next two weeks." Lake. Tr. 233:16-234:14, 253:18-254:19; Wuco Tr. 153:4-15. Paradoxically, after admitting that she, as acting head of the agency, has paid scant attention to some of these questions, Lake testified that Defendants, including Lake, are "answering [the Court's questions] to the best of our ability. And [the Court] keeps asking and asking and asking the same questions. I don't know what more I can give him." Lake Tr. 422:10-13.

Defendants' other witnesses, meanwhile, appear not to have been as involved in Defendant Lake's decision-making process as suggested by her testimony. Defendant Lake testified that Leili Soltani, whom Ms. Lake identified as "interim director" of VOA by virtue of her position as director of programming, was involved in deciding "what positions are needed to run Voice of America," and therefore what positions to retain in the current reduction in force. Lake Tr. 85:21-86:2, 314:1-22, 323:7-324:12. But Ms. Soltani, who testified no one has ever told her she was now serving in the role of acting director of Voice of America, testified that nobody consulted her about which staff to retain in the recent reduction in force beyond asking her for a list of "current active staff members" at VOA. Soltani Tr. 75:18-76:4; 208:14-209:16; *see also* Soltani Tr. 204:17-18 ("I had zero involvement in the RIF process."). And Mr. Wuco testified that he, too, was not involved in the RIF process. Wuco Tr. 154:9-17,

Ms. Soltani also testified that she has "not had any conversations with USAGM" about the preliminary injunction in place, nor has she had "discussion regarding what the statutory minimum is with anybody." Soltani Tr. 179:10-22, 187:22-188:3. And Ms. Soltani testified she does not have "the knowledge and understanding of the statutory minimum." Soltani Tr. 186:20-21. Meanwhile, Mr. Wuco characterized his role as "an administrative function" of providing the employees required to carry out the requests of the programming director, Ms. Soltani, not deciding what level of programming is needed. Wuco Tr. 68:13-69:8, 94:7-95:10, 157:3-158:1 (Lake was the "key final decision maker" on resuming broadcasts to North Korea, and all Wuco's "communications have been operationally-based, management-based, on . . . providing the resources to effectuate the re-commencement[.]".

Finally, while Defendant Lake testified on September 9 that Ms. Soltani provides her and Mr. Wuco "relatively frequently" with a report about VOA audience statistics and had done so

(and provided a very positive report) "a couple days ago," Ms. Soltani testified that the last time she had asked for audience data "was in June" and she had not made a report on the volume of listenership or viewership to USAGM senior leadership since becoming director of programming, which occurred in July. Lake Tr. 269:2-271:19, Soltani Tr. 69:9-17, 274:1-276:19.

iv. The Proposed Reduction in Force Will Cement Defendants' Noncompliance.

Defendants have justified the size of their proposed reduction in force on the ground it "will not affect Voice of America's ability to broadcast *as it is currently broadcasting,"* Defs. Br. at 5 (emphasis added), i.e., to bring the Agency's workforce numbers in line with its current, deficient levels of programming. The Wuco declaration attests that, after the reduction in force, USAGM will have 38 additional active employees beyond those currently working. ECF No. 153-1 ¶ 4. Mr. Wuco does not say what those 38 employees will be doing, but there is no indication that 38 employees could fulfill the various program areas that are statutorily required, but not currently being produced, after more than 500 employees are terminated en masse.

Indeed, the evidence is to the contrary. Defendants appear to have issued termination notices to all radio master control technicians and all but three radio broadcast technicians (RBTs), Suppl. Decl. of John Dryden ¶ 7, despite that Ms. Soltani confirmed these technicians' essential role in radio broadcast. Soltani Tr. 85:13-86:1. Even if three RBTs can handle VOA's current radio programming—which consists of only one 30-minute show per day—many more would be needed to broadcast content more regularly, as required by statute.

Likewise, Ms. Soltani's testimony shows that Defendants have determined their level of programming based on the staff available, rather than deliberately retaining the staff required to fulfill statutory duties. Ms. Soltani testified that she has developed VOA's current programming plan "based on the resources [she] was given and the current staff," which is limited to one hour

of satellite television to Iran, 30 minutes of radio to Afghanistan, and "digital coverage" in Mandarin, Dari, Pashto, and Persian. Soltani Tr. 183:21-184:21. Ms. Soltani developed that plan solely based on resources available to her, not on any consideration of VOA's legal duties. *Id*. at 186:2-10.

Nor can VOA fulfill its duties by onboarding new personal service contractors (PSCs) alone. When the agency first made efforts to bring actual TV broadcasting to Iran, it leveraged its "access to critical talent" in the form of full-time employees, who were the "personnel necessary to successfully perform that task." Wuco Tr. 102:2-103:18. And, as of today, with VOA broadcasting one hour of TV "live to Iran" per day, the Persian Language Service of VOA maintains about 24 full-time employees and 12 PSCs. Soltani Tr. 167:2-9, 184:1-3. PSCs are journalists; they do not fulfill the technical responsibilities of, for instance, a radio broadcast technician or master control. Soltani Tr. 90:13-18. Any future programming staffed only by PSCs—like the intended Korean and Russian programming—will therefore be limited to digital (online) content. Soltani Tr. 199:13-202:203:15. And while Frank Wuco testified that VOA could rely heavily on PSCs to "surge" in the future in Korean and Russian language programming, Wuco Tr. 258:9-14, his testimony also revealed that it takes weeks to staff up a language service with PSCs: He testified that he began the process of bringing on PSCs for North Korean digital programming about "three weeks" ago, and that he expected the programming to resume in about "two weeks." Wuco Tr. 160:7-161:11, 154:18-155:1.

II. THIS COURT HAS JURISDICTION TO PAUSE THE REDUCTION IN FORCE

This Court has jurisdiction to temporarily pause the proposed reduction in force as part of its authority to enforce its preliminary injunction, and Defendants' five arguments to the contrary are all unpersuasive.

1. Defendants begin their argument to the contrary by asserting the "D.C. Circuit has already spoken on this issue" when a divided emergency motions panel stayed prong (1) of the preliminary injunction. Defs. Br. at 12. Defendants fail to acknowledge, throughout their brief, and despite Plaintiffs' opening brief, that the D.C. Circuit's most recent word on this Court's authority to enter orders regarding agency personnel was the *en banc* Court's statement that it is this Court's prerogative to determine "in the first instance" whether it should appropriately do so. Doc. 2117869 in Case No. 25-5144, at 3. The stay order on prong (1) therefore not only lacks preclusive effect on this issue, but it does not represent the Court's views on the question currently before the Court. Indeed, Judge Pillard, who joined the *en banc* majority statement, observed in a separate statement: "[T]his court has not limited the district court's remedial options going forward. The district judge retains the power to require the agency's compliance with its statutory obligations . . . I have confidence that Judge Lamberth can and will afford fitting relief so that defendants meet their acknowledged obligation to ensure that VOA operates consistently with the International Broadcasting Act." *Id*. at 5.

2. Defendants next rely on the D.C. Circuit's opinion in *NTEU v. Vought*, --- F.4th ----, 2025 WL 2371608 (D.C. Cir. Aug. 15, 2025) (*NTEU II*). But *NTEU II* held only that federal employees whose harm arose from an employment-related action were channeled under step two of the *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994), inquiry. 2025 WL 2371608, at *4-*6. The court then proceeded to assess the merits of claims brought by "plaintiffs [who] do not seek redress for employment-related injuries," namely the NAACP, which suffered harm when the agency in that case ceased providing services on which the NAACP's members relied. *Id*. at *6.

Here, Reporters Sans Frontières and Reporters Without Borders, Inc. (the "RSF Plaintiffs") and The NewsGuild-CWA ("TNG-CWA") are situated similarly to the NAACP in *NTEU II*—with the important distinction that the scope of the injury experienced by the RSF Plaintiffs and TNG-CWA is much broader. Both the RSF Plaintiffs and TNG-CWA have suffered irreparable harm from Defendants' cessation of programming, Defendants' minimal efforts to comply with prong (3) of the injunction have not remediated that harm, and carrying out the reduction in force would render full relief to the Plaintiffs impossible.

The declaration submitted by Thibaut Bruttin on behalf of RSF, for instance, establishes that the organization's members rely on VOA programming in "Afghanistan, Armenia, Azerbaijan, Bangladesh, Burundi, Cambodia, China (including Hong Kong and Tibet), Colombia, Democratic Republic of Congo, Myanmar, Ukraine, Pakistan, Venezuela, El Salvador, Vietnam, and Zimbabwe." ECF No. 16-15 ¶ 7. This Court credited that uncontested irreparable harm in entering the preliminary injunction. ECF No. 98 at 33-34. To date, Defendants have resumed radio broadcast in only one of those countries—Afghanistan—and have resumed production of digital content in only one other—China—and have no plans to resume broadcast in any other. *See* Wuco Tr. 170:1-171:1 (no plans to broadcast in other languages). Allowing the reduction in force, which is tailored to fulfill current levels of programming, *see* Wuco Decl. ECF No. 153-1 ¶¶ 4, 6, will frustrate RSF's ability to obtain full, or even meaningful, relief. Defendants' dismissive *ipse dixit* that RSF's harm is "speculative at best," Defs. Br. at 13, fails to acknowledge that the harm this Court already held was irreparable is ongoing and cannot be remedied if the reduction in force is effectuated, and Defendants have presented no concrete argument why the Court's conclusion was erroneous.

The emergency motions panel that stayed part (1) of this Court's preliminary injunction failed to acknowledge RSF and TNG-CWA's presence in the case, discussing only employees and contractors in its jurisdictional analysis. *See Widakuswara v. Lake*, No. 25-5144, 2025 WL 1288817, at *3 (D.C. Cir. May 3, 2025). In oral argument on the merits of the appeal this past Monday, however, the subject of the RSF Plaintiffs and TNG-CWA's claims took center stage, and counsel for Defendants conceded that, at a minimum, these plaintiffs may bring an APA claim without being channeled, although counsel contested the appropriateness of a reinstatement remedy. *See* Recording of Oral Argument at 1:13:15, available at media.cadc.uscourts.gov/recordings/docs/2025/09/25-5144-and-25-5145-and-25-5150-and-25-5151.mp3.

3. As to the union and individual plaintiffs, Defendants argue that *National Association of Immigration Judges v. Owen*, 139 F.4th 293 (4th Cir. 2025), cannot suffice to establish this Court' jurisdiction and further distinguish *NTEU II* because it is "wrong on the merits" and this Court has already rejected an argument that the MSPB's lack of quorum can defeat the *Thunder Basin* channeling implication. Defs. Br. at 13-14.

Defendants misunderstand Plaintiffs' argument. The Fourth Circuit in *Owen* found that any jurisdiction-stripping implication discernible from the CSRA was called into doubt for two reasons: first, the administrative agencies' lack of quorum meant the scheme was not practically functional; and second, the removal of heads of each CSRA-created administrative agency without cause destroyed the agencies' independence from the President, undermining Congress's intent that, although federal employees were precluded from district court, they could receive a fair and impartial hearing before the agencies. *Compare Owen*, 139 F.4th at 304-05 (discussing quorum issue), *with id*. at 305-07 (discussing implications from lack of independence). Plaintiffs

in this case raise only the *second*, independence-related argument. Defendants' rejoinder, relying on this Court's observation in the *Abramowitz* case, that the MSPB has lacked a quorum before, is therefore not responsive to the argument raised in this motion. Defs. Br. at 14.

As the Fourth Circuit put it, "Congress enacted the CSRA on the bedrock principle that the members of the MSPB and the Special Counsel would be protected from removal on political grounds, providing them independence from the President." *Id*. at 307. That fundamental premise of the CSRA's comprehensive administrative scheme is apparent throughout the legislative history, which repeatedly stresses the importance of each agency's independence from presidential control. In point of fact, the second line in the senate report's summary of the legislation announces that the CSRA "provides for an *independent* merit systems protection board and special counsel to adjudicate employee appeals and protect the merit system." *See* S. Rep. 95-969, 1978 U.S.C.C.A.N. 2723; *see also id*. at 2724, 2729, 2730, 2739, 2746, 2750, 2751, 2821 (repeatedly stressing the importance of the agencies' independence from presidential control) (emphasis added). Now that the President has exercised "unfettered control" over the administrative bodies, the Fourth Circuit observed, it may no longer be true that Congress intended to channel federal personnel disputes to the administrative process. 139 F.4th at 307. The Fourth Circuit remanded for the district court to complete a "new examination of Congressional intent" given the without-cause removals. *Id*. at 308. This Court is equally empowered to undertake that examination. *Cf. Elev8 Baltimore, Inc. v. Corp. for Nat'l & Cmty. Serv.*, No. CV MJM-25-1458, 2025 WL 1865971, at *18 (D. Md. July 7, 2025) (finding this argument one basis for the Court's likely jurisdiction).

4. Defendants brush aside the fact that they have unilaterally cancelled collective bargaining agreements with Plaintiffs AFSCME and AFGE, frustrating the unions' ability to

negotiate over the reduction in force and closing off the CSRA administrative channel through which unions can typically challenge unlawful unilateral action by federal employers. In Defendants' view, it is sufficient that the unions' members can go to the MSPB. But the unions themselves are plaintiffs with allegations of organizational harm separate and apart from the associational standing derived from their members' harms. *See* ECF No. 98 at 16-17 (holding unions have organizational standing). Defendants do not grapple with the case law exercising jurisdiction over unions' claims where the employer agency has been excluded from the FLRA's ambit. *See* ECF No. 144 at 12 (citing *Fed. Educ. Ass'n v. Trump*, No. CV 25-1362, 2025 WL 2355747, at *5 (D.D.C. Aug. 14, 2025); *AFGE Local 446 v. Nicholson*, 475 F.3d 341, 347-48 (D.C. Cir. 2007)).

5. Finally, Defendants' invocation of Supreme Court stays in service of its argument that this Court lacks jurisdiction to enforce the preliminary injunction by temporarily pausing the reduction in force is unconvincing. Defendants cite *McMahon v. New York*, 145 S. Ct. 2643 (2025), and *Office of Personnel Management v. AFGE*, 145 S. Ct. 1914 (2025), neither of which addressed jurisdiction-stripping under the CSRA. In both cases, the government pressed channeling as a bar to the district court's jurisdiction, and in both cases the Supreme Court gave no reason for its stay. And in the latter case, the district court recently granted summary judgment to the union plaintiffs, holding that it had jurisdiction over a challenge to the government's mass termination of probationary employees. *See Am. Fed'n of Gov't Emps., AFL-CIO v. United States Off. of Pers. Mgmt.*, No. C 25-01780 WHA, 2025 WL 2633791, at *10 (N.D. Cal. Sept. 12, 2025) (noting Supreme Court stay had no bearing on the jurisdictional question).[8]

[8] The district court noted that in the ordinary course, relief under the APA would require returning the probationary employees to their posts. But the court declined to do so in part because "the Supreme Court has made clear enough by way of its emergency docket that it will

Nor does *Maryland v. Department of Agriculture*, No. 25-1338, 2025 WL 1073657 (4th Cir. Apr. 9, 2025), suggest this Court lacks jurisdiction. The best, most plausible reading of that stay order is that it found a likely lack of jurisdiction based on a lack of standing. *See Elev8 Baltimore,* 2025 WL 1865971, at *16 n.8 (explaining that *Maryland* is ambiguous, but likely did not rely on channeling). The Fourth Circuit confirmed as much with its published opinion on the merits, which Defendants do not acknowledge, holding that the states lacked standing to obtain the broad relief the district court ordered in reinstating probationary employees, given their only injury was informational. *See generally State of Maryland v. United States Dep't of Agric*., No. 25-1248, 2025 WL 2586795 (4th Cir. Sept. 8, 2025). The court concluded with dicta about the CSRA, but did not hold that it lacked jurisdiction under *Thunder Basin*. *Id*. at *10.

III. THIS COURT SHOULD NOT ARTIFICIALLY RESTRICT THE SCOPE OF RELIEF

Defendants end by imploring the Court to restrict any relief to the Plaintiffs who have shown standing and irreparable harm, or to limit the scope of relief to VOA employees.

The relief Plaintiffs request is already tailored to what is necessary to protect against irreparable harm—pausing the reduction in force only until Defendants show they are in compliance with part (3) of the injunction.

Limiting the relief to the bare minimum required to remediate Plaintiffs' harm would not further retract the scope of relief. As discussed above, RSF Plaintiffs and TNG-CWA rely on VOA programming, and remediating their harm requires the resumption of programming in

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overrule judicially granted relief respecting hirings and firings within the executive," and in part because "too much water ha[d] passed under the bridge" since the Supreme Court's April stay and many probationary employees who were separated had "moved on with their lives." 2025 WL 2633791, at *20. Here, in contrast, the USAGM employees who received the RIF notices at issue have not yet been separated from employment, and no reinstatement would be necessary.

multiple countries and languages that Defendants have cast aside. *See supra* part II. Moreover, the vast majority of employees proposed to be terminated are represented by either Plaintiff AFSCME or Plaintiff AFGE, meaning that limiting relief to the Plaintiffs is not distinctly different from temporarily pausing the RIF in full.

Finally, Plaintiffs do not dispute that prong (3) of the injunction is limited to VOA broadcasting duties. And were it apparent that only "VOA employees" are essential to VOA programming, Plaintiffs would have no basis to ask for relief extending beyond such employees. But Defendants' own declarations conflate USAGM employees with VOA functions. For instance, Frank Wuco's September 18 declaration states, "the Agency expects to have 295 employees on duty as USAGM, VOA, and OCB. All of the *positions that are currently working on* VOA broadcast operations remain intact (and will following the RIF)." ECF No. 153-1 ¶ 4 (emphasis added). Defendant Lake's August 13 declaration explains that "VOA could use [OCB operations] in the event of exigent circumstances." ECF No. 134-2 ¶ 23. Elsewhere, Defendants rely on USAGM staff to fulfill VOA duties. *See* Lake Decl., ECF No. 127-1 ¶ 9 (July 18, 2025) (explaining agency is fulfilling VOA's mandated editorial responsibilities through "subject matter experts (SME) from across USAGM"); Wuco Decl., ECF No. 123-1 ¶ 13 (explaining "USAGM Business Development staff" were working on fulfilling VOA's 50-states program broadcast obligation); ECF No. 123-2 at 4 (listing "Back Of[f]ice Support" positions as "enable[ing] ongoing operations of USAGM"). Moreover, enjoining the reduction in force only as to VOA employees would be unworkable, given that Defendants themselves have, in the retention register listing positions subject to the RIF, defined multiple competitive levels to include both VOA and USAGM employees. Dryden Supp. Dec. ¶ 8.

CONCLUSION

For the foregoing reasons, and for the reasons in Plaintiffs' opening brief, Plaintiffs respectfully request that this Court temporarily pause the August 29 reduction in force, in service of enforcing its prior preliminary injunction order.

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Respectfully submitted,

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** The views expressed herein do not purport to represent the institutional views of Yale Law School, if any.