

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO,

DEANNA CHELETTE, and

ALEXZANDRIA BOYD,

Plaintiffs,

v.

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

and

ANDREA R. LUCAS, in her official capacity
as Chair of the U.S. Equal Employment
Opportunity Commission

Defendants.

Civil Action No. 1:26-cv-02640

ORAL ARGUMENT REQUESTED

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS’
MOTION FOR A PRELIMINARY INJUNCTION AND STAY**

TABLE OF CONTENTS

INTRODUCTION	1
BACKGROUND	3
I. The Federal Sector Class Complaint Process	3
II. Plaintiffs and the Phippen Class Complaint.....	7
III. The EEOC’s Categorical Suspension of Class Cases	10
LEGAL STANDARD.....	12
ARGUMENT	12
I. Plaintiffs Have a Substantial Likelihood of Proving Standing.	12
A. Plaintiffs Chelette and Boyd Have Standing.	13
B. AFGE Has Standing.....	13
II. Plaintiffs Are Likely to Succeed on the Merits.....	15
A. The Suspension Directive is Reviewable Agency Action.	15
B. The Suspension Directive Is Contrary to Law and Exceeds the EEOC’s Authority.....	17
C. The Suspension Directive Is Arbitrary and Capricious.	19
D. The Suspension Directive Unlawfully Withholds and Unreasonably Delays Mandatory Agency Action.	21
III. Plaintiffs Will Suffer Irreparable Harm Without Preliminary Relief.	23
A. Plaintiffs Chelette and Boyd Face Ongoing Irreparable Harm.	23
B. The Directive Inflicts Irreparable Harm Across Pending Class Cases.	25
C. The Suspension Directive Harms AFGE.	27
IV. The Balance of Equities and the Public Interest Favor Enjoining the Unlawful Suspension Directive.	28
V. The Court Should Stay the Suspension Directive.....	28
CONCLUSION.....	29

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>In re Aiken County</i> , 725 F.3d 255 (D.C. Cir. 2013)	23
<i>Air Line Pilots Ass’n, Int’l v. Civ. Aeronautics Bd.</i> , 750 F.2d 81 (D.C. Cir. 1984)	15, 22
<i>Am. Wild Horse Pres. Campaign v. Perdue</i> , 873 F.3d 914 (D.C. Cir. 2017)	21
<i>Bennett v. Spear</i> , 520 U.S. 154 (1997)	15, 16
<i>Biden v. Texas</i> , 597 U.S. 785 (2022)	16
<i>Bonnette v. D.C. Ct. of Appeals</i> , 796 F. Supp. 2d 164 (D.D.C. 2011)	24
<i>Cabrera v. U.S. Dep’t of Lab.</i> , 792 F. Supp. 3d 91 (D.D.C. 2025)	12, 16, 29
<i>Cabrera v. U.S. Dept’t of Lab.</i> , No. 25-5340, 2025 WL 3635881 (D.C. Cir. Dec. 15, 2025)	12
<i>Chalk v. U.S. Dist. Ct. Cent. Dist. of Cal.</i> , 840 F.2d 701 (9th Cir. 1988)	24
<i>City of Waukesha v. E.P.A.</i> , 320 F.3d 228 (D.C. Cir. 2003)	13
<i>CityFed Fin. Corp. v. Off. of Thrift Supervision</i> , 58 F.3d 738 (D.C. Cir. 1995)	12
<i>Clean Air Council v. Pruitt</i> , 862 F.3d 1 (D.C. Cir. 2017)	16
<i>Coal. for Humane Immigr. Rts. v. Noem</i> , 805 F. Supp. 3d 48 (D.D.C. 2025)	12
<i>Connecticut v. U.S. Dep’t of the Interior</i> , 363 F. Supp. 3d 45 (D.D.C. 2019)	17

<i>In re Core Commc'ns, Inc.</i> , 531 F.3d 849 (D.C. Cir. 2008)	22
<i>CSX Transp., Inc. v. Williams</i> , 406 F.3d 667 (D.C. Cir. 2005)	12
<i>Ctr. for Sci. in the Pub. Int. v. U.S. Food & Drug Admin.</i> , 74 F. Supp. 3d 295 (D.D.C. 2014)	22
<i>Dep't of Homeland Sec. v. Regents of the Univ. of Cal.</i> , 591 U.S. 1 (2020)	19
<i>District of Columbia v. U.S. Dep't of Agric.</i> , 444 F. Supp. 3d 1 (D.D.C. 2020)	29
<i>EEOC v. Chrysler Corp.</i> , 546 F. Supp. 54 (E.D. Mich. 1982)	24
<i>EEOC v. Chrysler Corp.</i> , 733 F.2d 1183 (6th Cir. 1984)	24
<i>Elec. Priv. Info. Ctr. v. Presidential Advisory Comm'n on Election Integrity</i> , 878 F.3d 371 (D.C. Cir. 2017)	13
<i>Friedman v. Fed. Aviation Admin.</i> , 841 F.3d 537 (D.C. Cir. 2016)	17
<i>Gomez v. Trump</i> , 485 F. Supp. 3d 145 (D.D.C. 2020)	16, 20
<i>Gomez v. Trump</i> , 486 F. Supp. 3d 445 (D.D.C. 2020)	16
<i>Gomez v. Biden</i> , No. 20-CV-01419 (APM), 2021 WL 1037866 (D.D.C. Feb. 19, 2021)	16
<i>In re GTE Serv. Corp.</i> , 762 F.2d 1024 (D.C. Cir. 1985)	29
<i>Hackley v. Roudebush</i> , 520 F.2d 108 (D.C. Cir. 1975)	26
<i>Harmon v. Thornburgh</i> , 878 F.2d 484 (D.C. Cir. 1989)	29
<i>Humane Soc'y of U.S. v. Zinke</i> , 865 F.3d 585 (D.C. Cir. 2017)	29
<i>Hunt v. Wash. State Apple Advert. Comm'n</i> , 432 U.S. 333 (1977)	14

<i>Int’l Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. Brock,</i> 477 U.S. 274 (1986).....	14
<i>Kingdomware Techs., Inc. v. United States,</i> 579 U.S. 162 (2016).....	18
<i>League of Women Voters of U.S. v. Newby,</i> 838 F.3d 1 (D.C. Cir. 2016).....	23–24, 27, 28
<i>Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach,</i> 523 U.S. 26 (1998).....	18
<i>Louisiana v. Biden,</i> 622 F. Supp. 3d 267 (W.D. La. 2022).....	16
<i>Lujan v. Defs. of Wildlife,</i> 504 U.S. 555 (1992).....	13
<i>Mass. Fair Share v. L. Enf’t Assistance Admin.,</i> 758 F.2d 708 (D.C. Cir. 1985).....	18
<i>Matthews v. Brennan,</i> No. CV H-14-1825, 2017 WL 1956732 (S.D. Tex. May 11, 2017).....	7
<i>Mendoza v. Perez,</i> 754 F.3d 1002 (D.C. Cir. 2014).....	13
<i>Moore v. Summers,</i> 113 F. Supp. 2d 5 (D.D.C. 2000).....	26, 27
<i>Motor Vehicle Mfrs. Ass’n of the U.S. v. State Farm Mut. Auto. Ins. Co.,</i> 463 U.S. 29 (1983).....	19
<i>Nat’l Council of Nonprofits v. Off. of Mgmt. & Budget,</i> 763 F. Supp. 3d 36 (D.D.C. 2025).....	16, 21, 27
<i>New York v. Trump,</i> 133 F.4th 51 (1st Cir. 2025).....	16
<i>New York v. Trump,</i> 811 F. Supp. 3d 215 (D. Mass. 2025).....	16
<i>Nken v. Holder,</i> 556 U.S. 418 (2009).....	12
<i>Norton v. S. Utah Wilderness All.,</i> 542 U.S. 55 (2004).....	21

<i>Segar v. Civiletti</i> , 516 F. Supp. 314 (D.D.C. 1981)	27
<i>Telecomms. Rsch. & Action Ctr. v. Fed. Commc'ns Comm'n</i> , 750 F.2d 70 (D.C. Cir. 1984)	22, 23
<i>Texas v. United States</i> , 524 F. Supp. 3d 598 (S.D. Tex. 2021)	16
<i>The Wilderness Soc'y v. Norton</i> , No. CIV.A.03-64 RMC, 2005 WL 3294006 (D.D.C. Jan. 10, 2005)	13–14
<i>Wade v. Donahoe</i> , No. CIV.A. 11-3795, 2012 WL 3844380 (E.D. Pa. Sept. 4, 2012)	7
<i>West v. Gibson</i> , 527 U.S. 212 (1999)	3, 19, 26
<i>Winter v. Nat. Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008)	12
<i>Woonasquatucket River Watershed Council v. U.S. Dep't of Agric.</i> , 778 F. Supp. 3d 440 (D.R.I. 2025)	17

Statutes

29 C.F.R. § 1614	1, 3, 4, 5, 6, 7, 17, 18, 20, 21, 22, 26, 29
Fed. R. Civ. P. 23	4, 6, 26
63 Fed. Reg. 8594 (Feb. 20, 1998)	3, 20
64 Fed. Reg. 37644 (July 12, 1999)	4, 20
77 Fed. Reg. 43498 (July 25, 2012)	5, 20
5 U.S.C. § 555(b)	21, 22
5 U.S.C. § 704	15, 17
5 U.S.C. § 705	2, 12, 29
5 U.S.C. § 706	2, 15, 17, 19, 21, 22
42 U.S.C. § 2000e-16	3

Other Authorities

- Cassandra A. Okechukwu et al., *Discrimination, Harassment, Abuse, and Bullying in the Workplace: Contribution of Workplace Injustice to Occupational Health Disparities*, 57 Am. J. Indus. Med. 573 (2014).....22
- Elizabeth R. Langton, *Workplace Discrimination as a Public Health Issue: The Necessity of Title VII Protections for Volunteers*, 83 Fordham L. Rev. 1455, 1480 (2014).....22
- Equal Emp. Opportunity Comm’n, Handbook for Administrative Judges (July 1, 2002), https://deweypub.com/store/media/EEOC_Administrative_Judges_Handbook.pdf4, 7
- U.S. Equal Emp. Opportunity Comm’n, Fiscal Year 2027 Congressional Budget Justification (Mar. 2026), https://www.eeoc.gov/sites/default/files/2026-04/Fiscal_Year_2027_Congressional_Budget_Justification_-_508.pdf.20
- U.S. Equal Emp. Opportunity Comm’n, *Frequently Asked Questions about the Fed. Sector Hearing Process*, <https://www.eeoc.gov/federal-sector/frequently-asked-questions-about-federal-sector-hearing-process> (last visited July 31, 2026)4
- U.S. Equal Emp. Opportunity Comm’n, Management Directive 110, ch. 7 (August 5, 2015), https://www.eeoc.gov/sites/default/files/migrated_files/federal/directives/md-110.pdf.4, 6, 7, 25
- U.S. Equal Emp. Opportunity Comm’n, *Questions and Answers: Final Federal Sector Complaint Processing Regulations 29 C.F.R. Part 1614*, <https://www.eeoc.gov/federal-sector/management-directive/questions-and-answers-final-federal-sector-complaint-processing> (last visited July 28, 2026).5
- Richard C. Sorenson et al., *Solving the Chronic Problem of Sexual Harassment in the Workplace: An Empirical Study of Factors Affecting Employee Perceptions and Consequences of Sexual Harassment*, 34 Cal. W. L. Rev. 457 (1998).....23

INTRODUCTION

This motion seeks to prevent the irreparable harm that the U.S. Equal Employment Opportunity Commission (“EEOC” or “Commission”) is recklessly causing by its indefinite suspension of federal-sector class complaint processing (the “Suspension Directive”). The Suspension Directive violates binding regulations requiring the Commission to process and adjudicate class discrimination complaints promptly. 29 C.F.R. § 1614.204 (2024). Yet for over seven months, the Commission has halted all proceedings in pending class cases, leaving federal employees exposed to ongoing discrimination, harassment, and retaliation without access to the administrative process established to protect them.

Plaintiff Deanna Chelette represents a certified class of nearly 200 female employees who have been, and continue to be, subjected to egregious sexual harassment at the Federal Correctional Complex in Pollock, Louisiana (“FCC Pollock”). Plaintiff Alexzandria Boyd is a member of that class. As alleged in the complaint, female staff at FCC Pollock are continually subjected to demeaning sexual comments and lewd gestures, inmates deliberately exposing themselves and masturbating at them, and graphic threats of rape and sexual violence. Management has discouraged women from reporting the harassment, retaliated against those who do, and refused to discipline inmates or implement basic protective measures. That inaction has only emboldened the harassers, leaving female officers terrified that an inmate will carry out their threats.

Invoking their right to a hearing from an EEOC administrative judge, Plaintiff Chelette and the other class agents sought class-wide injunctive relief to protect themselves and other women from the irreparable harm caused by the ongoing harassment. But just after the class was certified, Defendants abruptly ordered administrative judges to halt all case processing until further notice. The case has now remained frozen for nearly eight months while the harassment at FCC Pollock has only worsened and management remains unresponsive, depriving Plaintiffs Chelette, Boyd,

and the class of the means to obtain protection from further injury.

The harm caused by the Suspension Directive extends beyond FCC Pollock. Plaintiff American Federation of Government Employees, AFL-CIO (“AFGE”) represents more than 800,000 federal civil employees, including workers whose rights are being infringed by the indefinite suspension of class complaints. In each suspended case, federal workers harmed by discriminatory policies and hostile work environments have been left in limbo, with no indication of when their cases will resume, if at all. While cases languish, witnesses may leave the federal government, memories fade, and class-wide relief becomes more difficult to administer. Absent class members are also unable to opt out of the class complaint as long as it remains pending, leaving them bound to a process that the Commission has indefinitely suspended. The resulting uncertainty irreparably impairs AFGE’s ability to effectively counsel and represent its members in EEOC proceedings. And by undermining trust in a process designed to protect them, the Suspension Directive risks a chilling effect on federal workers’ exercise of their rights guaranteed by Title VII and other discrimination statutes.

The Suspension Directive violates the Administrative Procedure Act (“APA”), 5 U.S.C. § 706, because it is contrary to binding regulations, was adopted without explanation or legal support, ignores federal workers’ reliance on the class process, and indefinitely withholds agency action that the Commission is legally required to take. Accordingly, Plaintiffs seek narrow interim relief under 5 U.S.C. § 705, which authorizes the Court to stay the challenged agency action and “issue all necessary and appropriate process . . . to preserve status or rights pending conclusion of the review proceedings.” To prevent irreparable injury, the Court should stay the Suspension Directive and require the Commission to resume normal processing of class complaints in accordance with its binding regulations.

BACKGROUND

I. The Federal Sector Class Complaint Process

For decades, the EEOC has administered a class-complaint process for federal employees who allege discrimination affecting groups of similarly situated workers. Title VII of the Civil Rights Act of 1964 prohibits discrimination in federal employment and instructs the EEOC to issue rules “necessary and appropriate” to enforce that prohibition. 42 U.S.C. § 2000e-16(b). Pursuant to this authority, the Commission promulgated 29 C.F.R. Part 1614 through notice-and-comment rulemaking, codifying a detailed, mandatory procedure for adjudicating both individual and class complaints of discrimination from federal workers. *See* 29 C.F.R. § 1614.103(a) (“Individual and class complaints of employment discrimination and retaliation . . . *shall* be processed in accordance with this part.” (emphasis added)). For purposes of implementing its regulations, the EEOC has also issued Management Directive 110 (“MD-110”) which provides further guidance relating to the federal-sector complaint process.

The federal-sector administrative process was designed to provide a “quicker, less formal, and less expensive” means of resolving workplace discrimination claims “within the Federal Government and outside of court.” *West v. Gibson*, 527 U.S. 212, 218–19 (1999) (citing 42 U.S.C. § 2000e-16(c)). *See also* 63 Fed. Reg. 8594, 8599 (Feb. 20, 1998) (“[A]n effective administrative process for class complaints offers several advantages over litigation in federal court, including informality, lower cost, and the speed of resolution.”). Employees pay no filing fee to pursue an EEO complaint, request a hearing, or appeal to the Commission.¹ Unlike in federal court, class

¹ *See* U.S. Equal Emp. Opportunity Comm’n, *Frequently Asked Questions about the Fed. Sector Hearing Process*, <https://www.eeoc.gov/federal-sector/frequently-asked-questions-about-federal-sector-hearing-process> (last visited July 31, 2026) (“You do not have to pay a filing fee or other charges in connection with the hearing.”).

agents do not need to hire an attorney to represent them in administrative class proceedings.² And because the hearing is intended to be informal, the process is not strictly governed by the Federal Rules of Civil Procedure and Evidence.³ The Commission's administrative judges also bring highly specialized expertise to federal-sector discrimination complaints.⁴ Finally, the administrative process provides employees with the benefit of strict confidentiality. *See* 29 C.F.R. § 1614.109(e) ("Hearings are part of the investigative process and are thus closed to the public.").

The Commission has long recognized that the federal-sector class procedure is essential for identifying and remedying systemic discrimination in the federal workforce. In 1999, it amended Part 1614 in order "to strengthen the class complaint process" and to "ensure that complaints raising class issues are not unjustifiably denied class certification in the administrative process." 64 Fed. Reg. 37644, 37651 (July 12, 1999). The Commission emphasized that "[c]lass actions play a particularly vital role in the enforcement of the equal employment laws" and are "an essential mechanism for attacking broad patterns of workplace discrimination and providing relief to victims of discriminatory policies or systemic practices" in the federal workforce. *Id.* In 2012, after convening an expert workgroup to consider how to further improve the process, the Commission again strengthened the class complaint process to expedite certification appeals and make administrative judges' merits decisions final decisions subject to agency implementation or

² Compare 29 C.F.R. § 1614.204 with Fed. R. Civ. P. 23(g) ("Unless a statute provides otherwise, a court that certifies a class must appoint class counsel."). *See also Frequently Asked Questions about the Fed. Sector Hearing Process*, *supra* note 1 ("You are not required to retain an attorney or have another person represent you [in the federal-sector hearing process].").

³ *See* U.S. Equal Emp. Opportunity Comm'n, Management Directive 110, ch. 7 (August 5, 2015) [hereinafter "MD-110"], https://www.eeoc.gov/sites/default/files/migrated_files/federal/directives/md-110.pdf.

⁴ *Frequently Asked Questions about the Fed. Sector Hearing Process*, *supra* note 1 ("All EEOC AJs are highly skilled and knowledgeable attorneys, with respect to the federal sector hearing process and the relevant law.").

appeal. 77 Fed. Reg. 43498, 43503 (July 25, 2012). According to the Commission, these amendments were intended to “make it *more feasible* for class claims to be brought and resolved in the administrative system.”⁵

29 C.F.R. § 1614.204 establishes a detailed process for complaints alleging discrimination against a group of federal employees. It begins with counseling and the filing of a class complaint with the employing agency. 29 C.F.R. § 1614.204(b)–(c). As part of their duties under the regulations, EEO Counselors are required to give complainants “notice of the right to file a class complaint.” *Id.* § 1614.204(c)(2). If the individual informs the Counselor that they wish to file a class complaint, the Counselor “shall explain the class complaint procedures and the responsibilities of the class agent.” *Id.* § 1614.105(b)(1). The class complaint “must be filed with the agency that allegedly discriminated not later than 15 days after the agent’s receipt of the notice of right to file a class complaint.” *Id.* § 1614.204(c)(2).

The regulations command that a class complaint “shall be processed promptly” and that the parties “shall proceed at all times without undue delay.” *Id.* § 1614.204(c)(3).⁶ Within thirty days of receiving a class complaint, the employing agency must designate a representative and forward the complaint and relevant materials to the Commission. *Id.* § 1614.204(d)(1). The Commission “shall assign” an administrative judge, *id.* § 1614.204(d)(1), who has “full responsibility for the adjudication of the complaint, including overseeing the development of the

⁵ U.S. Equal Emp. Opportunity Comm’n, *Questions and Answers: Final Federal Sector Complaint Processing Regulations 29 C.F.R. Part 1614* (emphasis added), <https://www.eeoc.gov/federal-sector/management-directive/questions-and-answers-final-federal-sector-complaint-processing> (last visited July 28, 2026).

⁶ *See also* Equal Emp. Opportunity Comm’n, Handbook for Administrative Judges, ch. 10 (July 1, 2002), https://deweypub.com/store/media/EEOC_Administrative_Judges_Handbook.pdf (“Whenever possible, class complaints should be assigned on a priority basis and processed as expeditiously as possible.”).

record.” *Id.* § 1614.109(a).

The assigned administrative judge must decide whether to accept or dismiss the proposed class complaint using the same factors required for class certification under Federal Rule of Civil Procedure 23(a). *Id.* § 1614.204(a)(2). The administrative judge “shall transmit his or her decision to accept or dismiss a complaint to the agency and the agent.” *Id.* § 1614.204(d)(7). If the class complaint is accepted, the employing agency must notify class members, and the administrative judge must afford the parties an opportunity to prepare the case and develop evidence. *Id.* § 1614.204(e)–(f). If either party files a motion to compel discovery, the administrative judge “will rule expeditiously on the request for discovery.” MD-110, ch. 7 § IV.D.4. *See also id.* § IV.A.2 (discovery should be conducted “so as to avoid delay and to facilitate the adjudication of the case”).

After the discovery period, the administrative judge “shall set a date for the hearing.” 29 C.F.R. § 1614.204(h). Following the hearing, the administrative judge “shall transmit to the agency and class agent a decision on the complaint, including findings, systemic relief for the class, and any individual relief, where appropriate, with regard to the personnel action or matter that gave rise to the complaint.” *Id.* § 1614.204(i). If discrimination is found, the regulations require class-wide notice and a process for adjudicating individual claims, over which the administrative judge retains jurisdiction. *Id.* § 1614.204(k)–(l). A final order on a class complaint “shall . . . be binding on all members of the class and the agency.” *Id.* § 1614.204(j)(3). The class agent and employing agency may settle at any time, but a class resolution becomes binding only after notice to the class and approval from an administrative judge who reviews the settlement for fairness, adequacy, and reasonableness. *Id.* § 1614.204(g)(4).

The federal-sector class process also affects the rights of employees who are not named as class agents. Individual administrative complaints presenting the same claims are required to be

subsumed into the class proceeding. *See* MD-110, ch. 8 § III.⁷ And the EEOC rules do not allow individual class members to opt out of a certified class to pursue an individual claim while the administrative complaint is pending. *Id.* § VI.C (“The class members may not ‘opt out’ of the defined class”); *see also, e.g., Wade v. Donahoe*, No. CIV.A. 11-3795, 2012 WL 3844380, at *13 (E.D. Pa. Sept. 4, 2012) (holding EEOC class actions are non-opt-out); *Matthews v. Brennan*, No. CV H-14-1825, 2017 WL 1956732, at *6 (S.D. Tex. May 11, 2017) (staying federal court claims pending resolution of the EEOC class complaint because allowing plaintiff to litigate her individual claims in federal court “would effectively allow her to opt out of the EEOC class action, in violation of the agency regulations and rules”). Accordingly, when a class case is paused indefinitely, the effects are not limited to the named class agents. The suspension also halts the process that governs the overlapping claims and potential relief for absent class members, preventing them from vindicating their rights in either the administrative or judicial forum while the class complaint remains pending.

II. Plaintiffs and the Phippen Class Complaint

Plaintiff AFGE is the union representing the largest number of federal employees, with more than 800,000 members throughout the federal government. Ex. A, Declaration of Kenrick Roberson (“AFGE Decl.”) ¶ 2. AFGE advocates on behalf of its members and seeks to promote dignity, safety, and fairness for government employees, so that the government can more effectively serve the American people. *Id.* ¶ 5. Its core functions include providing support, guidance, and resources to members and affiliates, including representing them in the administrative proceedings through which federal employees enforce their statutory right to be free from discrimination at work. *Id.* AFGE members regularly invoke and rely on the federal-

⁷ *See also* Handbook for Administrative Judges, *supra* note 6, ch. 10, § I.

sector EEO process as complainants, class agents, and class members. *Id.* ¶¶ 10–12, 15.

AFGE’s Women and Fair Practices Department (“WFP”) trains, counsels, and represents members in EEO matters, including class complaints before the Commission. *Id.* ¶¶ 9, 10. WFP attorneys advise members about whether and how to use class procedures and represent members in pending cases. *Id.* ¶ 10. Because the Suspension Directive has effectively closed the class process without explanation or end date, AFGE cannot give members reliable guidance about the status and availability of the class-complaint process and is prevented from advancing pending class matters in which members’ rights are at stake. *Id.* ¶¶ 13, 14.

Plaintiff Deanna Chelette is a correctional officer employed by the Federal Bureau of Prisons (“BOP”) at FCC Pollock. Ex. B, Declaration of Deanna Chelette (“Chelette Decl.”) ¶ 1. She is a class agent in *Pippen v. Federal Bureau of Prisons*, EEOC No. 460-2024-00132X. Plaintiff Alexzandria Boyd is also a correctional officer at FCC Pollock and a member of the certified *Pippen* class. Ex. C, Declaration of Alexzandria Boyd (“Boyd Decl.”) ¶ 1. The *Pippen* complaint alleges that BOP has subjected women employees at FCC Pollock to a sex-based hostile work environment by failing to prevent and correct severe and pervasive sexual harassment by inmates, including vulgar sexual comments, lewd gestures, exhibitionist nudity and masturbation, unwanted touching, and rape threats. Ex. D, *Pippen* Compl.; Ex. E, Declaration of Heidi Burakiewicz (“Burakiewicz Decl.”) ¶ 2. In support of certification, the class agents submitted declarations from eight women; BOP acknowledged that at least fifty women had filed one or more related incident reports; and the class agents estimated that the proposed class included at least 182 women. Ex. F, *Pippen* Class Cert. Decision at 7.

On March 17, 2025, Administrative Judge Erania Ebron certified the class and, on April 21, 2025, the Department of Justice accepted the certification decision. The certified class is

defined as:

All women who have worked in the United States Department of Justice, Federal Correctional Complex in Pollock, Louisiana, who were allegedly subjected to discriminatory sexual harassment from September 22, 2023, to the present, except for any period of time when a putative class member served in the position of Warden, Associate Warden, Disciplinary Hearing Officer, Executive Assistant, or Lieutenant or Captain in the Correctional Services Department.

Ex. G, Dep't of Just. Final Order.

After certification, notice issued to class members informing them that the *Pippen* class representatives would represent their interests.⁸ Plaintiff Chelette and the other class agents complied with their obligations and stood ready to continue discovery, proceed to a hearing, and obtain a decision when they were suddenly notified that their case was indefinitely halted.

Both Chelette and Boyd may be assigned throughout the prison complex at FCC Pollock and remain exposed to the conduct challenged in the class complaint. Although Chelette's seniority permits her to bid for assignments involving less inmate contact, BOP may assign her to work anywhere within the complex and continues to require her to work mandatory overtime in the housing units. Chelette Decl. ¶ 11. Boyd primarily works in the high-security penitentiary, where she and other women are sometimes assigned alone in housing units containing approximately 120 male inmates—including inmates who have previously sexually harassed or threatened them. Boyd Decl. ¶¶ 1, 16–17. Inmates have repeatedly threatened to rape Boyd and other female staff. *Id.* ¶ 4. In one instance, other inmates covertly alerted staff that an inmate was actively plotting to rape Boyd and make false allegations against her. *Id.* ¶ 5. Both Chelette and Boyd describe inmates deliberately positioning themselves to force female officers to watch them masturbate and

⁸ Prior to the order pausing processing of the case, Plaintiffs' counsel intended to raise concerns regarding whether the BOP sufficiently provided notice to all class agents. *See* Burakiewicz Decl. ¶ 2.

engaging in other coordinated, gross forms of sexual harassment. *Id.* ¶ 6; Chelette Decl. ¶ 3.

Recently, management has emboldened the inmates to more egregiously sexually harass female staff. Chelette and Boyd report that management continues to discourage women from reporting harassment, tells them to “suck it up” or “toughen up,” refuses to sustain charges without video evidence even though cells lack cameras, and returns offenders to the same areas where their victims work. Boyd Decl. ¶¶ 9–11, 15; Chelette Decl. ¶¶ 5, 14. Inmates now openly taunt female staff that nothing will happen if they are reported. Chelette Decl. ¶ 14. Management’s inaction is so severe that, within the last two months, inmates took matters into their own hands to protect a female officer from an inmate’s threat to rape and murder her. Ex. H, Declaration of Samantha McCowan (“McCowan Decl.”) ¶¶ 7–10 (describing largest inmate disturbance at FCC Pollock in the last two years, which inmates started because management failed to take steps to protect female employee from inmate who threatened her, and which resulted in serious injuries). In addition to making the harassment more brazen, management’s impunity has driven women to leave FCC Pollock, thereby worsening already dangerous understaffing, and has left the remaining officers at heightened risk of sexual assault. Boyd Decl. ¶¶ 7, 12, 17; Chelette Decl. ¶¶ 4, 7, 9.

III. The EEOC’s Categorical Suspension of Class Cases

On December 10, 2025, Administrative Judge Ebron issued a “Notification of Case Processing Abeyance” in the *Pippen* matter. Ex. I, *Pippen* Abeyance Notice; Burakiewicz Decl. ¶ 2. The notice stated that the Commission had ordered all case processing in federal-sector class cases to stop until further notice:

Effective immediately, all case processing in the above-captioned matter must be paused until further notice. All scheduled deadlines and appearances are also cancelled. **This notification applies to all class cases in the federal sector,** including those alleging disparate impact.

Ex. I. (emphasis added). The notice cancelled all deadlines and appearances, and provided no date

for processing to resume. *Id.* On information and belief, the EEOC issued the underlying instruction and required administrative judges to follow it in all federal-sector class cases, regardless of the procedural posture, urgency, or nature of the alleged discrimination.

More than six months later, on June 23, 2026, Administrative Judge Ebron informed the parties by email that the *Pippen* matter had been removed from “stay status,” but that “case processing remains paused.” Ex. J, Emails between Counsel & Admin. Judge. When counsel asked what distinction existed between a stay and a pause, the judge responded that “[t]here is no difference between a stay and a pause in case processing” and that she had “no further information.” *Id.* The *Pippen* matter remains indefinitely paused. Burakiewicz Decl. ¶ 2.

The Suspension Directive placed Plaintiffs Chelette, Boyd, and members of the *Pippen* class in harm’s way. In the eight months since case processing was suspended, the hostile work environment and management’s inaction in response to the sexual harassment at FCC Pollock have only worsened. Boyd Decl. ¶¶ 7, 12, 17; Chelette Decl. ¶¶ 4, 7, 9, 14. Plaintiffs Chelette and Boyd have no information about when, if ever, their case will continue and whether they will be able to obtain injunctive relief from the EEOC to prevent ongoing harassment and resulting harm.

On information and belief, Defendants continue to enforce the Suspension Directive across the EEOC. Burakiewicz Decl. ¶¶ 2, 3, 6, 7. In addition to the *Pippen* case, counsel is aware of at least ten other class complaints that have not moved forward for months. *Id.* ¶¶ 3, 6, 7. Administrative judges have cancelled deadlines, appearances, discovery, hearings, and other case activity because of the Commission-wide instruction. *Id.* ¶¶ 2, 3, 6, 7. Defendants have not published the Suspension Directive or provided any explanation or authority for the decision, nor any end date, leaving thousands of federal employees with no indication of when the EEOC will permit the adjudication of class claims to resume, and under what circumstances.

LEGAL STANDARD

The APA authorizes a court “to the extent necessary to prevent irreparable injury,” to “issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.” 5 U.S.C. § 705. A party seeking a stay under § 705 must satisfy the same four-factor test as a party seeking a preliminary injunction. *Coal. for Humane Immigr. Rts. v. Noem*, 805 F. Supp. 3d 48, 71 (D.D.C. 2025); *Cabrera v. U.S. Dep’t of Lab.*, 792 F. Supp. 3d 91, 99 (D.D.C. 2025), *appeal dismissed sub. nom.*, No. 25-5340, 2025 WL 3635881 (D.C. Cir. Dec. 15, 2025). To obtain a preliminary injunction, the moving party must show that (1) they are “likely to succeed on the merits”; (2) they are “likely to suffer irreparable harm in the absence of preliminary relief”; (3) “the balance of equities tips in [their] favor”; and (4) “an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). In cases against the government, the balance of equities and public interest factors merge into a single inquiry. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

The preliminary injunction test “is a flexible one” that should be analyzed on a sliding scale. *CSX Transp., Inc. v. Williams*, 406 F.3d 667, 670 (D.C. Cir. 2005). “If the arguments for one factor are particularly strong, an injunction may issue even if the arguments in other areas are rather weak.” *CityFed Fin. Corp. v. Off. of Thrift Supervision*, 58 F.3d 738, 747 (D.C. Cir. 1995).

ARGUMENT

I. Plaintiffs Have a Substantial Likelihood of Proving Standing.

A plaintiff seeking a preliminary injunction must show a “substantial likelihood of standing.” *Elec. Priv. Info. Ctr. v. Presidential Advisory Comm’n on Election Integrity*, 878 F.3d 371, 377 (D.C. Cir. 2017). Article III standing requires: (1) an “injury in fact”; (2) a “causal connection between the injury” and the challenged action; and (3) a likelihood that the “injury will

be redressed by a favorable decision.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (citation modified). In assessing standing, the court must “assume that on the merits the plaintiffs would be successful in their claims.” *City of Waukesha v. E.P.A.*, 320 F.3d 228, 235 (D.C. Cir. 2003). To establish jurisdiction over a claim, “the court need only find one plaintiff who has standing.” *Mendoza v. Perez*, 754 F.3d 1002, 1010 (D.C. Cir. 2014).

A. Plaintiffs Chelette and Boyd Have Standing.

Plaintiffs Chelette and Boyd both meet the requirements for Article III standing. The Suspension Directive has already stopped the certified proceeding that seeks to vindicate their rights. *See* Ex. I. Plaintiff Chelette cannot carry out her responsibilities as a class agent or obtain a decision on the merits and, if warranted, prospective relief. Plaintiff Boyd, as an absent class member, remains bound to the outcome of the class complaint, even though the action is frozen. Both continue to work in the environment challenged in the complaint and face an ongoing risk of being subjected to harassment. Boyd Decl. ¶¶ 7, 12, 17; Chelette Decl. ¶¶ 4, 7, 9, 14.

Plaintiffs’ harms are directly traceable to Defendants’ actions, as the administrative judge expressly attributed the halt in *Pippen* to the Commission-wide Suspension Directive. *See* Ex. I. And this Court can redress Plaintiffs’ harms by removing the barrier preventing the administrative judge from processing the *Pippen* case. Plaintiffs need not prove that they will ultimately prevail on the merits of their underlying discrimination claims; it is enough that this Court’s relief would restore their opportunity to pursue the adjudicatory process that is now categorically and indefinitely halted. *The Wilderness Soc’y v. Norton*, No. CIV.A.03-64 RMC, 2005 WL 3294006, at *4 (D.D.C. Jan. 10, 2005) (“The Court can redress this injury by simply compelling the process, whether or not [plaintiff] and its members will ultimately achieve a favorable outcome.”).

B. AFGE Has Standing.

An association has standing when: (1) “its members would otherwise have standing to sue

in their own right;” (2) “the interests it seeks to protect are germane to the organization’s purpose;” and (3) “neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977). AFGE satisfies each of these requirements.

First, AFGE has members directly injured by the Suspension Directive. AFGE members include class agents and class members covered by other class complaints, subject to the same categorical Suspension Directive, including BOP employees at FCC Pollock. AFGE Decl. ¶¶ 3, 4, 10, 11, 15. Each of these members is experiencing concrete injuries to their legally protected rights and these harms are fairly traceable to the Suspension Directive and are redressable by the Court.

Second, protecting the process by which federal workers can enforce their rights and seek relief from discrimination is germane to the organizational purpose of AFGE. AFGE exists to secure dignity, safety, fairness, and lawful treatment for federal employees. AFGE Decl. ¶ 5. Its WFP department regularly conducts training on EEOC case handling and provides counseling for AFGE’s members, including with respect to the EEOC’s class complaint process. *Id.* ¶¶ 9–12. Protecting members’ access to the process for obtaining relief from systemic discrimination is thus directly relevant to AFGE’s mission. *See Int’l Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. Brock*, 477 U.S. 274, 286–87 (1986) (recognizing obtaining and protecting benefits for their worker members is germane to the purpose of labor unions).

Third, neither the nature of the claims nor the relief requested requires the participation of individual members in this lawsuit. In this APA action, liability turns on Defendants’ implementation of the Suspension Directive, not on any individualized proof. Plaintiffs seek prospective relief, not damages for particular workers, so a stay of the Suspension Directive would remove the same barrier for every affected member.

II. Plaintiffs Are Likely to Succeed on the Merits.

Plaintiffs are likely to succeed on the merits of their claims that the Suspension Directive violates the APA, 5 U.S.C. § 706. *First*, because the EEOC must follow its own binding regulations, Defendants' implementation of the Suspension Directive is contrary to law, in violation of APA § 706(2)(A). *Second*, the Suspension Directive is arbitrary and capricious under APA § 706(2)(A) because Defendants have provided no explanation—much less a reasoned one—for implementing a blanket policy that indefinitely stays an entire category of discrimination cases, without considering reliance interests or alternatives. *Finally*, Defendants are violating APA § 706(1) because the Suspension Directive unlawfully withholds and unreasonably delays action on federal-sector class cases that the EEOC is required by law to take.

A. The Suspension Directive is Reviewable Agency Action.

The APA authorizes review of “final agency action for which there is no other adequate remedy in a court.” 5 U.S.C. § 704.⁹ Agency action is final when it (1) marks “the consummation of the agency’s decisionmaking process” and (2) is “one by which rights or obligations have been determined, or from which legal consequences flow.” *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (citation modified). The Suspension Directive meets both of these requirements.

First, the Suspension Directive represents the “consummation of the agency’s decisionmaking process,” culminating in its decision that federal-sector class cases may not proceed. *Bennett*, 520 U.S. at 177. Administrative judges have heeded the Suspension Directive

⁹ Importantly, final agency action is only a prerequisite to Plaintiffs’ first and second causes of action brought under 5 U.S.C. § 706(2) challenging Defendants’ actions as contrary to law and arbitrary or capricious. By contrast, Plaintiffs’ third cause of action, brought under 5 U.S.C. § 706(1) for agency action unlawfully withheld or unreasonably delayed does not require final agency action. *Air Line Pilots Ass’n, Int’l v. Civ. Aeronautics Bd.*, 750 F.2d 81, 85 (D.C. Cir. 1984) (“By definition, a claim of unreasonable delay cannot await final agency action before judicial review since it is the very lack of agency action which gives rise to the complaint.”).

by cancelling proceedings in class cases. *See Biden v. Texas*, 597 U.S. 785, 808–09 (2022) (recognizing that an action that binds agency “staff by forbidding them to continue [a] program” is final). The EEOC’s description of its action as a “pause” or “suspension” does not render it non-final. *See Louisiana v. Biden*, 622 F. Supp. 3d 267, 291 (W.D. La. 2022) (“Government Defendants’ use of the label ‘Pause’ is not dispositive of whether agency action is final.”). Indeed, courts in this Circuit have repeatedly found that even temporary agency actions, which the agency might review or change later, can still constitute final agency action subject to review. *See, e.g., Cabrera*, 792 F. Supp. 3d at 104 (finding indefinite suspension of Job Corps program operations was final agency action); *Gomez v. Trump*, 485 F. Supp. 3d 145, 193–94 (D.D.C. 2020) (State Department’s suspension of visa processing and adjudication due to COVID-19 was final agency action), *amended in part*, 486 F. Supp. 3d 445 (D.D.C. 2020), and *amended in part sub nom., Gomez v. Biden*, No. 20-CV-01419 (APM), 2021 WL 1037866 (D.D.C. Feb. 19, 2021); *Nat’l Council of Nonprofits v. Off. of Mgmt. & Budget*, 763 F. Supp. 3d 36, 53–54 (D.D.C. 2025) (directive that federal agencies “must temporarily pause” federal financial assistance was final agency action (emphasis in original)); *Clean Air Council v. Pruitt*, 862 F.3d 1, 6 (D.C. Cir. 2017) (agency decision to suspend prior rule for two years pending reconsideration by new administration was final agency action).¹⁰

Second, legal and practical consequences flow directly from the Suspension Directive. It

¹⁰ *See also, e.g., New York v. Trump*, 133 F.4th 51, 69 (1st Cir. 2025) (finding directive to implement categorical funding freezes was final agency action); *Texas v. United States*, 524 F. Supp. 3d 598, 642 (S.D. Tex. 2021) (finding agency’s 100-day pause of deportations was final agency action); *New York v. Trump*, 811 F. Supp. 3d 215, 233–34 (D. Mass. 2025) (finding agency’s “temporary” pause on issuance of wind energy authorizations was final agency action); *Woonasquatucket River Watershed Council v. U.S. Dep’t of Agric.*, 778 F. Supp. 3d 440, 461–463 (D.R.I. 2025) (finding final agency action where plaintiffs challenged agency’s “ongoing holds” on funding and “decisions by the Agency Defendants to implement broad, categorical freezes on obligated funds”).

removes administrative judges' authority to process class cases, cancels existing deadlines and appearances, and prevents class agents and class members from invoking the class procedures and obtaining the relief provided by 29 C.F.R. Part 1614. The Suspension Directive "prevent[s] [p]laintiffs from moving forward" with their claims, such that they are "trapped without recourse due to the indefinite postponement of agency action." *Connecticut v. U.S. Dep't of the Interior*, 363 F. Supp. 3d 45, 60 (D.D.C. 2019) (quoting *Soundboard Ass'n v. Fed. Trade Comm'n*, 888 F.3d 1261, 1268 (D.C. Cir. 2018)). *See also Friedman v. Fed. Aviation Admin.*, 841 F.3d 537, 542, 545 (D.C. Cir. 2016) (finding final agency action where plaintiff had been placed in "administrative limbo," effectively "preventing him from obtaining any explicitly final determination on his application").

Finally, Plaintiffs lack any "other adequate remedy in a court." 5 U.S.C. § 704. A *de novo* Title VII action against BOP would not vacate the EEOC-wide directive or restore the federal-sector class adjudication process. The possibility of different litigation does not provide an adequate substitute for review of the agency action challenged here. *See* Section III.B., *infra*.

B. The Suspension Directive Is Contrary to Law and Exceeds the EEOC's Authority.

The APA requires courts to "hold unlawful and set aside" agency action that is "not in accordance with law" or is "in excess of statutory jurisdiction, authority, or limitations." 5 U.S.C. §§ 706(2)(A), (C). The Suspension Directive must be set aside because it contradicts binding regulations and disables an entire adjudicatory framework that the Commission long ago determined was "necessary and appropriate" to carry out its statutory duty to eradicate employment discrimination in the federal sector.

To start, 29 C.F.R. Part 1614 is mandatory. Those binding regulations state that, in the federal sector, "[i]ndividual and class complaints of employment discrimination . . . *shall* be processed in accordance with this part." 29 C.F.R. § 1614.103(a) (emphasis added). Section

1614.204 requires prompt processing of class complaints; directs the forwarding and assignment of class complaints to administrative judges; delegates full responsibility for adjudication to administrative judges; and requires certification decisions, hearings, merit decisions, and class-wide relief, as appropriate. *Id.* §§ 1614.109(a), 1614.204(c)(3). The ordinary meaning of “shall” is mandatory. *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 171 (2016) (“Unlike the word ‘may,’ which implies discretion, the word ‘shall’ usually connotes a requirement.”); *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 27 (1998) (“[T]he mandatory ‘shall,’ . . . normally creates an obligation impervious to judicial discretion.”). The Suspension Directive conflicts directly with the EEOC’s binding regulations, preventing the Commission from processing class complaints promptly and preventing administrative judges from exercising the authority and performing the duties the regulations assign to them. *See Mass. Fair Share v. L. Enf’t Assistance Admin.*, 758 F.2d 708, 711 (D.C. Cir. 1985) (“It has long been settled that a federal agency must adhere firmly to self-adopted rules by which the interests of others are to be regulated.”).

The Suspension Directive also undermines Title VII and the EEOC’s statutory mandate to eradicate discrimination in federal employment. Congress created the EEOC in order to *further* Title VII’s antidiscrimination objectives, not to undermine them by cutting off access to an adjudicatory mechanism needed to eliminate systemic discrimination in the federal workforce. Moreover, by delegating responsibility for enforcing Title VII to the EEOC, Congress evinced a clear intent for federal employees’ discrimination complaints to be handled administratively, outside of court, to the greatest extent possible. As the Supreme Court has found, it would “undermine this remedial scheme” to “force into court matters that the EEOC might otherwise have resolved.” *West*, 527 U.S. at 219; *see also id.* at 220 (noting Congress was “anxious to have

the EEOC consider as a preliminary matter” Title VII remedies for federal employees). And, practically speaking, “preventing earlier resolution of a dispute,” as the Suspension Directive does, “would increase the burdens of both time and expense that accompany efforts to resolve hundreds, if not thousands, of such disputes each year.” *Id.* at 219. Such a result is antithetical to the fundamental purposes of Title VII and the EEOC’s duty to vigorously enforce its antidiscrimination goals. The Suspension Directive therefore must be set aside.

C. The Suspension Directive Is Arbitrary and Capricious.

A reviewing court must “hold unlawful and set aside” agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). The APA “requires agencies to engage in ‘reasoned decisionmaking.’” *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16 (2020) (quoting *Michigan v. EPA*, 576 U.S. 743, 750 (2015)). An agency must examine the relevant information, articulate a reasoned explanation, and connect the facts found to the choices made. *Motor Vehicle Mfrs. Ass’n of the U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). When an agency changes a longstanding policy, it must acknowledge the change, provide a reasoned explanation, consider important aspects of the problem, and account for significant reliance interests. *Dep’t of Homeland Sec.*, 591 U.S. at 16.

Here, Defendants have supplied no explanation at all for the Suspension Directive. They have not identified the problem the Directive is meant to solve or the legal authority supporting a categorical suspension of federal-sector class cases. *See Gomez*, 485 F. Supp. at 194 (finding agency’s suspension of visa processing was arbitrary and capricious where defendants “offered no rational explanation for the policy, nor did they account for the serious consequences the policy would impose”). In abruptly departing from decades of processing federal-sector class complaints under § 1614.204, Defendants ignored binding regulations and the Commission’s longstanding practice, informed by its considered judgment that class proceedings are essential to address

systemic discrimination and that delay in certification and adjudication should be reduced. *See* 64 Fed. Reg. at 37651; 63 Fed. Reg. at 8599 (“[A]n effective administrative process for class complaints offers several advantages over litigation in federal court, including informality, lower cost, and the speed of resolution.”); 63 Fed. Reg. at 8600 (“Where a class of individuals have been affected by a policy or practice, it is far more efficient to address those concerns in one action rather than requiring numerous individual complaints”); 77 Fed. Reg. at 43504. Defendants have neither acknowledged those prior judgments nor explained why the considerations supporting them no longer apply.¹¹

There is no indication that Defendants considered the Suspension Directive’s predictable impact on federal workers who rely on the agency’s class complaint process, including those who continue to be exposed to discriminatory policies and hostile work environments while their cases languish. Defendants ignored the risk of lost evidence, fading memories, and unavailable witnesses, as well as the serious impact their actions could have on federal employees’ trust in the administrative process and the chilling effect that could result. And there is no evidence that Defendants considered narrower alternatives to their sweeping directive. For these reasons, the Suspension Directive is arbitrary and capricious and therefore must be vacated. *See Am. Wild Horse Pres. Campaign v. Perdue*, 873 F.3d 914, 932 (D.C. Cir. 2017) (where an agency fails “to

¹¹ The Commission’s unexplained actions are especially difficult to reconcile with its representations to Congress as recently as March 2026. Even while refusing to process federal-sector class complaints, the EEOC sought funding for a federal-sector hearings program that it described to Congress as “provid[ing] federal sector complainants in individual *and class action claims* with a full, fair, and impartial adjudication of EEO complaints by an EEOC Administrative Judge.” U.S. Equal Emp. Opportunity Comm’n, Fiscal Year 2027 Congressional Budget Justification, at 28 (Mar. 2026) (emphasis added), https://www.eeoc.gov/sites/default/files/2026-04/Fiscal_Year_2027_Congressional_Budget_Justification_-_508.pdf. For FY 2027, the EEOC has requested \$64.5 million for federal-sector hearings—the same funding level as the prior year—for a program whose operation it has substantially impeded. *Id.* at 7 tbl. 1.

consider or to adequately analyze the . . . consequences of” its actions, it has failed to engage in reasoned decisionmaking); *Nat’l Council of Nonprofits*, 763 F. Supp. 3d at 54–55 (finding funding freeze was arbitrary and capricious where government failed to take a “measured approach” before it “cut the fuel supply to a vast, complicated, nationwide machine—seemingly without any consideration for the consequences of that decision”).

D. The Suspension Directive Unlawfully Withholds and Unreasonably Delays Mandatory Agency Action.

The APA requires an agency to “proceed to conclude a matter presented to it” within “a reasonable time,” 5 U.S.C. § 555(b), and authorizes a reviewing court to “compel agency action unlawfully withheld or unreasonably delayed.” *Id.* § 706(1). Relief under § 706(1) is available when an agency fails to take a discrete action that it is legally required to take. *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64–65 (2004).

Here, the Commission’s regulations unambiguously require the processing of each class complaint and impose discrete, mandatory duties in class cases. The EEOC must assign an administrative judge to complaints, and the administrative judge must exercise full responsibility for the case, oversee development of the record, set a hearing after the preparation period, and issue a decision. 29 C.F.R. §§ 1614.109(a), (i), 1614.204(f), 1614.204(h)–(i). The Suspension Directive categorically prevents the administrative judge from performing those duties.

The resulting delay is unreasonable under the factors identified in *Telecommunications Research & Action Center v. Federal Communications Commission*. 750 F.2d 70, 80 (D.C. Cir. 1984) [hereinafter *TRAC*]. See *In re Core Commc’ns, Inc.*, 531 F.3d 849, 855 (D.C. Cir. 2008) (explaining that the *TRAC* factors are “intended to provide useful guidance in assessing claims of agency delay,” but are not “ironclad” (citation modified)). First, the “most important factor is that ‘the time agencies take to make decisions must be governed by a rule of reason.’” *Id.* at 855. Here,

the EEOC’s indefinite suspension of class complaint processing, which has already extended for nearly eight months, violates any construction of the rule of reason when it has no “identifiable rationale.” *Ctr. for Sci. in the Pub. Int. v. U.S. Food & Drug Admin.*, 74 F. Supp. 3d 295, 300 (D.D.C. 2014). The Suspension Directive imposes a categorical pause with no duration, exceptions, or explanation.

Second, Congress and the Commission supplied the governing timetable by requiring the agency to conclude matters within a “reasonable time,” 5 U.S.C. § 555(b), and to process class complaints promptly and without undue delay. 29 C.F.R. § 1614.204(c)(3). *See Air Line Pilots Ass’n, Int’l*, 750 F.2d at 85 (“[A]gencies operate under a mandate to decide matters in a reasonable time, and Congress has instructed statutory review courts to compel agency action which has been unreasonably delayed.”) (citing 5 U.S.C. §§ 555(b), 706(1)).

Third, the interests at stake are federal employees’ health, safety, and freedom from discrimination, not simply economic injury, and thus the injury caused by delay is particularly harmful and irreparable.¹² In the *Pippen* matter, for instance, women employees continue to face pervasive and severe sexual harassment while the administrative process for obtaining systemic relief is blocked.¹³

¹² See Cassandra A. Okechukwu et al., *Discrimination, Harassment, Abuse, and Bullying in the Workplace: Contribution of Workplace Injustice to Occupational Health Disparities*, 57 Am. J. Indus. Med. 573 (2014) (finding a direct link between experiences of discrimination or harassment in the workplace and negative psychological and physical health outcomes); Elizabeth R. Langton, *Workplace Discrimination as a Public Health Issue: The Necessity of Title VII Protections for Volunteers*, 83 Fordham L. Rev. 1455, 1480 (2014) (describing studies finding that workplace discrimination also affects bystanders who “often express a loss of belief in justice and a caring community, as well as anxiety, overall poor health, and pain”).

¹³ See Richard C. Sorenson et al., *Solving the Chronic Problem of Sexual Harassment in the Workplace: An Empirical Study of Factors Affecting Employee Perceptions and Consequences of Sexual Harassment*, 34 Cal. W. L. Rev. 457, 491 (1998) (finding sexual harassment is an “emotionally devastating event” for both direct victims and bystanders, resulting in loss of productivity, decreased worker satisfaction, and increased turnover).

Fourth, the delay prejudices employees by allowing discrimination to continue, degrading evidence, and postponing relief. Across class cases, witness memories fade and records become harder to locate as time goes on. Class member contact information also becomes more difficult to obtain and notice and relief become harder to administer. These harms cannot be quantified and thus remedied later.

Fifth, the requested relief would not improperly reorder competing agency priorities. Defendants have identified no higher priority served by freezing an entire category of cases, and generalized assertions of resource allocation cannot authorize an agency to disregard mandatory duties. *See In re Aiken County*, 725 F.3d 255, 259–60 (D.C. Cir. 2013).

Sixth, no showing of impropriety or bad faith is required. *TRAC*, 750 F.2d at 80. The Commission’s secrecy and failure to explain the Directive reinforce the need for relief in this case, but the claim succeeds even without any finding of improper motive.

III. Plaintiffs Will Suffer Irreparable Harm Without Preliminary Relief.

To obtain a preliminary injunction, a party must demonstrate that the harm they face is “certain and great, actual and not theoretical, and so imminent that there is a clear and present need for equitable relief to prevent irreparable harm.” *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 8 (D.C. Cir. 2016) (citation modified). The Suspension Directive has already frozen federal-sector class cases for nearly eight months, causing significant injuries that continue each day that the Directive remains in effect. Plaintiffs seek a preliminary injunction to prevent further irreparable harm.

A. Plaintiffs Chelette and Boyd Face Ongoing Irreparable Harm.

Plaintiffs Chelette, Boyd, and other women in the *Pippen* class remain exposed to the discriminatory workplace conditions at FCC Pollock challenged in their complaint. In fact, the Plaintiffs’ declarations establish that the severe sexual harassment and management’s failure to

take corrective action have worsened since the Suspension Directive was implemented. Boyd Decl. ¶¶ 7, 12, 17; Chelette Decl. ¶¶ 4, 7, 9, 14; McCowan Decl. ¶¶ 3–7. Each additional month that the *Pippen* case remains paused prolongs employees’ exposure to the hostile work environment while withholding the administrative process capable of redressing it. That injury cannot be repaired by an eventual final judgment in this APA case, and courts have recognized that requiring a person to endure ongoing discriminatory conditions can constitute irreparable harm. *See Bonnette v. D.C. Ct. of Appeals*, 796 F. Supp. 2d 164, 187 (D.D.C. 2011) (“[F]orcing Plaintiff to take the MBE under discriminatory conditions is itself a form of irreparable injury.”); *Chalk v. U.S. Dist. Ct. Cent. Dist. of Cal.*, 840 F.2d 701, 709 (9th Cir. 1988) (finding plaintiff’s “emotional and psychological” injury constituted irreparable harm because “[s]uch an injury cannot be adequately compensated for by a monetary award after trial”); *EEOC v. Chrysler Corp.*, 546 F. Supp. 54, 70–71 (E.D. Mich. 1982) (finding emotional stress, depression and reduced sense of well-being constituted irreparable injury), *aff’d*, 733 F.2d 1183 (6th Cir. 1984).

The Suspension Directive also inflicts irreparable injury by reducing the likelihood that Plaintiffs and class members will receive effective relief. As the case remains dormant, memories fade; witnesses transfer, retire, or leave federal service; supervisors and decisionmakers change; and records such as incident reports and communications become harder to obtain. Lost witnesses, faded memories, and misplaced records cannot be recreated, even if processing eventually resumes. The resulting prejudice is especially harmful in a systemic case that depends on aggregated evidence across many employees and incidents.

Similarly, class notice and relief become more difficult to administer with time. In *Pippen*, although class notice began prior to the Suspension Directive, Plaintiffs’ counsel had identified concerns about whether all class members received sufficient notice. Burakiewicz Decl. ¶ 2.

Continued employee turnover makes it harder to locate class members and administer any eventual individual claims process. Some employees may leave FCC Pollock or federal service without ever learning that the class proceeding covers them. A later order restarting the case cannot fully cure these injuries.

Absent class members, like Plaintiff Boyd, suffer an additional injury. They cannot opt out of the administrative class, and overlapping individual complaints are subsumed and held in abeyance until the class proceeding is fully resolved. MD-110, ch. 8 § III. Their interests are therefore tied to a proceeding that Defendants refuse to administer, leaving them in limbo, their claims suspended with no indication when, if ever, they will resume.

B. The Directive Inflicts Irreparable Harm Across Pending Class Cases.

The *Pippen* plaintiffs' injuries illustrate the predictable consequences of the Suspension Directive's categorical ban. In each federal-sector class complaint that has been stayed by the Directive, class agents are barred from prosecuting the claims they initiated and employees challenging discriminatory policies or hostile environments remain subject to the challenged conditions. Burakiewicz Decl. ¶¶ 2, 3, 6, 7. Absent class members cannot opt out. And the longer the suspension continues, the more difficult it becomes to adjudicate systemic claims effectively and administer class-wide relief.

The theoretical possibility that some class agents could abandon the administrative process and file a *de novo* Title VII action does not cure these harms. *See* 29 C.F.R. § 1614.407; *Hackley v. Roudebush*, 520 F.2d 108, 157 (D.C. Cir. 1975) (holding federal employees have the right to trial de novo under Section 717 of Title VII). To proceed in court, they would be required to commence litigation of their claims anew, pay filing and litigation costs, develop a new record, and secure class certification again, while being deprived of a forum intended to be “quicker, less formal, and less expensive.” *West*, 527 U.S. at 218–19. Workers who have already waited months,

if not years, for injunctive relief from the EEOC would face still further delay if forced into federal court. Moreover, if they are unrepresented by counsel in the administrative process, filing a class action in federal court would require them to hire an attorney.¹⁴ Even if they have counsel before the EEOC, they may be forced to seek new counsel if they proceed in a new forum. Moreover, forcing federal employees into the federal courts would deprive them of the confidentiality that the administrative process provides. *See* 29 C.F.R. § 1614.109(e). This is why, for many federal employees, the federal-sector administrative process is the only realistic means of challenging discrimination at work. AFGE Decl. ¶ 12; Burakiewicz Decl. ¶ 4. Thus, fundamentally, filing a new discrimination action in federal court is not an adequate alternative to being able to proceed under the Commission-created process on which federal employees rely.

The Suspension Directive will also cause a “chilling effect” on federal workers’ future use of the EEOC’s administrative process to vindicate their rights. A categorical decision to stop every class case indefinitely, without explanation or a foreseeable end date, predictably discourages employees from invoking or pursuing that process. *See Moore v. Summers*, 113 F. Supp. 2d 5, 26 (D.D.C. 2000) (finding preliminary injunction warranted where “plaintiffs have shown that the Secret Service has engaged in activity which likely has had and will continue to have a chilling effect on the prospective class members’ desire to assert their Title VII rights”); *Segar v. Civiletti*, 516 F. Supp. 314, 320 (D.D.C. 1981) (finding irreparable injury where employer’s retaliatory actions would predictably send a “message” to employees to “know your place, don’t challenge management, don’t assert your right to equal employment opportunity”).¹⁵ This is a particularly

¹⁴ *See* Fed. R. Civ. P. 23(g) (“Unless a statute provides otherwise, a court that certifies a class must appoint class counsel.”).

¹⁵ *See also Moore*, 113 F. Supp. 2d at 27 (“Plaintiffs cannot be expected to come forward with testimony from individuals who are too afraid to bring their claims but not too afraid to put their fears on the record. To be entitled to injunctive relief, plaintiffs are required only to produce

urgent concern in light of the current administration’s widespread restructuring of the federal workforce and curtailing of federal workers’ rights in other contexts. *See, e.g.*, Chelette Decl. ¶¶ 6–7; Boyd Decl. ¶¶ 14–15.

C. The Suspension Directive Harms AFGE.

In addition to harming AFGE’s members for the reasons discussed above, the Suspension Directive also directly injures AFGE as an organization. “An organization is harmed if the actions taken by [the defendant] have ‘perceptibly impaired’ the [organization’s] programs.” *League of Women Voters*, 838 F.3d at 8 (citation modified); *see also Nat’l Council of Nonprofits*, 763 F. Supp. 3d at 56 (“[O]bstacles [that] unquestionably make it more difficult for the [plaintiff] to accomplish [its] primary mission . . . provide injury for purposes . . . [of] irreparable harm.”).

Here, the Suspension Directive impairs AFGE’s ability to fulfill its core functions. In particular, it harms the efforts of AFGE’s WFP department to counsel and represent its members in EEOC proceedings. AFGE Decl. ¶ 13. Those functions depend on WFP’s ability to advise members accurately about the procedures available to them. Because of the Suspension Directive and the EEOC’s lack of transparency, WFP cannot give members reliable guidance about whether to pursue a class complaint, what will become of a class complaint already filed, or when the Commission will resume following its own regulations. *Id.* The Suspension Directive has also impaired WFP’s training program for members and affiliate representatives on EEOC case handling, including the complaint process. *Id.* ¶ 14. WFP is unable to responsibly train members to use a process that the Commission has stopped administering, and its existing training materials on the class complaint process may no longer reflect what members actually encounter at the

evidence showing that the action complained of is ‘likely to have a chilling effect on other employees’ who would then refrain from coming forward with their claims.” (emphasis in original)).

Commission. *Id.* A final judgment months from now cannot restore the time and opportunities lost while members' rights cannot be vindicated because their cases remain suspended.

IV. The Balance of Equities and the Public Interest Favor Enjoining the Unlawful Suspension Directive.

The balance of equities and the public interest strongly favor Plaintiffs. Defendants have no legitimate interest in enforcing an agency policy that conflicts with binding regulations and was adopted without reasoned decisionmaking. *See League of Women Voters*, 838 F.3d at 12 (“There is generally no public interest in the perpetuation of unlawful agency action.”). “To the contrary, there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.” *Id.* (citation modified).

Denying relief would allow the concrete harms to Plaintiffs described above to continue: ongoing discrimination would remain unremedied; evidence would deteriorate; notice and relief would become more difficult; and federal employees would continue to be deprived of the administrative process established for their benefit. The public also has a substantial interest in the efficient and effective enforcement of Title VII and the eradication of systemic discrimination in federal employment. Restoring the lawful class process advances these interests.

By contrast, preliminary relief would impose no cognizable hardship on the Commission beyond requiring it to return to the status quo that existed before the Suspension Directive was implemented.

V. The Court Should Stay the Suspension Directive.

The APA authorizes the Court to “issue all necessary and appropriate process” to “preserve status or rights pending conclusion of the review proceedings.” 5 U.S.C. § 705. The appropriate interim relief here is an order staying the Suspension Directive, prohibiting Defendants from enforcing it, and requiring the Commission and its administrative judges to resume processing

pending federal-sector class complaints in accordance with 29 C.F.R. Part 1614.

The D.C. Circuit instructs that “when a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated—not that their application to the individual petitioners is proscribed.” *Harmon v. Thornburgh*, 878 F.2d 484, 495 n.21 (D.C. Cir. 1989); *see also Humane Soc’y of U.S. v. Zinke*, 865 F.3d 585, 614 (D.C. Cir. 2017) (“A common remedy when we find a rule is invalid is to vacate.”). On a preliminary injunction motion, the APA authorizes courts to “stay an agency order pending review.” *In re GTE Serv. Corp.*, 762 F.2d 1024, 1027 (D.C. Cir. 1985). *See also District of Columbia v. U.S. Dep’t of Agric.*, 444 F. Supp. 3d 1, 48 (D.D.C. 2020) (5 U.S.C. § 705 “authorize[s] relief from agency action for any person otherwise subject to the action, not just as to plaintiffs”); *In re GTE Serv. Corp.*, 762 F.2d at 1026 (recognizing that § 705 supplies “statutory authority to stay agency orders pending review in this court”); *Cabrera*, 792 F. Supp. 3d at 102 (granting preliminary injunction staying DOL directive and finding “plaintiffs may challenge DOL’s across-the-board action under the APA”). Thus, a stay of the Suspension Directive is the appropriate relief here.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant their Motion for a Preliminary Injunction and Stay.

August 3, 2026

Respectfully submitted,

/s/ Joseph M. Sellers

Joseph M. Sellers (D.C. Bar No. 318410)
 Phoebe M. Wolfe (D.C. Bar No. 90014711)
 Cohen Milstein Sellers & Toll LLP
 1100 New York Avenue, N.W., Suite 800
 Washington, D.C. 20005
 Tel: (202) 408-4600
 Fax: (202) 408-4699
 jsellers@cohenmilstein.com
 pwolfe@cohenmilstein.com

Heidi R. Burakiewicz (D.C. Bar No. 473973)
Burakiewicz & DePriest
1120 Connecticut Avenue, N.W., Suite 500
Washington, D.C. 20036
Tel: (202) 856-7500
Fax: (202) 217-2599
hburakiewicz@bdlawdc.com

Harold Craig Becker (D.C. Bar No. 371239)
Taryn Wilgus Null (D.C. Bar No. 985724)
Tianna J. Mays (D.C. Bar No. 90005882)
Democracy Defenders Fund
600 Pennsylvania Avenue, S.E., No. 15180
Washington, D.C. 20003
Tel: (202) 594-9958
craig@democracydefenders.org
taryn@democracydefenders.org
tianna@democracydefenders.org

Counsel for Plaintiffs

Rushab B. Sanghvi (D.C. Bar No. 1012814)
Andres M. Grajales (D.C. Bar No. 476894)
American Federation of Government
Employees, AFL-CIO
80 F Street, N.W.
Washington, D.C. 20001
Tel: (202) 639-6426
SanghR@afge.org
Grajaa@afge.org

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

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the Court's CM/ECF system will be served via U.S. Certified Mail upon the following parties pursuant to Federal Rule of Civil Procedure 4(i) and Local Civil Rule 5.4(d):

Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Civil Process Clerk
U.S. Attorney's Office for the District of Columbia
601 D Street NW
Washington, D.C. 20579

U.S. Equal Employment Opportunity Commission
131 M Street NE
Washington, D.C. 20507

Andrea R. Lucas
131 M Street NE
Washington, D.C. 20507

/s/ Joseph Sellers
Joseph M. Sellers