UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, and AMERICAN FEDERATION OF TEACHERS, Plaintiffs, v. UNITED STATES DEPARTMENT OF JUSTICE, *et al.*, Defendants.	Case No. 1:25-cv-02429-MKV **PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiffs hereby provide notice to the Court of the following supplemental authority relevant to plaintiffs' pending Motion for Preliminary Injunction (ECF No. 24). These decisions were issued after plaintiffs filed their Reply Brief in support of that motion on May 8, 2025. Each decision supports plaintiffs' arguments in support of preliminary injunctive relief in this case and rejects arguments materially indistinguishable from arguments raised by Defendants:

1. ***Cmty. Legal Servs. in E. Palo Alto v. United States Dep't of Health & Hum. Servs.***, __ F.4th ___, Case No. 25-2808, Dkt Entry 17.1, Order (9th Cir. May 14, 2025), attached hereto as Exhibit A (also available at 2025 WL 1393876).
    a. Pages 4-10 support plaintiffs' argument that the Tucker Act does not preclude jurisdiction here.
    b. Pages 10-16 support plaintiffs' argument that defendants' actions are not committed to agency discretion by law, for purposes of the APA.

2. ***Commonwealth of Massachusetts, et al. v. Robert F. Kennedy, Jr., et al.***, Case No. 25-10814-WGY, Doc. No. 105, Memorandum and Order on Subject Matter Jurisdiction (D. Mass. May 12, 2025), attached hereto as Exhibit B (also available at 2025 WL 1371785).
    a. Pages 8-23 support plaintiffs' argument that the Tucker Act does not preclude jurisdiction here.
    b. Pages 25-26 support plaintiffs' argument that defendants' actions are not committed to agency discretion by law, for purposes of the APA.
3. ***Am. Bar Ass'n. v. U.S. Dep't of Justice***, Case No. 25-cv-1263 (CRC), Doc. No. 28, Memorandum and Opinion granting motion for preliminary injunction (D.D.C. May 14, 2025), attached hereto as Exhibit C.
    a. Pages 8-13 support plaintiffs' argument that the Tucker Act does not preclude jurisdiction here.
    b. Pages 13-15 support plaintiffs' argument that they are likely to succeed on the merits of their First Amendment claims.
    c. Pages 16-17 support plaintiffs' argument that they will suffer irreparable harm without preliminary injunctive relief.
    d. Pages 17-18 support plaintiffs' argument that the balance of equities and public interest support preliminary injunctive relief.
4. ***State of Colorado, et al. v. U.S. Dep't of Health & Human Servs., et al.***, Case No. 1:25-cv-00121-MSM-LDA. Doc. No. 84, Memorandum and Order granting motion for a preliminary injunction (D.R.I. May 16, 2025), attached hereto as Exhibit D.
    a. Pages 15-23 support plaintiffs' argument that the Tucker Act does not preclude jurisdiction here.
    b. Pages 27-30 support plaintiffs' argument that defendants' actions are not committed to agency discretion by law, for purposes of the APA.
    c. Pages 30-43 support plaintiffs' argument that they are likely to succeed on the merits of their APA claims.

d. Pages 44-47 support plaintiffs' argument that they are likely to succeed on the merits of their separation of powers / ultra vires claims.

e. Pages 47-55 support plaintiffs' argument that they will suffer irreparable harm without preliminary injunctive relief.

f. Pages 56-57 support plaintiffs' argument that the balance of equities and public interest support preliminary injunctive relief.

g. Pages 57-58 support plaintiffs' argument that no bond should be required here.

5. ***The Sustainability Institute, et al. v. Donald J. Trump, et al.***, Case No. 2:25-cv-2152-RMG, Doc. No. 157, Order entering judgment and granting preliminary injunction (D.S.C. May 20, 2025), attached hereto as Exhibit E.

a. Pages 7-8 support plaintiffs' argument that they are likely to succeed on the merits of their APA claims.

b. Pages 10-11 support plaintiffs' argument that the Court has jurisdiction over their separation of powers / ultra vires claims.

c. Pages 14-15 support plaintiffs' argument that they are likely to succeed on the merits of their separation of powers / ultra vires claims.

d. Pages 15-17 support plaintiffs' argument that they will suffer irreparable harm without preliminary injunctive relief.

e. Pages 17-19 support plaintiffs' argument that the balance of equities and public interest support preliminary injunctive relief.

f. Pages 20-22 support plaintiffs' argument that no bond should be required here.

6. ***Southern Education Foundation v. U.S. Dep't of Education, et al.***, Case No. 25-1079 (PLF), Doc. 28, Opinion granting motion for preliminary injunction (D.D.C. May 21, 2025), attached hereto as Exhibit F.

a. Pages 10-21 support plaintiffs' argument that the Tucker Act does not preclude jurisdiction here.

b. Pages 30-34 support plaintiffs' argument that they are likely to succeed on the merits of their APA claims.

c. Pages 34-36 support plaintiffs' argument that the balance of equities and public interest support preliminary injunctive relief.

d. Pages 36-37 support plaintiffs' argument that no bond should be required.

Dated: May 23, 2025

Respectfully submitted,

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**Pro hac vice* application granted

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EXHIBIT A

FOR PUBLICATION

FILED

MAY 14 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

COMMUNITY LEGAL SERVICES IN EAST PALO ALTO; SOCIAL JUSTICE COLLABORATIVE; AMICA CENTER FOR IMMIGRANT RIGHTS; ESTRELLA DEL PASO; FLORENCE IMMIGRANT AND REFUGEE RIGHTS PROJECT; GALVESTON-HOUSTON IMMIGRANT REPRESENTATION PROJECT; IMMIGRANT DEFENDERS LAW CENTER; NATIONAL IMMIGRANT JUSTICE CENTER; NORTHWEST IMMIGRANT RIGHTS PROJECT; ROCKY MOUNTAIN IMMIGRANT ADVOCACY NETWORK; VERMONT ASYLUM ASSISTANCE PROJECT,

Plaintiffs - Appellees,

v.

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; UNITED STATES DEPARTMENT OF THE INTERIOR; OFFICE OF REFUGEE RESETTLEMENT,

Defendants - Appellants.

No. 25-2808

D.C. No.
3:25-cv-02847-AMO

ORDER

Appeal from the United States District Court
for the Northern District of California
Araceli Martinez-Olguin, District Judge, Presiding

Before: William A. Fletcher, Consuelo M. Callahan, and Lucy H. Koh, Circuit Judges.

Order by Judge Koh
Dissent by Judge Callahan

KOH, Circuit Judge:

To protect unaccompanied children in immigration proceedings from the risks of "mistreatment, exploitation, and trafficking," the Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), 8 U.S.C. § 1232, directs that the Department of Health and Human Services ("HHS") "shall ensure, to the greatest extent practicable," that unaccompanied children in immigration custody receive legal representation. *Id.* § 1232(c)(5). To carry out this obligation, the Office of Refugee Resettlement ("ORR") promulgated the "Foundational Rule" which states that "ORR shall fund legal service providers to provide direct immigration legal representation for certain unaccompanied children, subject to ORR's discretion and available appropriations." 45 C.F.R. § 410.1309(a)(4). Since 2012, and as recently as March 15, 2025, Congress has consistently appropriated funds to ensure compliance with the TVPRA's statutory mandate. *See* Full-Year Continuing Appropriations and Extensions Act, 2025, Pub. L. No. 119-4, Div. A Tit. I Sec. 1101(8), 139 Stat. 9, 11 (2025); Further Consolidated Appropriations Act, 2024, Pub. L. 118-47, Div. D Tit. I, 138 Stat. 460, 664–665 (2024); Consolidated Appropriations Act, 2012, Pub. L. 112-74, Div. F, Tit. II, 125 Stat.

786, 1077 (2011); S. Rep. 118-84, at 169. In this matter, the district court preliminarily enjoined Defendants HHS, ORR and the Department of the Interior ("DOI") (collectively, the "Government") from withdrawing government-provided funding for counsel to represent unaccompanied children in immigration proceedings. The Government appealed the issuance of the preliminary injunction and now moves to stay the injunction while this appeal is pending.

When deciding a motion for a stay pending appeal, the court considers "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). "The first two factors . . . are the most critical," and the court will address the last two factors only once the applicant has satisfied the first two factors. *Id.* at 434–35. "The party requesting a stay bears the burden of showing that the circumstances justify" issuance of the stay. *Id.* at 433–34.

We conclude the Government has shown neither a likelihood of success on the merits nor irreparable injury absent a stay and accordingly deny the

Government's motion.[1]

I.

The Government offers two reasons why it believes it is likely to succeed on the merits. First, the Government argues the Tucker Act, 28 U.S.C. § 1491, "impliedly forbids" plaintiffs' Administrative Procedure Act ("APA") claims and thus the district court lacked jurisdiction. Second, the Government argues that its decision to completely defund direct legal services for unaccompanied children constitutes an unreviewable exercise of agency discretion. As explained below, the Government has not made "a strong showing that [it] is likely to succeed on the merits" of either argument. *Nken*, 556 U.S. at 434 (quoting *Hilton*, 481 U.S. at 776).

A.

The APA "embodies [a] basic presumption of judicial review to one 'suffering legal wrong because of agency action.'" *Abbott Lab'ys v. Gardner*, 387 U.S. 136, 140–41 (1967) (quoting 5 U.S.C. § 702). The APA generally waives sovereign immunity and permits a challenge to agency action unless "any other statute that grants consent to suit expressly or impliedly forbids the relief which is

[1] Because the Government failed to satisfy the first two stay factors, we need not reach the two remaining stay factors. *See Nken*, 556 U.S. at 434–35.

sought." 5 U.S.C. § 702.[2] The Government argues that the Tucker Act "impliedly forbids" plaintiffs' suit because plaintiffs' claims sound in contract and accordingly can only be brought in the Court of Federal Claims (if at all). This argument is unlikely to succeed for two reasons.

First, contrary to the Government's argument, plaintiffs' APA claims are based on the Government's statutory and regulatory violations, not any government contract. In fact, no contract exists between plaintiffs and the Government. Instead, the Government has entered into a nationwide agreement with an organization called Acacia, who in turn subcontracts with legal service providers such as plaintiffs.

"[T]he Tucker Act . . . 'impliedly forbid[s]' an APA action seeking injunctive and declaratory relief only if that action is a 'disguised' breach-of-contract claim." *United Aeronautical Corp. v. U.S. Air Force*, 80 F.4th 1017, 1026 (9th Cir. 2023) (quoting *Megapulse, Inc. v. Lewis*, 672 F.2d 959, 968 (D.C. Cir. 1982)). In making this determination, we "look[] to (1) 'the source of the rights upon which the plaintiff bases its claims' and (2) 'the type of relief sought (or appropriate).'" *Id.* (quoting *Doe v. Tenet*, 329 F.3d 1135, 1141 (9th Cir. 2003)).

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[2] The APA also does not apply to suits that either (a) seek "money damages," 5 U.S.C. § 702; or (b) where "other adequate remed[ies]" to review the agency action exist, *id.* § 704. On appeal, the Government does not argue that either of these limitations on APA review apply here.

"If rights and remedies are *statutorily* or *constitutionally* based, then district courts have jurisdiction; if rights and remedies are *contractually* based then only the Court of Federal Claims does . . . ." *Id.* (emphasis in original); *see also Ferreiro v. United States*, 501 F.3d 1349, 1353 n.3 (Fed. Cir. 2007) ("An order compelling the government to follow its regulations is equitable in nature and is beyond the jurisdiction of the Court of Federal Claims.").

Here, plaintiffs seek to enforce compliance with statutes and regulations, not any government contract. The TVPRA provides that the Government "*shall ensure*, to the greatest extent practicable . . . that all unaccompanied alien children . . . have counsel to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking." 8 U.S.C. § 1232(c)(5) (emphasis added). The Foundational Rule states that "ORR *shall* fund legal service providers to provide direct immigration legal representation for certain unaccompanied children, subject to ORR's discretion and available appropriations." 45 C.F.R. § 410.1309(a)(4) (emphasis added). Seeking to ensure compliance with statutory and regulatory commands is a matter beyond the scope of the Tucker Act's exclusive jurisdiction.

In evaluating the merits, the district court found plaintiffs were likely to succeed in showing a violation of both of these provisions. Congress has appropriated substantial funds specifically to carry out the TVPRA for over a

decade and as recently as 2025. *See, e.g.*, Full-Year Continuing Appropriations and Extensions Act, 2025, Pub. L. No. 119-4, Div. A Tit. I Sec. 1101(8), 139 Stat. 9, 11 (2025); Further Consolidated Appropriations Act, 2024, Pub. L. 118-47, Div. D Tit. I, 138 Stat. 460, 664–665 (2024). The district court found that the Government elected to withhold all congressionally authorized funding for direct legal representation, even though such funding was necessary to ensure all unaccompanied children remained represented. It was "undisputed that appropriations for direct representation remain available," and that the Government had "evidenced no effort to ensure pro bono counsel." Indeed, the district court found the Government made its decision "with no supplemental plan to ensure unaccompanied children have legal counsel" at all, let alone "to the greatest extent practicable." On appeal, the Government contests the district court's jurisdiction but does not dispute any of the aforementioned findings. Plaintiffs accordingly are likely to establish the requisite violations of law to support their APA claims irrespective of any contractual violation.

Second, as the Government concedes, subcontractors such as plaintiffs do not even have the right to sue under the Tucker Act. The Tucker Act provides the Court of Federal Claims with jurisdiction to hear claims based "upon any express or implied contract with the United States." 28 U.S.C. § 1491(a)(1). Consistent with the statute's plain text, "[t]o maintain a cause of action pursuant to the Tucker

Act that is based on a contract, the contract must be between the plaintiff and the government." *Cienega Gardens v. United States*, 194 F.3d 1231, 1239 (Fed. Cir. 1998) (quoting *Ransom v. United States*, 900 F.2d 242, 244 (Fed. Cir. 1990)). Subcontractors, who have not entered into contracts with the Government, generally have no right to sue under the Tucker Act, and the Court of Federal Claims has no jurisdiction to hear their suit. *See id.*; *Erickson Air Crane Co. of Wash., Inc. v. United States*, 731 F.2d 810, 813 (Fed. Cir. 1984).

The Government concedes (and indeed affirmatively argues) that the Court of Federal Claims lacks jurisdiction to hear plaintiffs' claims because "it is 'a hornbook rule that, under ordinary government prime contracts, subcontractors do not have standing to sue the government under the Tucker Act.'" But the Government nonetheless argues the Tucker Act "impliedly forbids" plaintiffs' APA claims because "subcontractors have *fewer* legal rights than prime contractors." This argument lacks merit.

The Tucker Act's "exclusive jurisdiction" has been construed "to impliedly forbid contract claims against the Government from being brought in district court under the waiver in the APA." *Crowley Gov't Servs., Inc. v. Gen. Servs. Admin.*, 38 F.4th 1099, 1106 (D.C. Cir. 2022) (cleaned up) (quoting *Perry Cap. LLC v. Mnuchin*, 864 F.3d 591, 618–19 (D.C. Cir. 2017)). But "[t]here cannot be exclusive jurisdiction under the Tucker Act if there is no jurisdiction under the

Tucker Act." *Tootle v. Sec'y of Navy*, 446 F.3d 167, 177 (D.C. Cir. 2006). For this reason, the D.C. Circuit has "categorically reject[ed] the suggestion that a federal district court can be deprived of jurisdiction by the Tucker Act when no jurisdiction lies in the Court of Federal Claims." *Id.* at 176; *see also Crowley*, 38 F.4th at 1109 ("Because a plaintiff could not bring this type of tort action in [the Court of Federal Claims] in the first place, that Court would not have exclusive jurisdiction of them.").

The result requested by the Government would mean that no court has jurisdiction to hear plaintiffs' claims. Not only is this result contrary to common sense, but it also conflicts with the "strong presumption favoring judicial review of administrative action" that is embodied in the APA. *Mach Mining, LLC v. E.E.O.C.*, 575 U.S. 480, 486 (2015) (internal quotation marks omitted); *see Abbott Lab'ys*, 387 U.S. at 140–41.

The Supreme Court's recent decision in *Department of Education v. California*, 145 S. Ct. 966 (2025), does not change this conclusion. *Department of Education* involved a claim to enforce grant agreements that the plaintiffs had entered into directly with the government and thus "to enforce a contractual obligation to pay money." *Id.* at 968 (citation omitted). The Supreme Court held that this claim fell within the Tucker Act's grant of exclusive jurisdiction and accordingly suggested that the suit must be brought in the Court of Federal Claims.

See id. ("But, as we have recognized, the APA's limited waiver of immunity does not extend to orders to enforce a contractual obligation to pay money along the lines of what the District Court ordered here. Instead, the Tucker Act grants the Court of Federal Claims jurisdiction over suits based on any express or implied contract with the United States." (internal citations and quotation marks omitted)). *Department of Education* has no application where, as here, the claims sound in statute, rather than contract.

Accordingly, the Government has not shown a likelihood of success on its Tucker Act argument.

B.

The APA does not apply where "agency action is committed to agency discretion by law." 5 U.S.C. § 701(a)(2). This exception has been construed "narrowly" to apply only in "those rare circumstances where the relevant statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion." *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 586 U.S. 9, 23 (2018) (quoting *Lincoln v. Vigil*, 508 U.S. 182, 191 (1993)). The Supreme Court has identified certain categories of agency decisions that have traditionally been regarded as committed to agency discretion and are, accordingly, "presumptively unreviewable." *Heckler v. Chaney*, 470 U.S. 821, 832–33 (1985) (holding agency decision whether to initiate an enforcement action was

presumptively unreviewable). Even where an action falls within the class of actions traditionally committed to agency discretion, "judicial review is available where there are 'meaningful standards to cabin the agency's otherwise plenary discretion.'" *Physicians for Soc. Resp. v. Wheeler*, 956 F.3d 634, 643 (D.C. Cir. 2020) (quoting *Drake v. FAA*, 291 F.3d 59, 71 (D.C. Cir. 2002)).

The Government argues that the decision to cancel the program is committed to agency discretion by law. Its argument is based entirely upon the Supreme Court's decision in *Lincoln v. Vigil*, 508 U.S. 182 (1993). In that case, the Indian Health Service (the "Service") was provided with a single lump-sum appropriation that covered all of the agency's activities. *Id.* at 185. The Service was authorized, but not required, to "'expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians,' for the 'relief of distress and conservation of health,'" including on "Indian mental-health care." *Id.* at 184 (quoting 25 U.S.C. § 13). The Service had historically exercised this discretion to establish the "Indian Children's Program," which provided a variety of medical services to Indian children, but subsequently decided to cancel that program. *Id.* at 184–85. Plaintiffs brought an APA claim challenging the Service's decision not to fund the program. *Id.*

The Supreme Court held that the Service's "allocation of funds from a lump-sum appropriation is [a type of] administrative decision traditionally regarded as

committed to agency discretion" and was, accordingly, presumptively unreviewable. *Id.* at 192. The Court explained that "allocation of funds from a lump-sum appropriation requires 'a complicated balancing of a number of factors which are peculiarly within [agency] expertise.'" *Id.* at 193 (quoting *Heckler*, 470 U.S. at 831). Because the relevant statutes did "not so much as mention the Program" that was cancelled, let alone require it, the Court found "[t]he decision to terminate the Program was committed to the Service's discretion" by law. *Id.* at 193–94.

The rule announced in *Lincoln* has no application where, as here, the agency fails to carry out a program that is *required* by statute. *Lincoln* made clear that "an agency is not free simply to disregard statutory responsibilities" and "Congress may always circumscribe agency discretion to allocate resources by putting restrictions in the operative statutes." *Id.* at 193; *see also Los Coyotes Band of Cahuilla & Cupeno Indians v. Jewell*, 729 F.3d 1025, 1038 (9th Cir. 2013) (noting that *Lincoln* applies only "absent some statutory constraint on the agency's discretion"). Where Congress establishes a mandatory program, in the sense that "Congress directs (rather than merely authorizes) the agency to conduct" certain activities, the rule in *Lincoln* has no application. U.S. Gov't Accountability Off., GAO-16-464SP, *Principles of Federal Appropriations Law* 2-37 & n.40 (4th Ed. 2016); U.S. Gov't Accountability Off., GAO-17-797SP, *Principles of Federal*

Appropriations Law 3-30 (4th Ed. 2017 Rev.) ("When Congress appropriates money to implement a program, and implementation of the program is mandatory, the agency may not use the appropriated amounts to terminate the program."); *see, e.g.*, *Shawnee Tribe v. Mnuchin*, 984 F.3d 94, 100 (D.C. Cir. 2021) (explaining that where "Congress has 'circumscribe[d] agency discretion to allocate resources by putting restrictions in the operative statute[]'" there is "no presumption of non-reviewability" (quoting *Lincoln*, 508 U.S. at 193)); *Ramah Navajo Sch. Bd. v. Babbitt*, 87 F.3d 1338, 1347 (D.C. Cir. 1996) (distinguishing *Lincoln* where "Congress intended the [statute] to limit the Secretary's discretion in funding matters"). Rather, in such circumstances the Executive has no authority to withhold the funds appropriated by Congress or otherwise refuse to comply with the law. *See City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1232 (9th Cir. 2018) ("Aside from the power of veto, the President is without authority to thwart congressional will by canceling appropriations passed by Congress."); *In re Aiken Cnty.*, 725 F.3d 255, 266 (D.C. Cir. 2013) (Kavanaugh, J.) ("Prosecutorial discretion does not include the power to disregard other statutory obligations that apply to the Executive Branch, such as statutory requirements to issue rules, or to pay benefits, or to implement or administer statutory projects or programs." (internal citation omitted)); *see also* Memorandum from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, to Edward L. Morgan,

Deputy Counsel to the President (Dec. 1, 1969) ("While there have been instances in the past in which the President has refused to spend funds appropriated by Congress for a particular purpose, we know of no such instance involving a statute which by its terms sought to require such expenditure.").

Here, the TVPRA provides that HHS "*shall ensure*, to the greatest extent practicable . . . , that all unaccompanied alien children . . . have counsel to represent them in legal proceedings." 8 U.S.C. § 1232(c)(5) (emphasis added); *see also id.* § 1232(c)(1) (HHS "*shall* establish policies and programs to *ensure* that unaccompanied alien children in the United States are protected from traffickers" (emphasis added)). This statute does not say that HHS "may" provide certain services, as was the case in *Lincoln*. Instead, the use of "shall" plainly imposes a mandatory duty on HHS to take steps to ensure "all" such children have counsel. *See Alabama v. Bozeman*, 533 U.S. 146, 153 (2001) ("The word 'shall' is ordinarily the language of command." (internal quotation marks and citation omitted)). Similarly, the Foundational Rule states that "ORR *shall* fund legal service providers to provide direct immigration legal representation for certain unaccompanied children, subject to ORR's discretion and available appropriations." 45 C.F.R. § 410.1309(a)(4) (emphasis added). These affirmative obligations stand in stark contrast with those at issue in *Lincoln*, where "no statute or regulation even mention[ed] the Program" that was cancelled, let alone required

that the Executive carry out the program. 508 U.S. at 190.

To be sure, HHS is only required to provide counsel "to the greatest extent practicable" and the Foundational Rule similarly grants the agency some discretion in the procurement of counsel for unaccompanied children, but that in no way defeats judicial review. Whatever discretion the agency may have in evaluating what "the greatest extent practicable" may be, this phrase certainly is not the same as "to no extent at all." *See Calvert Cliffs' Coordinating Comm., Inc. v. U. S. Atomic Energy Comm'n*, 449 F.2d 1109, 1114 (D.C. Cir. 1971) (explaining that the fact the agencies' statutory duties were "qualified by the phrase 'to the fullest extent possible'" did "not provide an escape hatch for footdragging agencies" and did "not make [the statute's] requirements somehow 'discretionary'"). APA Section 701(a)(2) has "never been thought to put all exercises of discretion beyond judicial review." *ASSE Int'l, Inc. v. Kerry*, 803 F.3d 1059, 1071 (9th Cir. 2015). To the contrary, "the APA itself commits final agency action to [judicial] review for 'abuse of discretion.'" *Pinnacle Armor, Inc. v. United States*, 648 F.3d 708, 720 (9th Cir. 2011) (quoting 5 U.S.C. § 706(a)(2)(A)). Review is prohibited only where "there is truly no law to apply." *Jajati v. U.S. Customs & Border Prot.*, 102 F.4th 1011, 1014 (9th Cir. 2024) (quoting *Perez Perez v. Wolf*, 943 F.3d 853, 861 (9th Cir. 2019)). And courts routinely find far less determinate language than that at issue here establishes a sufficient standard to permit review. *See, e.g.*, *Citizens to*

Pres. Overton Park, Inc. v. Volpe, 401 U.S. 402, 411 (1971) (determination whether "no feasible and prudent alternative" existed was reviewable); *Pac. Nw. Generating Coop. v. Bonneville Power Admin.*, 596 F.3d 1065, 1075 (9th Cir. 2010) (requirement that agency act "consistent with sound business principles" provided meaningful standard for review); *City of Los Angeles v. U.S. Dep't of Com.*, 307 F.3d 859, 869 n.6 (9th Cir. 2002) (requirement that an agency Secretary "shall" act "if he considers it feasible" provided a meaningful standard for review). Accordingly, the Government has not shown a likelihood of success on this argument either.

II.

An applicant for a stay pending appeal must show that a stay is necessary to avoid likely irreparable injury to the applicant while the appeal is pending. *See Nken*, 556 U.S. at 434. "[S]imply showing some possibility of irreparable injury" is insufficient. *Id.* (internal quotation marks omitted). Rather, "[t]he minimum threshold showing for a stay pending appeal requires that irreparable injury is likely to occur during the period before the appeal is likely to be decided." *Al Otro Lado v. Wolf*, 952 F.3d 999, 1007 (9th Cir. 2020) (citing *Leiva-Perez v. Holder*, 640 F.3d 962, 968 (9th Cir. 2011)).

The Government has not met its irreparable injury burden. Despite waiting nearly a week to file this emergency motion to stay the preliminary injunction, the

Government provides no evidence to support its claims of irreparable injury. *Cf. Al Otro Lado*, 952 F.3d at 1007 (rejecting "a weak showing" of harm where the government had the opportunity to gather evidence in support of its claims). Rather, the Government asserts evidence is unnecessary in this case because the injunction requires the disbursement of taxpayer funds that may never be recovered, and the injunction harms the separation of powers. We disagree.

First, the Government has made no showing that dispersing congressionally appropriated funds for statutorily mandated purposes would cause irreparable harm in this case. Since 2012, and as recently as March 15, 2025, Congress has consistently appropriated funds to ensure compliance with the TVPRA's statutory mandate. *See, e.g.*, Full-Year Continuing Appropriations and Extensions Act, 2025, Pub. L. No. 119-4, Div. A Tit. I Sec. 1101(8), 139 Stat. 9, 11 (2025); Further Consolidated Appropriations Act, 2024, Pub. L. 118-47, Div. D Tit. I, 138 Stat. 460, 664–665 (2024); Consolidated Appropriations Act, 2012, Pub. L. 112-74, Div. F, Tit. II, 125 Stat. 786, 1077 (2011); S. Rep. 118-84, at 169. These funds are statutorily earmarked to carryout the TVPRA. Pursuant to the TVPRA, HHS "shall ensure, to the greatest extent practical . . . , that all unaccompanied alien children . . . have counsel to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking." 8 U.S.C. § 1232(c)(5). The President is required to spend these funds for the purpose of carrying out the

TVPRA and only for that purpose. *See* 31 U.S.C. § 1301(a) ("Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law."); *City & Cnty. of San Francisco*, 897 F.3d at 1232 ("[T]he President does not have unilateral authority to refuse to spend the funds." (quoting *Aiken*, 725 F.3d at 261 n.1)). The district court concluded that the Government is likely now shirking a statutory obligation that has been in place for over a decade. The Government "cannot suffer harm from an injunction that merely ends an unlawful practice." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). The Government has failed to demonstrate that spending congressionally appropriated funds as directed by Congress causes irreparable injury.

The Supreme Court's decision in *Department of Education* is not to the contrary. In assessing the risks of injury to the government there, the Supreme Court relied upon a declaration from a government official asserting the difficulties inherent in recovering disbursed funds under the specific grant agreements in that case. *See* 145 S. Ct. at 969 (citing App. To Application To Vacate Order 15a, 17a.). No such evidence has been presented here. To the contrary, the Government's motion fails to cite any evidence at all. Absent any showing from the Government, we cannot conclude that irreparable injury "is the more probable or likely outcome" here. *Al Otro Lado*, 952 F.3d at 1007 (quoting *Leiva-Perez*, 640

F.3d at 968).

Second, we reject the notion that the injunction's effect on the "separation of powers" qualifies as irreparable harm at the stay stage. *See Washington v. Trump*, 847 F.3d 1151, 1168 (9th Cir. 2017) ("To the extent that the Government claims that it has suffered an institutional injury by erosion of the separation of powers, that injury is not 'irreparable.' It may yet pursue and vindicate its interests in the full course of this litigation."); *see also E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 778 (9th Cir. 2018) (finding a separation of powers argument inadequate to demonstrate irreparable harm). In denying a motion to stay in another case, we concluded that the government had not established irreparable harm because "if we were to adopt the government's assertion that the irreparable harm standard is satisfied by the fact of executive action alone, no act of the executive branch asserted to be inconsistent with a legislative enactment could be the subject of a preliminary injunction. That cannot be so." *Doe #1 v. Trump*, 957 F.3d 1050, 1059 (9th Cir. 2020). The Government does not acknowledge this line of precedent, much less attempt to distinguish it.

III.

For the reasons set forth above, we deny the Government's request for a stay pending appeal.

Community Legal Services in East Palo Alto, et al. v. United States Department of Health and Human Services, et al., No. 25-2808

CALLAHAN, Circuit Judge, dissenting:

For the reasons provided in the dissent from rehearing en banc that I joined in the prior appeal in this case, I respectfully dissent. *See Cmty. Legal Servs. in E. Palo Alto v. United States Dep't of Health & Hum. Servs.*, No. 25-2358, --- F.4th ---, ----, 2025 WL 1203167, at *3-4 (9th Cir. Apr. 25, 2025) (Bumatay, J., and VanDyke, J., dissenting from the denial of rehearing en banc). Even if the district court had jurisdiction under the Administrative Procedure Act, the decision to terminate funding—or the decision of *who* to fund—is committed to agency discretion by law under 5 U.S.C. § 701(a)(2). *See* 8 U.S.C. § 1232(c)(5) (qualifying the provision of legal services "to the greatest extent practicable"). I would therefore grant the government's stay motion.

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

COMMONWEALTH OF MASSACHUSETTS; STATE OF CALIFORNIA; STATE OF MARYLAND; STATE OF WASHINGTON; STATE OF ARIZONA; STATE OF COLORADO; STATE OF DELAWARE; STATE OF HAWAI'I; STATE OF MINNESOTA; STATE OF NEVADA; STATE OF NEW JERSEY; STATE OF NEW MEXICO; STATE OF NEW YORK; STATE OF OREGON; STATE OF RHODE ISLAND; and STATE OF WISCONSIN,	)	
Plaintiffs,	)	CIVIL ACTION NO.
v.	)	25-10814-WGY
ROBERT F. KENNEDY, JR., in his official capacity as Secretary of Health and Human Services; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; JAYANTA BHATTACHARYA, in his official capacity as Director of the National Institutes of Health; NATIONAL INSTITUTES OF HEALTH; NATIONAL CANCER INSTITUTE; NATIONAL EYE INSTITUTE; NATIONAL HEART, LUNG, AND BLOOD INSTITUTE; NATIONAL HUMAN GENOME RESEARCH INSTITUTE; NATIONAL INSTITUTE ON AGING; NATIONAL INSTITUTE ON ALCOHOL ABUSE AND ALCOHOLISM; NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES; NATIONAL INSTITUTE OF ARTHRITIS AND MUSCULOSKELETAL AND SKIN DISEASES; NATIONAL INSTITUTE OF BIOMEDICAL IMAGING AND BIOENGINEERING; EUNICE KENNEDY SHRIVER NATIONAL INSTITUTE OF CHILD HEALTH AND HUMAN	)	

DEVELOPMENT; NATIONAL INSTITUTE)
ON DEAFNESS AND OTHER)
COMMUNICATION DISORDERS;)
NATIONAL INSTITUTE OF DENTAL)
AND CRANIOFACIAL RESEARCH;)
NATIONAL INSTITUTE OF DIABETES)
AND DIGESTIVE AND KIDNEY)
DISEASES; NATIONAL INSTITUTE)
ON DRUG ABUSE; NATIONAL)
INSTITUTE OF ENVIRONMENTAL)
HEALTH SCIENCES; NATIONAL)
INSTITUTE OF GENERAL MEDICAL)
SCIENCES; NATIONAL INSTITUTE OF)
MENTAL HEALTH; NATIONAL INSTITUTE)
ON MINORITY HEALTH AND HEALTH)
DISPARITIES; NATIONAL INSTITUTE)
OF NEUROLOGICAL DISORDERS AND)
STROKE; NATIONAL INSTITUTE OF)
NURSING RESEARCH; NATIONAL LIBRARY)
OF MEDICINE; NATIONAL CENTER FOR)
ADVANCING TRANSLATIONAL SCIENCES;)
JOHN E. FOGARTY INTERNATIONAL)
CENTER FOR ADVANCED STUDY)
IN THE HEALTH SCIENCES; NATIONAL)
CENTER FOR COMPLEMENTARY AND)
INTEGRATIVE HEALTH; and CENTER)
FOR SCIENTIFIC REVIEW,)
)
Defendants.)
)

YOUNG, D.J. May 12, 2025

MEMORANDUM AND ORDER
ON SUBJECT MATTER JURISDICTION

For the reasons stated below, after a full hearing and carefully considering the parties' submissions and arguments, the Court rules that it has subject matter jurisdiction over this action and, as is its duty, exercises that jurisdiction.

A case management conference is set for **Tuesday, May 13, 2025 at 2:00 p.m.**

I. BACKGROUND

A. Factual Allegations and Relief Sought in the Amended Complaint

In this civil action, the Commonwealth of Massachusetts along with 15 other States[1] (referred to collectively as "the States", sue the Secretary of Health & Human Services, the Director of the National Institutes of Health ("NIH"), and several of those federal institutes and centers[2] (referred to

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[1] In addition to the Commonwealth of Massachusetts, the State of California, the State of Maryland, the State of Washington, the State of Arizona, the State of Colorado, the State of Delaware, the State of Hawai'i, the State of Minnesota, the State of Nevada, the State of New Jersey, the State of New Mexico; the State of New York, the State of Oregon, the State of Rhode Island; and the State of Wisconsin join as plaintiffs.

[2] Those institutes and centers are: the National Cancer Institute, the National Eye Institute, the National Heart, Lung, and Blood Institute, the National Human Genome Research Institute, the National Institute on Aging, the National Institute on Alcohol Abuse and Alcoholism, the National Institute of Allergy and Infectious Diseases, the National Institute of Arthritis and Musculoskeletal and Skin Diseases, the National Institute of Biomedical Imaging and Bioengineering, the Eunice Kennedy Shriver National Institute of Child Health and Human Development, the National Institute on Deafness and Other Communication Disorders, the National Institute of Dental and Craniofacial Research, the National Institute of Diabetes and Digestive and Kidney Diseases, the National Institute on Drug Abuse; the National Institute of Environmental Health Sciences, the National Institute of General Medical Sciences, the National Institute of Mental Health, the National Institute on Minority Health and Health Disparities, the National Institute of Neurological Disorders and Stroke, the National Institute of Nursing Research, the National Library of Medicine, the National Center for Advancing Translational Sciences, the

collectively as "the Public Officials") because all act through those persons in their official capacities. Broadly, the States claim that "[s]ince his inauguration, . . . the President has issued a barrage of executive orders prohibiting federal agencies from supporting any initiatives with a perceived nexus to certain subjects he opposes, such as 'DEI' and 'gender ideology'." Am. Compl. ¶ 4, ECF No. 75. The States allege that the Public Officials "have adopted a series of directives [("the Challenged Directives")] that curtail NIH's support for previously advertised funding opportunities and previously awarded grants relating to these and other blacklisted topics." Id.

The States claim that the Public Officials Challenged Directives and actions, including grant terminations ("Terminated Grants"), violate various sections of the Administrative Procedure Act (Counts 1 - 3, 7), violate the separation of powers of the three co-equal branches of government under the Constitution (Count 4), violate the Constitution's Spending Clause (Count 5), and constitute ultra vires Executive Branch action in excess of Constitutional and statutory authority (Count 6).

John E. Fogarty International Center for Advanced Study in the Health Sciences, the National Center for Complementary and Integrative Health, and the Center for Scientific Review.

The States seek the following relief:[3]

1. an order under the APA "holding unlawful and setting aside the Challenged Directives, and any action taken to enforce or implement the Challenged Directives, on the ground that they are (a) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, and/or otherwise not in accordance with governing statutes; (b) not in accordance with governing regulations; and (c) arbitrary and capricious;"

2. a declaration "that the Challenged Directives, and any action taken to enforce or implement the Challenged Directives, are unconstitutional because they violate (a) the separation of powers and (b) the Spending Clause;"

3. issuance of "a preliminary and permanent injunction barring defendants from carrying out the Challenged Directives and any actions to enforce or implement the Challenged Directives, including, without limitation, by directing defendants to: (a) reissue Notices of Funding Opportunities (NOFOs) withdrawn based on the Challenged Directives and to refrain from withdrawing NOFOs based on the Challenged Directives; (b) refrain from denying grant applications or renewal applications based on the Challenged Directives; (c) release reimbursements and other funding for awards that defendants have refused to pay based on the Challenged Directives; (d) rescind the termination of the Terminated Grants and refrain from eliminating funding for awards based on the Challenged Directives; and (e) promptly reschedule and conduct all necessary steps in the review and disposition of plaintiffs' grant applications, including the Delayed Applications and Delayed Renewals;"

4. "an order pursuant to under the APA compelling defendants to undertake: (a) the required unreasonably delayed and unlawfully withheld activities of NIH's advisory councils and study sections, and (b) the required unreasonably delayed and unlawfully withheld prompt review and issuance of a final decision on the Delayed Applications and Delayed Renewals;" and

5. a declaration "that 2 C.F.R. §200.340(a)(2) (2020) and

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[3] As a sixth request for relief the States seek catch-all, unspecified "additional relief as interests of justice may require"

C.F.R. §200.340(a)(4) (2024) do not independently permit or authorize termination of awarded grants based on agency priorities identified after the time of the Federal award." Am. Compl. 88-89.

B. Procedural History

On April 14, 2025, the States filed their Amended Complaint, Am. Compl., and Motion for Preliminary Injunction, supported by a memorandum of law. Pls.' Mot. Prelim. Inj., ECF No. 76; Mem. Law. Supp. Pls.' Mot. Prelim. Inj. ("Pls.' Mem."), ECF No. 78. The motion is fully briefed. Defs.' Opp'n Pls.' Mot. Prelim. Inj. ("Opp'n"), ECF No. 95; Pls.' Reply Supp. Pls.' Mot. Prelim. Inj. ("Reply"), ECF No. 101.[4]

This action was randomly reassigned to this Session of the Court on May 1, 2025. Elec. Notice Reassignment, ECF No. 99. The Court rescheduled the hearing on the preliminary injunction from May 9, 2025 to May 8, 2025. Elec. Notice Hrg., ECF No. 100.

At the hearing, the Public Officials claimed that most of the case must properly be brought before the Court of Federal

[4] The Court also received a submission, ECF No. 86, from amici: the Association of American Medical Colleges, the American Association of State Colleges And Universities, the American Council on Education, the Association of American Universities, The Association Of Governing Boards of Universities And Colleges, the Association of Public and Land-Grant Universities, COGR, and the National Association of Independent Colleges and Universities. The Court is grateful for this helpful submission.

Claims and the remainder was no longer amenable to adjudication. The Court heard argument on the matter and took it under advisement. This opinion sets forth this Court's reasoning.

II. ANALYSIS

A. Standard of Review

"Federal courts . . . are courts of limited jurisdiction." Royal Canin U. S. A., Inc. v. Wullschleger, 604 U.S. 22, 26 (2025) (quoting Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 377 (1994)). This Court's jurisdiction is "[l]imited first by the Constitution," and also "by statute." Id. Through statute, "Congress determines, through its grants of jurisdiction, which suits those courts can resolve." Id. This Court must therefore satisfy itself as to its subject matter jurisdiction over an action. Calamar Constr. Services, Inc. v. Mashpee Wampanoag Village LP, 749 F. Supp. 3d 241, 242-43 (D. Mass. 2024) (citing McCulloch v. Velez, 364 F.3d 1, 5 (1st Cir. 2004) ("It is black-letter law that a federal court has an obligation to inquire sua sponte into its own subject matter jurisdiction.")); see Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."). Of course, "the party invoking the jurisdiction of a federal court carries the burden of proving its existence." Murphy v. United States, 45 F.3d 520, 522 (1st Cir. 1995) (quoting Taber Partners, I v.

Merit Builders, Inc., 987 F.2d 57, 60 (1st Cir. 1993)). Once jurisdiction is established, however, this Court has a "'virtually unflagging obligation' to exercise federal jurisdiction." AUI Partners LLC v. State Energy Partners LLC, 742 F. Supp. 3d 28, 41 (D. Mass. 2024) (quoting Colorado River Water Conservation Dist. v. U.S., 424 U.S. 800, 817 (1976)).

B. This Court Has Subject Matter Jurisdiction

1. The Tucker Act

Speaking of the Supreme Court, Justice Robert Jackson famously said, "We are not final because we are infallible, but we are infallible only because we are final." Brown v. Allen, 344 U.S. 443, 540 (1953) (Jackson, J., concurring). As always, the determinations of the Supreme Court matter, only here the most relevant Supreme Court determination is **not** final (at least not yet) -- and therein lies the problem. Because the Supreme Court, on a 5-4 vote, has seen fit to enter an emergency interlocutory order in a somewhat similar case, its language provides guidance in other cases but without full precedential force.

So it is that this Court, after careful reflection, finds itself in the somewhat awkward position of agreeing with the Supreme Court dissenters and considering itself bound by the still authoritative decision of the Court of Appeals of the

First Circuit (which decision the Supreme Court modified but did not vacate). Here is this Court's analysis:

"The Court of Claims was established, and the Tucker Act enacted, to open a judicial avenue for certain monetary claims against the United States." United States v. Bormes, 568 U.S. 6, 11 (2012). Prior to its enactment, "it was not uncommon for statutes to impose monetary obligations on the United States without specifying a means of judicial enforcement." Id. Thus, "Congress enacted the Tucker Act to 'suppl[y] the missing ingredient for an action against the United States for the breach of monetary obligations not otherwise judicially enforceable.'" Maine Community Health Options v. United States, 590 U.S. 296, 323 (2020) (citing Bormes, 568 U.S. at 12).

Under the Tucker Act, "the United States Court of Federal Claims . . . [has] . . . jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." 28 U.S.C. § 1491(a)(1); Department of Education v. California, 145 S. Ct. 966, 968 (2025) (per curiam) (California II). "In suits seeking more than $10,000 in damages, the Court of Federal Claims' jurisdiction is exclusive of the federal district courts."

Massachusetts v. Natl. Institutes of Health, --- F. Supp. 3d ---, No. 25-CV-10338, 2025 WL 702163, at *4 (D. Mass. Mar. 5, 2025) (Kelley, J.) (citing Burgos v. Milton, 709 F.2d 1, 3 (1st Cir. 1983)).

"The Supreme Court has made clear that 'not every claim invoking the Constitution, a federal statute, or a regulation is cognizable under the Tucker Act.'" Massachusetts 2025 WL 702163, at *5 (quoting United States v. Mitchell, 463 U.S. 206, 216) (cleaned up). "The fact that a judicial remedy may require one party to pay money to another is not a sufficient reason to characterize the relief as 'money damages.' " Bowen v. Massachusetts, 487 U.S. 879, 893, (1988). Also, "the mere fact that a court may have to rule on a contract issue does not, by triggering some mystical metamorphosis, automatically transform an action ... into one on the contract and deprive the court of jurisdiction it might otherwise have." California v. United States Dept. of Educ., 132 F.4th 92, 96 (1st Cir. 2025) ("California I") (quoting Megapulse, Inc. v. Lewis, 672 F.2d 959, 968 (D.C. Cir. 1982)). "The Claims Court does not have the general equitable powers of a district court to grant prospective relief." Bowen, 487 U.S. at 905.

Whether a claim is contractual in nature under the Tucker Act is based upon a determination of the essence of the action. "While the First Circuit has not formally adopted the 'rights

and remedies' test that is used by several other circuits,[] courts in this Circuit have adopted the test to determine if the 'essence' of an action is truly contractual in nature," Massachusetts, 2025 WL 702163, at *6 (D. Mass. Mar. 5, 2025) (collecting cases); however, it appears the First Circuit is open to such analysis, see California II, 132 F.4th at 96-97. "The 'essence' of an action encompasses two distinct aspects —- the source of the rights upon which the plaintiff bases its claim and the type of relief sought (or appropriate)." Massachusetts, 2025 WL 702163, at *5. (citations and quotations omitted). This Court adopts this test to determine whether the Tucker Act applies here and concludes that it does not.

The States argue that the essence of the claims here do not sound in contract because the claims attack the broad policies and actions of the Public Officials. Pls.' Mem. 18; Reply 2-4. The Public Officials counter that the Public Officials merely "disguise their claims as APA claims. Opp'n. 9.

The Public Officials rely on the recent Supreme Court determination in California II, which granted an emergency stay of a district court injunction. In that case, Judge Joun, of this District, issued a temporary restraining order, enjoining the Department of Education from terminating certain grants, and further ordered "the Government to pay out past-due grant obligations and to continue paying obligations as they

accrue[d]." Id.; see California v. U.S. Dept. of Educ., No. CV 25-10548-MJJ, 2025 WL 760825 (D. Mass. Mar. 10, 2025) (Joun, J.).

The government appealed to the First Circuit to stay the injunction pending appeal. California I. The First Circuit ruled the Tucker Act did not apply, that the actions were reviewable under the APA, and that on the merits the Department of Education had not met its burden to overturn the grant of the injunction, and therefore a stay pending appeal was not warranted. Id. at 96.

The Supreme Court accepted the government's application for an immediate administrative stay of the injunction, which was allowed per curiam. California II, 145 S.Ct. at 969. Construing the ruling as an "appealable preliminary injunction," the Court reasoned that the government was "likely to succeed in showing the District Court lacked jurisdiction to order the payment of money under the" Administrative Procedure Act, because "the APA's limited waiver of immunity does not extend to orders 'to enforce a contractual obligation to pay money' along the lines of what the District Court ordered" there. Id. at 968 (quoting Great-West Life & Annuity Ins. Co. v. Knudson, 534 U.S. 204, 212 (2002). Further, according to the Supreme Court, the Tucker Act likely applied. Id. The Court granted the stay

pending resolution of the appeal by the First Circuit. Id. at 969.

Justice Kagan dissented, asserting that it was a "mistake" to grant the emergency relief, noting among other things that:

> The remaining issue is whether this suit, brought under the Administrative Procedure Act (APA), belongs in an ordinary district court or the Court of Federal Claims. As the Court acknowledges, the general rule is that APA actions go to district courts, even when a remedial order "may result in the disbursement of funds." Ante, at 968 (citing Bowen v. Massachusetts, 487 U.S. 879, 910 (1988)). To support a different result here, the Court relies exclusively on Great-West Life & Annuity Ins. Co. v. Knudson, 534 U.S. 204, 122 S.Ct. 708, 151 L.Ed.2d 635 (2002). But Great-West was not brought under the APA, as the Court took care to note. See id., at 212, 122 S.Ct. 708 (distinguishing Bowen for that reason). So the Court's reasoning is at the least under-developed, and very possibly wrong.

California II, 145 S. Ct. at 969 (Kagan, J. dissenting).

Justice Jackson (with whom Justice Sotomayor joined), also dissented asserting, among other things, that presuming the Court could reach the merits, Judge Joun's assessment that "the Department's mass grant terminations were probably unlawful is not unreasonable." Id. 145 S. Ct. 975 (Jackson, J., dissenting). Indeed, the Department of Education's conduct could be viewed as arbitrary and capricious under the APA where:

> [A] mere two days after the Acting Secretary instructed agency officials to review the TQP and SEED grants, the Department started issuing summary grant-termination letters that provide a general and disjunctive list of potential grounds for

cancellation, without specifying which ground led to the termination of any particular grant. Nor did the letters detail the Department's decisionmaking with respect to any individual termination decision. It also appears that the grant recipients did not receive any pretermination notice or any opportunity to be heard, much less a chance to cure, which the regulations seem to require. See, e.g., 2 C.F.R. §§ 200.339, 200.208(c) (permitting grant termination only after an agency "determines that noncompliance cannot be remedied by imposing additional conditions," such as by "[r]equiring additional project monitoring," by requiring that the recipient obtain technical or management assistance, or by "[e]stablishing additional prior approvals").

The Department's robotic rollout of its new mass grant-termination policy means that grant recipients and reviewing courts are "compelled to guess at the theory underlying the agency's action." SEC v. Chenery Corp., 332 U.S. 194, 196-197 (1947). Moreover, the agency's abruptness leaves one wondering whether any reasoned decisionmaking has occurred with respect to these terminations at all. These are precisely the kinds of concerns that the APA's bar on arbitrary-and-capricious agency decisionmaking was meant to address. See Prometheus Radio Project, 592 U.S. at 423, 141 S.Ct. 1150 (explaining that the APA requires a reviewing court to ensure that "the agency ... has reasonably considered the relevant issues and reasonably explained the decision").

It also seems clear that at least one of the items included on the Department's undifferentiated laundry list of possible reasons for terminating these grants -- that the entity may have participated in unspecified DEI practices -- would not suffice as a basis for termination under the law as it currently exists. That is because termination is only permissible for recipient conduct that is inconsistent with the terms of the grants and the statutes that authorize them. But the TQP and SEED statutes expressly contemplate that grant recipients will train educators on teaching "diverse populations" in "traditionally underserved" schools, and on improving students' "social, emotional, and physical development." 20 U.S.C. §§ 1022e(b)(4), 6672(a)(1),

> 1022a(d)(1)(ii).[] It would be manifestly arbitrary and capricious for the Department to terminate grants for funding diversity-related programs that the law expressly requires. Cf. Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co., 463 U.S. 29, 43 (1983) (explaining that an agency acts arbitrarily and capriciously if it relies "on factors which Congress has not intended it to consider").

Id. 975-76. That appeal has since been dismissed, the underlying motion for preliminary injunction has been withdrawn, and the action is now proceeding in the ordinary course with a motion to dismiss anticipated in the near future. See Status Report, California, Civ No. 25-10548-MJJ, ECF No. 93. At a status conference on April 9, 2025, Judge Joun indicated that "the Supreme Court stay was of the TRO. . . [and] . . . the Court preliminarily weighed in on a couple of issues, but there [was] no ruling on anything other than granting a stay of the TRO." April 9, 2025 Hrg. Tr. 5-6, ECF No. 97.

The Public Officials argue that this Court ought follow the Supreme Court's analysis in California II. In fact, at oral argument they argued California II is virtually indistinguishable from the instant case.

Not so. California is somewhat different than the claims presented here. In that case, "[t]heir only claim was to sums awarded to them in previously awarded discretionary grants."

Widakuswara v. Lake, No. 25-5144, 2025 WL 1288817, at *13 (D.C. Cir. May 3, 2025) (Pillard, J. dissenting).

While the Supreme Court's determination in California II may be an indicator of how the Supreme Court **might** someday view the merits, it is not binding on this Court. As Chief Judge McConnell of the District of Rhode Island explained mere days ago facing a similar Tucker Act challenge by the government:

> To start, California's precedential value is limited . . . [and] . . . does not displace governing law that guides the Court's approach to discerning whether the States' claims are essentially contract claims in order to direct jurisdiction to the Court of Claims.")see also Merrill v. Milligan, 142 S. Ct. 879 (2022) (Kavanaugh, J., concurring) ("The principal dissent's catchy but worn-out rhetoric about the 'shadow docket' is similarly off target. The stay will allow this Court to decide the merits in an orderly fashion—after full briefing, oral argument, and our usual extensive internal deliberations—and ensure that we do not have to decide the merits on the emergency docket. To reiterate: The Court's stay order is not a decision on the merits.").

Rhode Island v. Trump, No. 1:25-CV-128-JJM-LDA, 2025 WL 1303868, at *5 (D.R.I. May 6, 2025).

In State of New York v. Trump, 2025 WL 1098966 (D.R.I. Apr. 14, 2025), Chief Judge McConnell has earlier done an extensive analaysis:

> On a surface level, the facts in the California case may appear to be generally analogous to the facts here, as both cases involve states challenging federal agencies' decision-making regarding appropriated federal funds, but the similarities end there. When the Court delves deeper, however, it finds several significant and relevant differences that underscore

> California's inapplicability to this case. In California, the First Circuit Court of Appeals determined that "the terms and conditions of each individual grant award" were "at issue." California, 132 F.4th 92, 96-97 (1st Cir. 2025). On appeal, the Supreme Court then granted the Department's application for a stay because it concluded that the district court issued an order "to enforce a contractual obligation to pay money" and "the Government is likely to succeed in showing the District Court lacked jurisdiction to order the payment of money under the APA." California, 2025 WL 1008354, at *1. That is not the case here. In this case, the terms and conditions of each individual grant that the States receive from the Agency Defendants are not at issue. Rather, this case deals with the Agency Defendants' implementation of a broad, categorical freeze on obligated funds pending determinations on whether it is lawful to end disbursements of such funds. The categorical funding freeze was not based on individualized assessments of any particular grant terms and conditions or agreements between the Agency Defendants and the States; it was based on the OMB Directive and the various Executive Orders that the President issued in the early days of the administration. Therefore, the Court's orders addressing the categorical funding freeze were not enforcing a contractual obligation to pay money.

Id. That Court also observed that the Court of Claims could not provide the relief requested. Id. at n.2.

Similarly, Judge Woodcock of the District of Maine recently wrote,

> The Supreme Court's [California] decision to vacate and stay a district court's TRO enjoining the U.S. Department of Education from terminating various education-related grants on the ground that the Tucker Act provided exclusive jurisdiction to the United States Court of Federal Claims does not change the Court's determination that it is a proper forum for this dispute under the APA . . . . While bearing some similarities to the instant suit, the Supreme

> Court issued this decision on its emergency docket, without full briefing or hearing, id. at ----, 145 S.Ct. at 969 (Kagan, J., diss.); id. at ----, 145 S.Ct. at 969-978 (Jackson, J., joined by Sotomayor, J., diss.), and its precedential value is thus limited. See Merrill v. Milligan, --- U.S. ----, 142 S. Ct. 879, 879, --- L.Ed.2d ---- (2022) (Kavanaugh, J., concurring).

Maine v. U.S. Dept. of Agric., No. 1:25-CV-00131-JAW, 2025 WL 1088946, at *19 (D. Me. Apr. 11, 2025).[5] The district courts'

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[5] But see Massachusetts Fair Hous. Ctr. v. Dep't of Hous. & Urban Dev., No. CV 25-30041-RGS, 2025 WL 1225481 (D. Mass. Apr. 14, 2025)) (Stearns, J.):

> The court begins, and ends, its analysis with plaintiffs' second argument (because, if the court likely lacks jurisdiction, there is no longer any likelihood of success on the merits -- at least, not for the purposes of this specific action in this specific forum -- which moots any inquiry into irreparable harm). Plaintiffs correctly note that, unlike the operative complaint here, the Complaint in California references "the terms of the grant agreements at issue." Id. What plaintiffs ignore, however, is that these references occur only in the context of buttressing the larger APA-based argument that the Department of Education did not terminate the grants in accordance with any statutory or regulatory authorization (the Department of Education simply cited to 2 C.F.R. § 200.340(a)(4) as authorizing the termination of the grants); the Complaint itself does not assert any independent claim based on the language of the grant agreement. The Supreme Court nonetheless found that the government was likely to succeed in showing that the plaintiffs in California sought to enforce a contractual obligation to pay money. Because plaintiffs assert essentially the same claim here -- that the agency did not terminate the grant in accordance with statutory or regulatory authority -- it follows that plaintiffs are likewise likely seeking to enforce a contractual obligation to pay money.

divergent views within the First Circuit of California's precedential value is not surprising given the unusual interventional posture taken by the Supreme Court. Indeed, Justice Jackson's dissent observed that the Supreme Court's "attempt to inject itself into the ongoing litigation by suggesting new, substantive principles for the District Court to consider in this case is unorthodox and, in [her] view, inappropriate." California II, 145 S. Ct. at 978. Whatever the Supreme Court's motivations or intentions, the California II decision is of little assistance to the district courts in charting the intersection of the APA and the Tucker Act.

The views of the dissenters in California II, as well as the fully developed reasoning of the decisions quoted above are persuasive authority for the course this Court adopts.

Even more compelling is the guidance of the First Circuit in California I.

> This decision should not be read as an endorsement of the brusque and seemingly insensitive way in which the terminations were announced nor as casting doubt on the First Circuit's assessment that the plaintiffs in the California case may well likely succeed on the merits of at least some of their claims. The court is merely deferring (as it must) to the Supreme Court's unmistakable directive that, for jurisdictional purposes, the proper forum for this case is the Court of Federal Claims.

Id. That decision is currently on appeal.

First, the Department claims that the district court itself lacked jurisdiction to entertain this lawsuit, which the Department argues belongs in the Court of Federal Claims. See 28 U.S.C. § 1491(a)(1) (granting jurisdiction to the Court of Federal Claims for any action against the government "upon any express or implied contract with the United States"). The Department points to the fact that each grant award takes the form of a contract between the recipient and the government. "But the mere fact that a court may have to rule on a contract issue does not, by triggering some mystical metamorphosis, automatically transform an action ... into one on the contract and deprive the court of jurisdiction it might otherwise have." Megapulse, Inc. v. Lewis, 672 F.2d 959, 968 (D.C. Cir. 1982). Here, although the terms and conditions of each individual grant award are at issue, the "essence," id., of the claims is not contractual. Rather, the States challenge the Department's actions as insufficiently explained, insufficiently reasoned, and otherwise contrary to law -- arguments derived from the Administrative Procedure Act (APA), 5 U.S.C. § 706(2)(A). The States' claims are, at their core, assertions that the Department acted in violation of federal law -- not its contracts. Simply put, if the Department breached any contract, it did so by violating the APA. And if the Department did not violate the APA, then it breached no contract. In the words of the Tenth Circuit, "when a party asserts that the government's breach of contract is contrary to federal regulations, statutes, or the Constitution, and when the party seeks relief other than money damages, the APA's waiver of sovereign immunity applies and the Tucker Act does not preclude a federal district court from taking jurisdiction." Normandy Apts., Ltd. v. HUD, 554 F.3d 1290, 1300 (10th Cir. 2009); see also Megapulse, 672 F.2d at 968, 970 (upholding a district court's jurisdiction where "[a]ppellant's position is ultimately based, not on breach of contract, but on an alleged governmental infringement of property rights and violation of the Trade Secrets Act").

Nor do the States seek damages owed on a contract or compensation for past wrongs. See Megapulse, 672 F.2d at 968-70 (considering, in a Tucker Act analysis, "the type of relief sought (or appropriate)"). Rather,

> they want the Department to once again make available already-appropriated federal funds for existing grant recipients. And as the Supreme Court has made clear, "[t]he fact that a judicial remedy may require one party to pay money to another is not a sufficient reason to characterize the relief as 'money damages.' " Bowen v. Massachusetts, 487 U.S. 879, 893, 108 S.Ct. 2722, 101 L.Ed.2d 749 (1988). As a result, we see no jurisdictional bar to the district court's TRO on this basis. See id. at 900-01 (holding that a district court could hear a claim for an injunction requiring the government to pay certain Medicaid reimbursements because it was "a suit seeking to enforce the statutory mandate itself, which happens to be one for the payment of money," and "not a suit seeking money in compensation for the damage sustained by the failure of the Federal Government to pay"); Megapulse, 672 F.2d at 970-71 (explaining, in a Tucker Act case, that "the mere fact that an injunction would require the same governmental restraint that specific (non)performance might require in a contract setting is an insufficient basis to deny a district court the jurisdiction otherwise available").

California I, 132 F.4th at 96-97.

In the absence of a decision on the merits from the Supreme Court, this Court takes to heart the First Circuit's admonition that its pronouncements of law bind this Court. United States v. Moore-Bush, 963 F.3d 29, 37 (1st Cir. 2020) (holding "circuit court decisions control federal district courts in their circuits" and that the district court is "absolutely bound to follow vertical precedents."), reh'g en banc granted, opinion vacated, 982 F.3d 50 (1st Cir. 2020), and on reh'g en banc, 36 F.4th 320 (1st Cir. 2022).

This Court need not gild the lily: California I presented a closer question than the one before this Court, and the First Circuit did not hesitate to rule that the Tucker Act did not apply there. The Court is not free to ignore the First Circuit's pronouncement of the law and chart new territory, even though it might not be the law for long -- either by action of the First Circuit itself or ultimately the Supreme Court. This Court follows California I.

Applied here, the "essence" of this action is not one of contract. This is not an action for monetary damages against the United States for which the Court of Claims was created. Rather, at least as alleged, and taking all inferences in the States' favor, it is an action to stop the Public Officials from violating the statutory grant-making architecture created by Congress, replacing Congress' mandate with new policies that directly contradict that mandate, and exercising authority arbitrarily and capriciously, in violation of federal law and the Constitution. See Am. Compl. ¶ 93 ("This lawsuit arises because [the Public Officials] are flouting the statutory and regulatory rules governing NIH grantmaking" by "adopting a series of directives that blacklist certain topics -- e.g., "DEI," "gender," or "vaccine hesitancy" -- that the Administration disfavors . . .[and by] . . . adopting, implementing, and enforcing those directives, defendants have

systematically disrupted the review of pending grant applications, delayed the annual renewal of already-approved multi-year awards, and terminated huge tranches of grants in the middle of the project year. Those disruptions have caused—and will continue to cause—significant harm to plaintiffs and their institutions."). The Tucker Act does not divest this Court of jurisdiction.

Similarly, the Public Officials' sovereign immunity claim falls flat. The Court need look no further than the First Circuit's binding guidance again, which, borrowing from the Tenth Circuit, explains "'when a party asserts that the government's breach of contract is contrary to federal regulations, statutes, or the Constitution, and when the party seeks relief other than money damages, the APA's waiver of sovereign immunity applies and the Tucker Act does not preclude a federal district court from taking jurisdiction." California I, 132 F.4th at 97 (quoting Normandy Apts., Ltd. v. HUD, 554 F.3d 1290, 1300 (10th Cir. 2009)). So it is here. Sovereign immunity is not a bar to the APA challenges.

2. Programmatic attack

Under the APA, a claim is limited to "discrete agency action that it is required to take," and that "limitation to discrete agency action precludes the kind of broad programmatic attack [the Supreme Court] rejected in Lujan v. National

Wildlife Federation, 497 U.S. 871 (1990)." Norton v. South Utah Wilderness All., 542 U.S. 55, 64 (2004).

The Public Officials argue that the States claims constitute a programmatic attack. Opp'n 13-14. The States persuasively counter that "[t]he fact that [the Public Officials] have enforced these directives against hundreds of projects does not make this lawsuit programmatic, even if it is large." Reply 11. The States cite the First Circuit's decision in New York v. Trump, 133 F.4th 51, 68 (1st Cir. 2025) ("[W]e are not aware of any supporting authority for the proposition that the APA bars a plaintiff from challenging a number of discrete final agency actions all at once.") and this Court's decision in American Association of University Professors v. Rubio, No. CV 25-10685-WGY, 2025 WL 1235084, at *21 (D. Mass. Apr. 29, 2025) (describing plaintiffs' claim as neither a "constellation of independent decisions or a general drift in agency priorities."). The States have the better of it. The APA claim here is not a prohibited programmatic challenge.

3. Jurisdiction Over Individual Actions

The Public Officials argue that two Challenged Directives are expired and two did not cause any injuries. Opp'n 15 - 16. The States concede that while "perhaps the administrative record will bear this claim out, . . . the current record shows is that [States] have experienced significant injury from a series of

overlapping and interlocking blacklisting directives that have caused unprecedented delays and disruptions. The secretive and slapdash nature of these directives, which makes it hard to know which are effective at any given time, is hardly a defense." Reply 8. At this stage, all inferences must be taken in favor of the States, and the States' argument prevails for now.

As for the remaining Challenged Directives, the Public Officials argue that they are not final agency actions and therefore not actionable under the APA. Opp'n 17. The Public Officials characterize their actions as "merely order[ing] a review of the grants to determine whether they were consistent with the agency's priorities." Id.

The States argue that this "misstates the directives' effects." Reply. 7. As the States persuasively argue, the Public Officials' "own [alleged] conduct confirms that the directives are not 'interlocutory': if they were, defendants would not be implementing them by terminating hundreds of grants around the country." Reply 7. Furthermore, the terminations themselves are final agency action. Id.

On balance, and at this stage, the States have the better of it.

C. Agency Discretion

Finally, the Public Officials argue that the States APA "claims are unreviewable because they challenge funding

decisions that are 'committed to the agency discretion by law." Opp. 19 (citing 5 U.S.C. § 701(a)(2). They argue that their allocation of funds is committed to their sole discretion. Opp. 19-21 (citing Lincoln v. Vigil, 508 U.S. 182 (1993); Milk Train, Inc. v. Veneman, 310 F.3d 747 (D.C. Cir. 2002).

The States counter that they are not seeking review of a funding decision, but rather the Public Officials' "adoption of enforcement of the overarching Challenged Directives." Reply 8. The States point out that Lincoln stands for the unremarkable proposition that review is precluded so "long as the agency allocates funds from a lump-sum appropriation to meet permissible statutory objectives." Id. (quoting Lincoln, 508 U.S. at 193). Thus, there is arguably review where the Challenged Directives "conflict with authorizing statutes and applicable regulations." Reply 9.

III. CONCLUSION

As alleged, and at its core, the States' Amended Complaint alleges conduct similar to what Justice Jackson describes in her dissent in California II as the "robotic rollout of [a] new mass grant-termination policy" that has left the States "and reviewing courts . . . 'to guess at the theory underlying the agency's action.'" California II, 145 S. Ct. at 975-76 (quoting SEC v. Chenery Corp., 332 U.S. 194, 196-197 (1947)) (Jackson, J. dissenting). Assuming the allegations of the Amended Complaint

as true for purposes of the jurisdictional inquiry, the Public Officials' alleged "abruptness leaves one wondering whether any reasoned decision making has occurred with respect to these terminations at all." Id. Indeed, this Court agrees in principle with Justice Jackson that "[t]hese are precisely the kinds of concerns that the APA's bar on arbitrary-and-capricious agency decision making was meant to address." Id. Whether the States can prove their case -- at summary judgment or a bench trial -- is for another day and the Court expresses no opinion on the merits. For now, the Court rules that subject matter jurisdiction exists in the United States District Court.

A case management conference is set for **Tuesday, May 13, 2025 at 2:00 p.m.**

SO ORDERED.

William G. Young

WILLIAM G. YOUNG
JUDGE
of the
UNITED STATES[6]

[6] This is how my predecessor, Peleg Sprague (D. Mass 1841-1865), would sign official documents. Now that I'm a Senior District Judge I adopt this format in honor of all the judicial colleagues, state and federal, with whom I have had the privilege to serve over the past 47 years.

EXHIBIT C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN BAR ASSOCIATION, Plaintiff, v. **U.S. DEPARTMENT OF JUSTICE, et al.**, Defendants.	Case No. 25-cv-1263 (CRC)

MEMORANDUM OPINION

Last month, Deputy Attorney General Todd Blanche issued a memorandum prohibiting all Department of Justice ("DOJ") lawyers from participating in events sponsored by the American Bar Association ("ABA") on official time. The reason, Blanche candidly explained, was that the ABA had recently joined a lawsuit against the Trump Administration. The next day, DOJ cancelled a series of grants with the ABA that funded services to victims of domestic and sexual violence. The only explanation offered for the cancellation was a terse statement indicating that the grants "no longer effectuate[] . . . [DOJ] priorities." Connecting these two rather large dots, the ABA promptly filed suit. Among other claims, the complaint alleges that termination of the grants constituted unlawful retaliation against the ABA for exercising its First Amendment right to petition the courts. A motion for a temporary restraining order or preliminary injunction preventing DOJ from enforcing the termination soon followed.

The government does not meaningfully contest the merits of the ABA's First Amendment retaliation claim. It points to no deficiencies in the ABA's performance of its grant obligations. It concedes that similar grants administered by other organizations remain in place. It agrees that bringing a lawsuit is protected by the First Amendment. And it suggests no other cause for the

cancellation apart from the sentiments expressed by Deputy Attorney General Blanche in his memorandum.

Rather, the government objects to the issuance of a preliminary injunction mainly on jurisdictional grounds. It argues that because the ABA seeks reinstatement of the grants, its claims sound in contract and therefore belong in the Court of Federal Claims, and not this Court, under the Tucker Act. But the ABA's retaliation claim springs from the First Amendment to the Constitution, not the relevant grant agreements. As a result, this Court has jurisdiction to hear it. And because the First Amendment prohibits the type of reprisal DOJ appears likely to have taken, and the ABA has shown that it will suffer irreparable harm in the absence of preliminary relief and that the equities and public interest favor it, the Court will grant its motion for a preliminary injunction on its First Amendment retaliation claim. The Court need not, at this juncture, decide whether any of the ABA's other claims warrant injunctive relief or are subject to dismissal.

I. Background

A. Factual Background

The following background is drawn from the ABA's complaint unless otherwise indicated. Over thirty years ago, Congress passed the Violence Against Women Act ("VAWA") to enhance the investigation and prosecution of violent crimes against women and to provide support to survivors. See Compl. ¶ 21. As part of this effort, VAWA established the Office on Violence Against Women ("OVW") within DOJ to administer grant programs aimed at "reduc[ing] domestic violence, dating violence, sexual assault, and stalking by strengthening services to victims and holding offenders accountable." Id. ¶ 23 (quoting Grant Programs, OVW, https://www.justice.gov/ovw/grant-programs (last visited May 14, 2025)). These OVW

grants, which constitute "cooperative agreement[s]" between the recipient and DOJ, are awarded through an "extremely competitive" open application process. Id. ¶¶ 24, 58. They are governed by Office of Management and Budget guidance, which allows DOJ, upon written notice, to terminate a grant award in three circumstances: (1) noncompliance with the award's terms and conditions; (2) consent; and, relevant here, (3) "pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities." Id. ¶ 33 (quoting 2 C.F.R. § 200.340(a)); see also id. ¶¶ 31–32, 35, 58.

This case is about five OVW grants to the ABA, the world's largest voluntary association of judges, lawyers, and legal professionals. Id. ¶ 4. The ABA established a Commission on Domestic Violence when VAWA was passed to "help the [ABA] play a more active national leadership role in the enhancement of legal system reform on domestic violence." Id. ¶ 22. Today, the original Commission's successor, the Commission on Domestic and Sexual Violence ("ABA CDSV"), provides training and technical assistance to legal practitioners and adjudicators who work with survivors of domestic violence, sexual assault, and stalking. Id. ¶¶ 22, 39.

Since its inception, ABA CDSV has received training and technical assistance grants from OVW. See id. ¶ 40. It employs seven full-time staff members to support its OVW grant projects, five of whom are entirely or almost entirely funded by OVW grants. Id. ¶ 44. ABA CDSV and DOJ have historically enjoyed a collaborative relationship, with ABA CDSV providing input on new OVW grant programs and helping OVW coordinate and plan training for award recipients at the start of each new grant cycle. Id. ¶ 43. ABA CDSV has never been found to have violated the conditions of any grant awards. Id. Nor, before the events giving rise to this litigation, had it ever had a grant suspended or terminated. Id.

But things changed after the start of President Trump's second term. Between February and March 2025, the ABA publicly criticized the Administration for actions it viewed as undermining the judiciary and legal profession. On February 11, 2025, for example, the ABA condemned "recent remarks of high-ranking officials of the administration that appear to question the legitimacy of judicial review." Id. ¶ 60 (quoting ABA Condemns Remarks Questioning Legitimacy of Courts and Judicial Review, Am. Bar Ass'n (Feb. 11, 2025), https://www.americanbar.org/news/abanews/aba-news-archives/2025/02/aba-statement-re-remarks-questioning-judicial-review/). On March 3, 2025, the ABA issued another statement decrying a "clear and disconcerting pattern" of targeting judges who issued "decision[s] this administration does not agree with." Id. ¶ 62 (quoting The ABA Rejects Efforts to Undermine the Courts and the Legal Profession, Am. Bar Ass'n (March 3, 2025), https://www.americanbar.org/news/abanews/aba-news-archives/2025/03/aba-rejects-efforts-to-undermine-courts-and-legal-profession/). And, on March 26, 2025, the ABA and over 100 other bar organizations issued a joint statement rejecting "the notion that the U.S. government can punish lawyers and law firms who represent certain clients or punish judges who rule certain ways." Id. ¶ 63 (quoting Bar Organizations' Statement in Support of the Rule of Law, Am. Bar Ass'n (March 26, 2025), https://www.americanbar.org/news/abanews/aba-news-archives/2025/03/bar-organizations-statement-in-support-of-rule-of-law/).

The ABA also joined a lawsuit in February challenging the Administration's freeze on international development grants to the U.S. Agency for International Development and the Department of State. Compl. ¶ 61. That lawsuit apparently prompted DOJ to reconsider its chummy relationship with the ABA. On April 9, 2025, Deputy Attorney General Todd Blanche issued a memorandum, "Engagement with the American Bar Association," to all DOJ

employees. Id. ¶ 64; Memorandum from Deputy Att'y Gen. Todd Blanche to All Dep't Emps. (Apr. 9, 2025), https://www.justice.gov/dag/media/1396116/dl?inline ("Blanche Memo"). The Memo explained that DOJ had a history of engaging with the ABA even when their "positions on contentious legal, policy, and social issues" had been at odds. Blanche Memo at 1. But, in light of the ABA's lawsuit against the United States, DOJ was now litigating against an organization it was also funding, while the ABA continued to benefit from its engagement with DOJ through boosted attendance at ABA events and the legitimization of its positions "that are contrary to the federal government's policies." Id.

Thus, the Memo went on, while "[t]he ABA is free to litigate in support of activist causes"—citing abortion, affirmative action, and religious exercise cases in which the ABA had filed amicus curiae briefs—DOJ has an obligation to "be [a] careful steward[] of the public fisc," and its employees have to "conduct themselves in a manner that does not undermine or appear to undermine the Department's core mission of administering justice in a fair, effective, and even-handed manner." Id. at 1–2. Accordingly, the memo laid out a new DOJ policy regarding engagement with the ABA: First, DOJ would no longer use taxpayer funds to pay for any travel to or involvement in ABA events. Id. at 2. Second, all DOJ employees would now be prohibited from participating in ABA-related activities while on duty or using government resources. Id. And third, moving forward, "policy employees" —those who serve in policy-determining, policymaking, or policy-advocating positions, including all political appointees—would have to obtain approval from their component heads and Blanche himself before participating in any ABA event or writing, speaking, or publishing materials in ABA sponsored media. Id. Policy employees were now also prohibited from holding leadership positions in the ABA or even renewing their existing memberships. Id.

The next day, DOJ terminated all of ABA's OVW grants "effective immediately," citing a change in "agency priorities" under 2 C.F.R. § 200.340(a)(4). Compl. ¶¶ 11, 71; see also Pl.'s Ex. A ("Termination Letter"), ECF 4-2 at 19–20 (page numbers designated by CM/ECF). It gave no explanation for why the grants "no longer effectuate[d] . . . agency priorities." Termination Letter, ECF 4-2 at 19. At the time, ABA CDSV had five active OVW grants totaling $3.2 million: (1) a $1,000,000 award to the Civil Litigation Skills Project for October 1, 2022, through September 30, 2025; (2) a $600,000 award to the Trauma-Informed Representation Project for October 1, 2022, through September 30, 2025; (3) a $450,000 award to the LGBTQI+ Legal Access Project for October 1, 2024, through September 30, 2027; (4) a $400,000 award to the LGBTQI+ Training for Coalitions Project for October 1, 2024, through September 30, 2026; and (5) a $750,000 award to OVW's Expanding Legal Services Initiative for October 1, 2023, through September 30, 2026. Id. ¶¶ 47–56; see also Def.'s Mot. to Dismiss at 3. The ABA had also previously received two additional grants that, by their terms, ended March 31, 2025. Compl. ¶ 57. DOJ cancelled "all unobligated balances remaining" on the seven awards, including the two that had already ended. Termination Letter, ECF 4-2 at 19. According to the government, the unobligated balance on the grants is $2,046,034.42. Def.'s Mot. to Dismiss at 31; ECF 16-2 (Declaration of Erin M. Loran) ¶ 4.

DOJ did not cancel any other OVW grants. Compl. ¶ 74; Oral Arg. Tr. 31:4–12. In fact, the ABA alleges, DOJ assured other grantees that their grants were safe, and that DOJ remained committed to their projects. Compl. ¶ 74.

B. Procedural Background

Approximately two weeks later, the ABA filed this lawsuit against the Department of Justice and Attorney General Pamela J. Bondi and Deputy Attorney General Blanche in their

official capacities (collectively, "Defendants"), asserting six claims: (1) First Amendment retaliation; (2) First Amendment viewpoint discrimination; (3) unconstitutional conditions on government grants in violation of the the First Amendment and Spending Power; (4) violation of Fifth Amendment Equal Protection; (5) violation of Fifth Amendment Procedural Due Process; and (6) violation of the Administrative Procedure Act. Id. ¶¶ 82–126. The ABA then moved for a Temporary Restraining Order or Preliminary Injunction "[1] barring Defendants from enforcing or otherwise giving effect to the termination of any grant to the" ABA CDSV, "including through the enforcement of closeout obligations; [2] barring [Defendants] from [reobligating] funds used to support ABA CDSV's grants; and [3] requiring Defendants to take all steps necessary to ensure that the Department of Justice disburses funds on ABA CDSV's grants in the customary manner and in customary timeframes." ECF 4 at 1. Following a scheduling conference with the Court, Defendants represented that they would not reobligate the funds at issue before June 2, 2025. ECF 10 at 1. They then moved to dismiss the ABA's complaint and opposed its motion for emergency relief. See Def.'s Mot. to Dismiss. The Court heard argument on the motions on May 12, 2025.

II. Legal Standards

A preliminary injunction "is an extraordinary remedy that should be granted only when the party seeking the relief, by a clear showing, carries the burden of persuasion." Postal Police Officers Ass'n v. United States Postal Serv., 502 F. Supp. 3d 411, 418 (D.D.C. 2020) (Cooper, J.) (quoting Cobell v. Norton, 391 F.3d 251, 258 (D.C. Cir. 2004)). When considering a motion for preliminary relief, the Court must determine whether the movant has met its burden of demonstrating that: (1) it is likely to succeed on the merits of its claims; (2) it is likely to suffer irreparable harm absent preliminary relief; (3) the balance of the equities tilts in its favor; and (4)

consideration of the public interest favors preliminary relief. Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008).

III. Analysis

Although the ABA brings six claims, it need only show a likelihood of success on one to obtain preliminary relief, provided the other preliminary-injunction factors are satisfied. See Nat'l Council of Nonprofits v. Off. of Mgmt. & Budget, No. 25-239 (LLA), 2025 WL 368852, at *9 (D.D.C. Feb. 3, 2025). Because the Court finds the ABA has made that showing as to its First Amendment retaliation claim and has satisfied the other factors, it will grant the motion for a preliminary injunction and deny Defendants' motion to dismiss as to that claim. The Court will reserve judgment on whether any of the ABA's other claims warrant injunctive relief or survive Defendants' motion to dismiss.

A. Likelihood of Success

Although the government did not initially contest this Court's jurisdiction over the ABA's First Amendment retaliation claim, its reply brief argues that, because this case involves a cooperative agreement to which the government is a party, and awarding relief could result in the payment of money from the public fisc, the entire action belongs in the Court of Federal Claims under the Tucker Act, 28 U.S.C. § 1491. Compare Def.'s Mot. to Dismiss at 7, 21, with Def.'s Reply at 1. Therefore, the Court will first address whether the ABA has established a likelihood of success on whether the Court has jurisdiction over the claim before turning to whether Defendants retaliated against the ABA for protected First Amendment activity.

1. Jurisdiction

"United States agencies 'are generally immune from suit in federal court absent a clear and unequivocal waiver of sovereign immunity.'" Am. Near E. Refugee Aid v. U.S. Agency for

Int'l Dev. ("ANERA"), 703 F. Supp. 3d 126, 132 (D.D.C. 2023) (quoting Crowley Gov't Servs., Inc. v. Gen. Servs. Admin., 38 F.4th 1099, 1105 (D.C. Cir. 2022)). However, sovereign immunity does not bar suits for injunctive or declaratory relief against federal officers acting unconstitutionally or beyond statutory authority. See Pollack v. Hogan, 703 F.3d 117, 120 (D.C. Cir. 2012) (citing Larson v. Domestic & Foreign Com. Corp., 337 U.S. 682, 689, 693 (1949); Dugan v. Rank, 372 U.S. 609, 621–22 (1963)).

Separately, the Tucker Act waives the United States's immunity from actions "founded . . . upon any express or implied contract with the United States." 28 U.S.C. § 1491(a)(1). And it "create[s] a presumption" that the Court of Federal Claims has exclusive jurisdiction over such claims. Franklin-Mason v. Mabus, 742 F.3d 1051, 1055 (D.C. Cir. 2014) (citation omitted). Accordingly, if the ABA's First Amendment retaliation claim is a constitutional claim for specific relief, sovereign immunity does not apply, and jurisdiction in this Court is proper. If, however, the ABA's First Amendment retaliation claim falls within the scope of the Tucker Act, jurisdiction lies exclusively within the Court of Federal Claims.

The Tucker Act applies when the claim is "essentially a contract action" and the Court of Federal Claims can exercise jurisdiction over the claim. ANERA, 703 F. Supp. 3d at 132 (first quoting Albrecht v. Comm. on Emp. Benefits, 357 F.3d 62, 68 (D.C. Cir. 2004); and then citing Tootle v. Sec'y of Navy, 446 F.3d 167, 176–77 (D.C. Cir. 2006)). The "longstanding test" to determine whether a claim is "'at its essence' contractual" examines "the source of the rights upon which the plaintiff bases its claims" and "the type of relief sought." Crowley, 38 F.4th at 1106 (quoting Megapulse, Inc. v. Lewis, 672 F.2d 959, 968 (D.C. Cir. 1982)). Because the source of the right underlying the ABA's First Amendment retaliation claim is the Constitution,

not the cooperative agreements, its claim is not "essentially a contract action." ANERA, 703 F. Supp. 3d at 132 (quoting Albrecht, 357 F.3d at 68).

a. Source of the Right

"In examining 'the source of the rights upon which the plaintiff bases its claims,'" the D.C. Circuit has "explicitly rejected the 'broad' notion 'that any case requiring some reference to or incorporation of a contract is necessarily on the contract and therefore directly within the Tucker Act' because to do so would 'deny a court jurisdiction to consider a claim that is validly based on grounds other than a contractual relationship with the government.'" Crowley, 38 F.4th at 1106–07 (quoting Megapulse, 672 F.2d at 967–68). In this analysis, courts ask whether "the plaintiff's rights 'existed prior to and apart from rights created under the contract.'" Id. at 1107 (alteration omitted) (quoting Spectrum Leasing Corp. v. United States, 764 F.2d 891, 894 (D.C. Cir. 1985)).

The ABA alleges that Defendants terminated its cooperative agreements in retaliation for protected speech, an act that would violate the First Amendment regardless of the agreements' terms. This theory of pretextual termination does not turn on contractual language. Cf. id. at 1108–09 (holding that contract was not the source of the right where claim "require[d] primarily an examination of the statutes the [Defendant] ha[d] purportedly violated, not of [the] contract"). Suppose, for example, that the agreements permitted termination for failure to effectuate agency priorities, and ABA CDSV's grant projects had in fact failed to do so. Even then, if retaliation were a motivating factor in the grants' termination, the ABA would still have a First Amendment retaliation claim. See Sanders v. District of Columbia, 85 F. Supp. 3d 523, 532 (D.D.C. 2015) (recognizing that protected activity must be "substantial or motivating factor in prompting . . .

retaliatory action" to establish a First Amendment retaliation claim (quoting Bowie v. Maddox, 642 F.3d 1122, 1133 (D.C. Cir. 2011))).

As another court in this district has explained, "[t]he fact that [the ABA] alleges that [D]efendants 'us[ed] [their] contracting powers as a means to retaliate' . . . does not transform [its] claim into one arising under or relating to [its] contract." Navab-Safavi v. Broad. Bd. of Governors, 650 F. Supp. 2d 40, 68 (D.D.C. 2009), aff'd sub nom., Navab-Safavi v. Glassman, 637 F.3d 311 (D.C. Cir. 2011) (fourth and fifth alterations in original) (quoting Ervin & Assoc., Inc. v. Dunlap, 33 F. Supp. 2d 1, 12 (D.D.C. 1997)). The means of retaliation does not determine the nature of the action. Indeed, the same constitutional injury could have occurred through the denial of a different government benefit or entitlement. Accordingly, the Court finds the source of the ABA's claim is its First Amendment right to be free from retaliation for engaging in protected activity, which "existed prior to and apart from rights created under the contract." Crowley, 38 F.4th at 1007 (alteration omitted) (quoting Spectrum, 764 F.2d at 894). This right stands independent of the cooperative agreements.

b. Type of Relief Sought

As for the type of relief sought, the relevant inquiry is whether the plaintiff "'in essence' seeks more than $10,000 in monetary relief from the federal government." Id. 1107 (citations omitted). On this claim, the ABA does not seek monetary damages; it seeks a declaration that Defendants acted unlawfully when they terminated the grants for retaliatory reasons and an injunction preventing Defendants from terminating the agreements on that basis.

True, a ruling for the ABA would effectively result in the continuation of monetary grants payment by the government. But, as the Supreme Court explained in Bowen v. Massachusetts, 487 U.S. 879 (1988), there is a distinction between money damages, which are

"given to the plaintiff to *substitute* for a suffered loss," and "specific remedies," such as specific performance, which "are not substitute remedies at all, but attempt to give the plaintiff the very thing to which he was entitled." Id. at 895 (citation omitted). That the specific relief sought here—preventing the government from terminating the contract for retaliatory reasons—may result in a monetary payout does not convert it into a claim for money damages.

And, even if the relief sought were characterized as contractual in nature, see Crowley, 38 F.4th at 1110 (describing specific performance as a "classic contractual remedy" (quoting Spectrum, 764 F.2d at 894)), that alone is not enough to bring the claim within the scope of the Tucker Act given that the ABA's First Amendment claim has an independent source. See id. at 1113 ("A plaintiff satisfies this test if its asserted right is based in contract *and* seeks 'in essence' more than $10,000 in monetary relief from the federal government." (emphasis added)).

The Supreme Court's recent per curiam opinion in Department of Education v. California, 145 S. Ct. 966 (2025), does not compel a contrary result. There was no constitutional claim in that case; the issue was whether the government was likely to succeed in showing that the district court lacked jurisdiction over the plaintiffs' APA challenge to the termination of their grants. See id. at 968; California v. U.S. Dep't of Educ., No. 25-cv-10548 (MJJ), 2025 WL 760825, at *3 (D. Mass. Mar. 10, 2025).

The D.C. Circuit's recent opinion in Widakuswara v. Lake, No. 25-5144, 2025 WL 1288817 (D.C. Cir. May 3, 2025), which has been administratively stayed by an en banc panel, is also distinguishable. The D.C. Circuit did not reach the First Amendment claim there because the district court's injunction was not based on it. Id. at *5 n.6. As for the plaintiffs' other constitutional claims, the Circuit concluded that "they simply flow[ed] from allegations that the Executive Branch has failed to abide by governing congressional statutes." Id. at *5. But here,

for the reasons explained above, the ABA's constitutional claim flows directly from the First Amendment.

Accordingly, the Tucker Act poses no obstacle to the Court's jurisdiction to consider the ABA's First Amendment retaliation claim.

2. Merits

"The First Amendment prohibits government from 'abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.'" Ams. for Prosperity Found. v. Bonta, 594 U.S. 595, 605–06 (2021) (quoting U.S. Const. amend. I). Accordingly, "the First Amendment bars [government] retaliation for protected speech." Crawford-El v. Britton, 523 U.S. 574, 592 (1998).

Here, the ABA claims that DOJ terminated its OVW grants to retaliate against it for "supporting 'activist causes,' taking positions 'not aligned with' DOJ's, and filing suit to challenge the termination of ABA's federal funding for foreign-assistance projects." Compl. ¶ 85 (quoting Blanche Memo).

To prevail on this claim, the ABA must show that (1) it "engaged in conduct protected under the First Amendment"; (2) Defendants "took some retaliatory action sufficient to deter a person of ordinary firmness in plaintiff's position from speaking again"; and (3) "there is 'a causal link' between the protected First Amendment activity and 'the adverse action taken against' the [ABA]." Perkins Coie LLP v. U.S. Dep't of Just., No. 25-cv-716 (BAH), 2025 WL 1276857, at *27 (D.D.C. May 2, 2025) (quoting Aref v. Lynch, 833 F.3d 242, 258 (D.C. Cir. 2016)). Courts may consider a defendant's "contemporaneous statements" when assessing "retaliatory motive." Nat'l Treasury Emps. Union v. Trump, No. 25-cv-0935 (PLF), 2025 WL 1218044, at *10 (D.D.C. Apr. 28, 2025); see also Florida v. United States, 885 F. Supp. 2d 299,

354 (D.D.C. 2012). Thus, while the government emphasizes that the Blanche Memo did not purport to terminate any of the grants, it is nonetheless relevant because it announced a new DOJ policy toward the ABA and came just a day before the grants were terminated.

The ABA has made a strong showing that Defendants terminated its grants to retaliate against it for engaging in protected speech. The government does not dispute that the ABA has met the first two elements of a retaliation claim. First, the Blanche Memo "openly acknowledges that plaintiff engaged in speech and other activities protected by the First Amendment." Perkins Coie, 2025 WL 1276857, at *27. It identifies the catalyst for the memo and DOJ's change in policy as to the ABA: "[T]he ABA filed a lawsuit against the United States." Blanche Memo at 1. And it describes the ABA's history of "tak[ing] positions on contentious legal, policy, and social issues" that "frequently have not aligned with the positions advanced by [DOJ]" and its "litigat[ion] in support of activist causes." Id. This activity is protected under the First Amendment. See, e.g., Cal. Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508, 510 (1972) ("The right of access to the courts is indeed but one aspect of the right of petition."); Perkins Coie, 2025 WL 1276857, at *27 (D.D.C. May 2, 2025) ("Well-settled law establishes that 'advocacy by . . . attorney[s] to the courts' falls within the category of 'private . . . speech' protected by the First Amendment." (alterations in original) (quoting Legal Servs. Corp. v. Velazquez, 531 U.S. 533, 542–43 (2001))).

Second, DOJ's termination of the grant funding is an action "sufficient to deter a person of ordinary firmness in plaintiff's position from speaking again." Perkins Coie, 2025 WL 1276857, at *27. This element is "satisfied by [the ABA's] showing of irreparable harm," see infra Part III.B. Perkins Coie, 2025 WL 1276857, at *30.

Third, the ABA's allegations, accepted as true, plausibly plead that the government's proffered justification for terminating the grants is pretextual, and that the real reason was retaliation. The Blanche Memo explicitly spells out how DOJ will be changing its approach toward the ABA in light of the ABA's lawsuit against the United States. And the temporal proximity between the Blanche Memo and the termination of the ABA's grants is probative of Defendants' retaliatory motive. See Nat'l Treasury Emps. Union, 2025 WL 1218044, at *10; Florida, 885 F. Supp. 2d at 354. The Memo may not have mentioned the ABA's grants specifically, but it promised to stop funding ABA events because of the DOJ's duty to be a "careful steward[] of the public fisc." Blanche Memo at 1.

The government claims that it had a nonretaliatory motive for terminating the grants: They no longer aligned with DOJ's priorities. But the government has not identified any nonretaliatory DOJ priorities, much less explained why they were suddenly deemed inconsistent with the goals of the affected grants. And the government's different treatment of other grantees suggests this justification is pretextual. DOJ did not terminate any other OVW grants, and, at oral argument, the government conceded that other grant recipients continue to conduct similar training functions with OVW money. Oral Arg. Tr. 31:4–12. The government has offered no nonretaliatory explanation for why it continues to fund these other OVW grantees after terminating the ABA's grants, or why these other grantees' projects still effectuate DOJ's priorities while the ABA's do not. Finally, DOJ also purported to terminate two grants that, by their terms, had already ended, making it even less plausible that DOJ conducted an individualized analysis of whether each grant aligned with DOJ policy. Based on all this, the Court cannot but conclude that the ABA is likely to succeed on its claim that Defendants terminated the agreements because of its protected activity in violation of the First Amendment.

B. Irreparable Harm

By establishing a likelihood of success on the merits of its First Amendment claims, the ABA has established it will suffer irreparable harm in the absence of preliminary relief. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Singh v. Berger, 56 F.4th 88, 109 (D.C. Cir. 2022) (quoting Roman Cath. Diocese of Brooklyn v. Cuomo, 141 S. Ct. 63, 67 (2020) (per curiam)).

The case the government relies on in opposition is inapposite. In Getty Images News Services Corp. v. Department of Defense, 193 F. Supp. 2d 112 (D.D.C. 2002), a press organization sought a preliminary injunction in part to challenge the "alleged denial of equal access to the detention facilities at Guantanamo Bay." Id. at 118. The Court denied the injunction because any alleged harm was speculative. Id. at 122–23. The organization had claimed it was harmed by limited access to Guantanamo Bay, but the Court found this harm existed only in comparison to a hypothetical Department of Defense policy that would have offered greater access. See id. The Court was similarly unpersuaded by the argument that the absence of a press pool at Guantanamo constituted a constitutional violation because the First Amendment did not necessarily guarantee such access. Id. at 123.

Here, by contrast, the First Amendment injury is concrete and ongoing. The ABA regularly engages in protected expressive activity, and DOJ's termination of its grants directly punishes that activity. Unlike Getty, this case involves actual government retaliation for speech, not a speculative comparison to an ideal access regime.

The ABA also alleges that the termination of the grants will force it to lay off most or all of ABA CDSV's staff within a month. Pl.'s Mot. at 22 (citing Decl. of Maricarmen Garza ¶ 48, ECF 4-2 at 16 (page numbers designated by CM/ECF)). The loss of funding thus "threaten[s]

the very existence of the movant's" operations. Climate United Fund v. Citibank, N.A., No. 25-cv-698 (TSC), 2025 WL 1131412, at *17 (D.D.C. Apr. 16, 2025) (quoting Wis. Gas Co. v. FERC, 758 F.2d 669, 674 (D.C. Cir. 1985)). Accordingly, this loss of funding goes further than the sort of "economic loss" that cannot usually constitute irreparable harm. See John Doe Co. v. CFPB, 849 F.3d 1129, 1134 (D.C. Cir. 2017).

The Court therefore finds that the ABA would suffer irreparable harm in the absence of preliminary relief.

C. Balance of the Equities and Public Interest

Finally, the ABA must show that the balance of the equities and the public interest weigh in favor of an injunction. "These factors merge when the Government is the opposing party." Nken v. Holder, 556 U.S. 418, 435 (2009)

"[G]overnment actions in contravention of the Constitution are 'always contrary to the public interest.'" Turner v. U.S. Agency for Glob. Media, 502 F. Supp. 3d 333, 386 (D.D.C. 2020) (quoting Gordon v. Holder, 721 F.3d 638, 653 (D.C. Cir. 2013)). Once again, then, the likelihood-of-success factor weighs on these factors: Given that the ABA has established a likelihood of success on the merits of a constitutional claim, it has shown that the balance of the equities and public interest favor an injunction preventing the government from continuing to violate the Constitution.

The government's contrary arguments are unavailing. First, the government contends that an injunction would prevent OVW from reobligating the funds to organizations that better serve its goals. Def.'s Mot. to Dismiss at 28. But it has neither identified those goals nor explained why the ABA no longer advances them. It is therefore impossible for the Court to

weigh this asserted interest. The same is true of the government's claims that injunctive relief would undermine its contractual rights. Id. at 29.

Next, while the executive branch's general interest in managing public funds carries significant weight, that interest does not outweigh the strong constitutional interests at stake here, particularly given the relatively modest amount of funding involved ($3.2 million total and only $2 million outstanding, see Def.'s Mot. to Dismiss at 31) and the tailored nature of the relief sought. The ABA does not seek, and the Court will not require, Defendants to reinstate the grants that had, by their terms, already ended or to renew the grants at the end of their terms. See Oral Arg. Tr. 25:10–22. Nor will it prevent Defendants from terminating ABA CDSV's grants for permissible and *truly* nonretaliatory reasons. See id. at 25:23–26:3. Therefore, the Court concludes the balance of the equities and public interest favor preliminary relief.

IV. Conclusion

For the foregoing reasons, the Court will grant Plaintiff's Motion for a Preliminary Injunction on its First Amendment retaliation claim. A separate Order shall accompany this memorandum opinion.

CHRISTOPHER R. COOPER
United States District Judge

Date: May 14, 2025

EXHIBIT D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STATE OF COLORADO; STATE OF RHODE ISLAND; STATE OF CALIFORNIA; STATE OF MINNESOTA; STATE OF WASHINGTON; STATE OF ARIZONA; STATE OF CONNECTICUT; STATE OF DELAWARE; THE DISTRICT OF COLUMBIA; STATE OF HAWAI'I; STATE OF ILLINOIS; OFFICE OF THE GOVERNOR *EX REL.* ANDY BESHEAR, in his official capacity as Governor of the Commonwealth of Kentucky; STATE OF MAINE; STATE OF MARYLAND; COMMONWEALTH OF MASSACHUSETTS; STATE OF MICHIGAN; STATE OF NEVADA; STATE OF NEW JERSEY; STATE OF NEW MEXICO; STATE OF NEW YORK; STATE OF NORTH CAROLINA; STATE OF OREGON; STATE OF WISCONSIN; JOSH SHAPIRO, in his official capacity as Governor of the Commonwealth of Pennsylvania, Plaintiffs, v. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ROBERT F. KENNEDY, JR., in his official capacity as Secretary of the U.S. Department of Health and Human Services, Defendants.	C.A. No. 1:25-cv-00121-MSM-LDA

MEMORANDUM AND ORDER

Mary S. McElroy, United States District Judge.

Bracing for the financial impact of an unprecedented public health crisis, Congress appropriated billions of dollars in spending across six appropriation acts starting in March 2020. The U.S. Department of Health and Human Services ("HHS") administered that money to all fifty States through grant programs aimed at responding to the ongoing health crisis. After the pandemic's official end in 2023, Congress reviewed its COVID-era spending and rescinded some appropriations it no longer saw as necessary, and left others in place. Since then, HHS has continued to administer the funding without issue.

On March 24, 2025, HHS suddenly terminated $11 billion of the public health grants appropriated by Congress to fund certain health programs and services, effective immediately ("Public Health Funding Decision). HHS began sending mass termination notices which contained the same boilerplate explanation that "[t]he end of the pandemic provides cause to terminate COVID-related grants. Now that the pandemic is over, the grants are no longer necessary." (ECF No. 4-40 Ex. A at 5.) Though Congress appropriated the funds during the pandemic, they did much more than address COVID-related public health concerns.

The terminations impact a wide range of the States' public health programs and services. The terminated funds addressed infectious disease outbreaks, including rising threats like measles and H5N1 (avian influenza). They ensured access to immunizations among vulnerable populations. They fortified emergency

preparedness for future public health threats. They provided mental health and substance abuse services. And they modernized critical public health infrastructure. Without the funds, these programs could not continue.

Challenging the Government's failure to comply with statutory and regulatory processes and fundamental Separation of Powers principles, a coalition of twenty-three States and the District of Columbia (the "States") sued in the District of Rhode Island.[1] The States now move for a preliminary injunction—a temporary court order requiring HHS to reinstate the funds, at least while their case is pending.

For the reasons discussed below, the Court GRANTS the States' Motion for a Preliminary Injunction (ECF No. 60). The Court DENIES the Defendants' Motion for Reconsideration and Request to Vacate the Temporary Restraining Order and Motion for a Stay Pending Appeal (ECF No. 56).

I. BACKGROUND

The Court begins with a preliminary statement of facts.

A. Congress's Appropriation of Public Health Funding

In March 2020, the world came to a screeching halt because of COVID-19. It sparked lockdowns across the globe, forced schools and businesses to shut their doors indefinitely, and quickly overwhelmed hospitals and healthcare providers.

[1] For ease of reading, the Court refers to the Defendants collectively as either "HHS" or "the Government." The Court refers to the Plaintiff-States collectively as "the States."

In response, Congress passed six appropriation acts to help people and businesses cope with the financial impact caused by the crisis. Congress enacted the laws to outline a path toward recovery, but also to better prepare the country for future public health threats. (ECF No. 60 at 3–4.) The funding was designed to strengthen healthcare outcomes and address gaps in the country's health system that were highlighted by the pandemic. *Id.*

Through these appropriations, Congress allocated large sums of money to HHS. HHS, in turn, was to distribute the money to the States by allocating certain amounts of the appropriated money to the Center for Disease Control ("CDC") and the Substance Abuse and Mental Health Services Administration ("SAMHSA"). (ECF No. 68 at 3-4.) As sub-agencies of HHS, both CDC and SAMHSA were responsible for allocating money to the States; they did so expeditiously through a variety of grant programs aimed at responding to the ongoing health crisis. *Id.* CDC and SAMHSA would either add the funds to existing awards to get the money to the States quickly or provide new grants to ensure the States could adequately respond to the pandemic. *Id.* at 4. The funds were largely used by the States, but in some cases, the agencies allowed for no-cost extensions of the grant awards if the funds could not be readily or timely used by the recipients. *Id.* As for CDC, some of the appropriations statutes direct a minimum amount of funding to be provided to state, tribal, local, and territorial entities, commonly referred to by HHS as "STLTs." (ECF No. 80-1 ¶ 7.)

Congress provided funds through six appropriation acts:

- Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, ("CPRSA") Pub. L. No. 116-123, 134 Stat. 146 (2020) ($8 billion);
- Families First Coronavirus Response Act, ("FFCRA") Pub. L. No. 116–127, 134 Stat. 178 (2020) ($15 billion);
- The Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (2020) ($2.1 trillion);
- The Paycheck Protection Program and Health Care Enhancement Act, Pub. L. No. 116-139, 134 Stat. 620 (2020) ($483 billion);
- The Coronavirus Response and Relief Supplemental Appropriations Act, (2021) Pub. L. No. 116-260, 134 Stat. 1182 (2020) ($900 billion); and
- The American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4 (2021) ($1.9 trillion).

Below, the Court describes with greater specificity what each act accomplished.

First, Congress passed CPRSA on March 6, 2020. Pub. L. No. 116-123, 134 Stat. 146 (2020). Title III of CPRSA specifically outlines the amount of money and purpose of the money being allocated to the CDC through HHS. *Id.* at 147–48. Congress specifically allocated $2,200,000,000 for "CDC-Wide Activities and Program Support" and further broke down that number into smaller allocations. For example, it required $950,000,000 be provided "for grants to or cooperative agreements with [STLTs] to carry out surveillance, epidemiology, laboratory capacity, infection control, mitigation, communications, and other preparedness and response activities[.]" *Id.* at 147.

Following the CPRSA, Congress passed the FFCRA on March 18, 2020. Pub. L. No. 116–127, 134 Stat. 178 (2020). FFCRA did not allocate any appropriations directly to CDC or SAMHSA; instead, the only allocations were $1,000,000,000, to

HHS, for the Public Health and Social Services Emergency Fund, "to remain available until expended." *Id.* at 182. It also gave $250,000,000 to HHS for Aging and Disability Services Programs. *Id.*

Next, Congress passed the CARES Act, which provided financial assistance to individuals, businesses, and local governments. CARES Act, Title VIII, 134 Stat. 281, 554–55 (2020). The Act includes provisions for direct payments to individuals, expanded unemployment benefits, and support for small businesses. *Id.* Additionally, it established the Coronavirus Relief Fund, which allocated $150,000,000,000 to help state and local governments manage the pandemic's impact. *Id.* at 554. The 2020 Supplemental Act further appropriated $950,000,000. 2020 Supplemental Act, Title III, 134 Stat. at 147. Together, these funds were for HHS to administer grant-in-aid programs with States and local jurisdictions to carry out surveillance, epidemiology, laboratory capacity, infection control, mitigation, communications, and other preparedness and response activities. Specifically, Congress appropriated $4,300,000,000 to CDC, of which $1,500,000,000 was appropriated for awards to STLTs, to remain available until September 30, 2024.[2] 134 Stat. 281 at 554. As of April 14, 2025, CDC made available $2,108,388,501 to the STLTs, and the STLTs spent $1,812,715,188 of the awarded CARES Act funds. (ECF No. 80-1 ¶ 10.)

[2] Pursuant to 31 U.S.C. §§ 1552(a), 1553(a), the States have until the fifth fiscal year after the period of availability for obligation to spend the funds.

Next, on April 24, 2020, Congress passed the Paycheck Protection Program and Health Care Enhancement Act ("PPP"), Pub. L. No. 116-139, 134 Stat. 620 (2020). Through the PPP, Congress appropriated $11,000,000,000 to HHS for STLTs in total. (ECF No. 80-1 ¶ 11.) Congress specified that $750,000,000 be appropriated for the Indian Health Service, resulting in $10,250,000,000 billion appropriated for non-Indian Health Service STLTs. *Id.* HHS also transferred another $282,311,516 to CDC, and Congress separately appropriated another $1,000,000,000 directly to CDC under the PPP. *Id.* As of April 14, 2025, CDC made available $11,652,785,823 to the STLTs, and the STLTs spent $10,029,206,313 of the awarded PPP funds. *Id.*

With the Coronavirus Response and Relief Supplemental Appropriations Act ("CRRSAA"), Congress appropriated $8,750,000,000 to CDC, of which $4,290,000,000 was specifically appropriated for awards to STLTs, to remain available until September 30, 2024. Pub. L. No. 116-260, 134 Stat. 1182, 1911 (2021). As of April 14, 2025, $5,426,073,054 was made available to the STLTs from CRRSAA funds, and the STLTs spent $3,811,438,554 of the awarded CRRSAA funds. (ECF No. 80-1 ¶ 12.) Congress appropriated $1,650,000,000 for the Substance Abuse Prevention and Treatment Block Grant and $1,650,000,000 for the Community Mental Health Services Block Grant. 134 Stat. 1182 at 1913. The CRRSAA directed that SAMHSA award no less than 50 percent of the CMHS Block Grant appropriation to community mental health centers. *Id.*

Lastly, through the American Rescue Plan Act of 2021 ("ARPA"), Congress appropriated $1,000,000,000 to the CDC. Pub. L. No. 117-2, 135 Stat. 4, 38 (2021).

CDC received another $17,964,597,077 from HHS and CMS under ARPA. *Id.* As of April 14, 2025, $18,964,597,077 was made available to the STLTs, and the STLTs had spent $12,241,082,518 of the awarded ARPA funds. (ECF No. 80-1 ¶ 13.) As of April 14, 2025, HHS records show $6,723,514,559 of unspent ARPA funds that had been awarded to STLTs. *Id.* Congress appropriated $1,500,000,000 for the Substance Abuse Prevention and Treatment Block Grant and $1,500,000,000 for the Community Mental Health Services Block Grant. 135 Stat. 4 at 45–46.

B. Congress's June 2023 Review of COVID-Era Funding Laws

Around a month after health officials declared that the pandemic was over, Congress undertook a review of its COVID-era spending, rescinding some appropriations and indicating others were to remain available. In June 2023, Congress passed the Fiscal Responsibility of Act of 2023, which canceled $27,000,000,000 in appropriations that were no longer necessary due to the end of the public health emergency. Pub. L. 118–5, Div. B, Sec. 1-81 (June 3, 2023). The rescissions included funds that had been appropriated under the laws at issue here, the 2020 Supplemental Act, Pub. L. No. 116-123, the Families First Coronavirus Response Act, Pub. L. No. 116-127, the CARES Act, Pub. L. No. 116-136, the Paycheck Protection Act, Pub. L. No. 116-139, the 2021 Supplemental Act, Pub. L. No. 116-260, and ARPA, Pub. L. No. 117-2. *Id.* In undergoing its June 2023 review, Congress clarified that certain funds were unnecessary, while others were to remain intact, such as the funding impacted by HHS' 2025 Public Health Funding Decision.

C. HHS' Administration of Funds

As Congress was busy handling appropriations during and after the pandemic, HHS worked diligently with the States. The money, which remained after congressional review, was funding various public health programs and services including treatment to those struggling with substance abuse and mental health issues, improvements to infectious disease tracking and response capability, and efforts to modernize the States' and their local jurisdictions' public health infrastructure. *See* ECF Nos. 4-13 ¶ 10; 4-6 ¶¶ 40–50; 4-27 ¶ 18. HHS even granted extensions to the States to draw down the funds, in some cases through June 2027, and issued guidance on how to appropriately use the funds beyond COVID-related concerns. *See* ECF Nos. 4-3 ¶¶ 10, 13, 21–22, 48; 4-24 ¶¶ 11, 22; 4-32 ¶ 19.

D. The Public Health Terminations

All that changed on March 24, 2025. Starting that day, the States' local health agencies began receiving termination notices from HHS, CDC, and SAMHSA revealing that their funding was cut ("Public Health Terminations"). (ECF No. 60-1 at 12).

According to the States, HHS' termination notices, distributed across various local programs and agencies, include the same basic components. *See e.g.*, ECF No. 4-40 at 16, 22, 28, 33, 38; ECF No. 4-41 at 52, 54; ECF No. 4-27 at 82, 95, 107, 125. The notices were issued on March 24 and 25 and provided no advanced notice to recipients. *See id.* The recipients were advised that the funding was terminated "for cause" and HHS referred to the end of the COVID-19 pandemic as the reason. *See*

id. Rather than explaining why the grantee had failed to comply with the terms and conditions or what for cause meant, the notices simply explained that the "end of the pandemic provides cause" to terminate the funds. (ECF No. 4-27 at 125.) Finally, the terminations were effective immediately, giving recipients no warning that they stand to lose the money.

Separately, CDC began sending termination notices that stated the following:

> The termination of this award is for cause. HHS regulations permit termination if "the non-Federal entity fails to comply with the terms and conditions of the award", or separately, "for cause." The end of the pandemic provides cause to terminate COVID-related grants and cooperative agreements. These grants and cooperative agreements were issued for a limited purpose: to ameliorate the effects of the pandemic. Now that the pandemic is over, the grants and cooperative agreements are no longer necessary as their limited purpose has run out. Termination of [this award] is effective as of the date set out in your Notice of Award.[3]

(ECF No. 4-40, Ex. A at 5.) Aside from this language, the notices executed by CDC did not provide any additional explanation to the recipients. (ECF No. 4-7 ¶ 59; 4-15 ¶ 15.) Prior to the termination, CDC did not notify the States that the grants were being administered in an unsatisfactory manner. *See, e.g.*, ECF No. 4-3 ¶¶ 19, 45; 4-7 ¶¶ 31, 43; 4-8 ¶ 18; 4-10 ¶ 36.

Although the CDC notices cited the end of the COVID-19 pandemic as cause for termination, many of the programs impacted by the Public Health Funding Decision were in place to advance health outcomes beyond the COVID-19 pandemic.

[3] The States note that while the terminations sent to their local programs and agencies do have minor, non-substantive variations, the gist of the language was the same. (ECF No. 60 at 10 n.2.)

These included funds to research labs investigating a listeria outbreak across multiple states (ECF No. 4-21 ¶ 27) and those preparing for future infectious disease threats such as avian influenza. (ECF No. 4-4 ¶¶ 7, 20; 4-7 ¶ 46; 4-8 ¶¶ 37, 43, 54; 4-24 ¶ 45.) And at times, CDC itself had extended the grants beyond the pandemic intentionally. *See, e.g.*, ECF No. 4-24 ¶¶ 11, 22; ECF No. 4-32 ¶ 19.

Similarly, SAMHSA implemented HHS' Public Health Funding Decision via notices that terminated block grants to the States and were effective immediately on March 24. (ECF Nos. 4-6 ¶ 11; 4-41 at 52.) The basis for the terminations was the same as the CDC notices—the end of the pandemic—and similarly, did not provide the recipients advanced notice or an opportunity for a hearing. *See id.* A few days later, SAMHSA issued superseding notices to recipients which stated:

> The termination of this award is for cause. The block grant provisions at 42 U.S.C. § 300x-55 permit termination if the state "has materially failed to comply with the agreements or other conditions required for the receipt of a grant under the program involved." The end of the pandemic provides cause to terminate COVID-related grants and cooperative agreements. These grants and cooperative agreements were issued for a limited purpose: to ameliorate the effects of the pandemic. Now that the pandemic is over, the grants and cooperative agreements are no longer necessary as their limited purpose has run out.

(ECF No. 4-6 ¶ 12; ECF No. 4-41 Ex. D at 1.) Besides this explanation, the SAMHSA notices did not provide any additional detail. *See id.* Like the CDC terminations, SAMHSA did not notify the States that they were failing to administer the grants appropriately. And despite the rationale being the end of the pandemic, the terminated SAMHSA funding supported mental health and substance abuse treatment efforts far beyond pandemic-related care. For instance, the States were

using the funds to strengthen the 988 Suicide and Crisis Lifeline system; make Naloxone more widely available to prevent fatal overdoses; expand access to mental health treatment among rural communities; serve foster youth with mental health and substance related needs; provide crisis intervention training to law enforcement officials and first responders; and to train crisis counselors to serve those impacted by natural disasters. *See, e.g.*, ECF Nos. 4-6 ¶¶ 40, 41, 50; 4-26 ¶ 14; 4-28 ¶ 5; 4-41 ¶ 33.

E. This Case

On April 1, 2025, twenty-three States and the District of Columbia sued for declaratory and injunctive relief against HHS and Secretary Kennedy, initially that the terminations violate the Administrative Procedure Act ("APA"), 5 U.S.C. § 701. (ECF No. 1 ¶¶ 3.) The States simultaneously moved for a temporary restraining order ("TRO") to restrain HHS "from enforcing or implementing the public health terminations for Plaintiff States and their local health jurisdictions." (ECF No. 4 at 3.)

On April 3, the Court heard the parties on the TRO and, at the hearing's conclusion granted it.[4] A written order detailing the Court's reasoning soon followed. The Court found that "the States have established a strong likelihood of success on

[4] At the TRO hearing, the Court heard from the States and HHS, though counsel for HHS did not make any substantive arguments, instead objecting to the issuance of the TRO and requesting that the Court to impose a bond. The Court granted the TRO and asked the States to prepare a proposed order and to confer with the Defendants as to any objections. The parties promptly complied and submitted a proposed TRO on April 4.

the merits, irreparable harm, and that the balance of equities and public interest favor the States." (ECF No. 54 at 13.) The TRO made clear that the Government was "fully restrained from implementing or enforcing funding terminations that were issued to Plaintiff States . . . or from issuing new funding terminations to Plaintiff States." *Id.* at 14.

Meanwhile, on April 4, the Supreme Court granted an emergency stay application in *Department of Education v. California*, 145 S. Ct. 966 (2025) (per curiam). That case concerned a district court's TRO enjoining the Government from terminating two education-related grant programs. HHS quickly moved for reconsideration of the TRO, arguing that *California* divested this Court of jurisdiction. (ECF No. 56 at 2-3.)[5]

On April 8, the States filed an Amended Complaint, which asserted several additional constitutional claims, and a Motion for a Preliminary Injunction. (ECF Nos. 59, 60.) The States insist that this Court has jurisdiction over their claims, despite the Supreme Court's recent decision in *California*. *Id.* at 22. They also claim that they have established a likelihood of success on the merits because the Public Health Funding Decision was contrary to law, arbitrary and capricious, and violates the Separation of Powers. *Id.* at 2-3. Furthermore, the States submit that absent a preliminary injunction, they stand to suffer immediate, irreparable harm to their

[5] After hearing the parties' arguments during the preliminary injunction hearing, the Court determined that it would address the Defendants' Motion for Reconsideration along with the States' Motion for Preliminary Injunction.

local public health programs, services, and initiatives. *Id.* at 3. Lastly, the States claim that the public interest and balance of the equities strongly favor a preliminary injunction in their favor. *Id.* A preliminary injunction hearing was held on April 17.[6]

II. PRELIMINARY INJUNCTION STANDARD

"A request for a preliminary injunction is a request for extraordinary relief." *Cushing v. Packard*, 30 F.4th 27, 35 (1st Cir. 2022). "To secure a preliminary injunction, a plaintiff must show '(1) a substantial likelihood of success on the merits, (2) a significant risk of irreparable harm if the injunction is withheld, (3) a favorable balance of hardships, and (4) a fit (or lack of friction) between the injunction and the public interest.'" *NuVasive, Inc. v. Day*, 954 F.3d 439, 443 (1st Cir. 2020) (cleaned up). In evaluating whether the plaintiffs have met the most important requirement of likelihood of success on the merits, a court must keep in mind that the merits need not be "conclusively" determined; instead, at this stage, decisions "are to be understood as statements of probable outcomes only." *Akebia Therapeutics, Inc. v. Azar*, 976 F.3d 86, 93 (1st Cir. 2020) (cleaned up). "To demonstrate likelihood of success on the merits, plaintiffs must show more than mere possibility of success–rather, they must establish a strong likelihood that they will ultimately prevail."

[6] Because the Government did not brief the States' constitutional claims in its original briefing—due to the States' amended complaint amid a tight briefing schedule—the Court granted it leave to file additional briefing for the Court's benefit. It did so on April 24, and the States responded on April 29. *See* ECF No. 80, ECF No. 81.

Sindicato Puertorriqueño de Trabajadores, SEIU Loc. 1996 v. Fortuño, 699 F.3d 1, 10 (1st Cir. 2012) (per curiam) (cleaned up).

III. DISCUSSION

A. Jurisdiction

Before addressing the merits, the Court must assure itself of jurisdiction. The Government does not dispute in its papers that the States have established Article III standing to challenge the Public Health Funding Decision. *See* ECF No. 68, ECF No. 80. The Court is satisfied that the States have demonstrated standing to challenge HHS' actions. *See Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024).

To start, HHS argues that the Court of Federal Claims has exclusive jurisdiction here because the States' claims are essentially contract actions that fall under the Tucker Act, rather than claims for equitable relief brought under the APA. (ECF No. 68 at 9, 14.) Challenging HHS' actions as contrary to regulatory, statutory, and constitutional law, and asking purely for prospective equitable relief, the States maintain that their claims are properly before the Court. (ECF No. 60 at 21.)

Congress has waived the United States' sovereign immunity and permitted judicial review under the APA in suits challenging agency actions that seek "relief other than money damages." 5 U.S.C. § 702. So when a plaintiff sues the federal government for breach of contract—an action seeking money damages—that claim "falls outside of § 702's waiver of sovereign immunity." *Dep't of Army v. Blue Fox, Inc.*, 525 U.S. 255, 263 (1999). Instead, the Tucker Act "confers jurisdiction upon the

Court of Federal Claims" for contract claims against the United States. *Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005). It vests jurisdiction there for "any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." 28 U.S.C. § 1491(a)(1); *see Maine Cmty. Health Options v. United States*, 590 U.S. 296, 327 (2020). And in suits seeking more than $10,000 in damages, the Court of Federal Claims' jurisdiction is exclusive of the federal district courts. *See, e.g.*, *Burgos v. Milton*, 709 F.2d 1, 3 (1st Cir. 1983).

The "jurisdictional boundary" between the Tucker Act and the APA is well-traversed by litigants seeking relief against the federal government. *Suburban Mortg. Assocs., Inc. v. U.S. Dep't of Hous. & Urb. Dev.*, 480 F.3d 1116, 1117 (Fed. Cir. 2007). But the boundary's precise contours remain elusive. *See id.* at 1124 (listing cases treading the jurisdictional line); *Bublitz v. Brownlee*, 309 F. Supp. 2d 1, 6 (D.D.C. 2004) (noting that "[t]he bright-line rule" between monetary and equitable relief in the Tucker Act–APA context "turns out to be rather dim . . . ."). Plaintiffs at times try to "avoid Tucker Act jurisdiction by converting complaints which at their essence seek money damages from the government into complaints requesting injunctive relief or declaratory actions." *Martin v. Donley*, 886 F. Supp. 2d 1, 8 (D.D.C. 2012) (cleaned up).

But not every "failure to perform an obligation" by the federal government "creates a right to monetary relief" only under the Tucker Act. *United States v.*

Bormes, 568 U.S. 6, 16 (2012). Just because "a judicial remedy may require one party to pay money to another is not a sufficient reason to characterize the relief as 'money damages.'" *Bowen v. Massachusetts*, 487 U.S. 879, 893 (1988). The Supreme Court has "long recognized the distinction between an action at law for damages—which are intended to provide a victim with monetary compensation for an injury to his person, property, or reputation—and an equitable action for specific relief." *Id.* (explaining that "insofar as the complaints sought declaratory and injunctive relief, they were certainly not actions for money damages"). And "although the Tucker Act is not expressly limited to claims for money damages, it has long been construed as authorizing *only actions for money judgments* and not suits for equitable relief." *Id.* at 914 (Scalia, J., dissenting) (cleaned up) (emphasis added).

All that is to say: "when traversing the Tucker Act–APA jurisdictional boundary, courts must look beyond the form of the pleadings to the substance of the claim to determine whether the essence of the action is in contract." *Woonasquatucket River Watershed Council v. U.S. Dep't of Agric.*, No. 1:25-CV-00097-MSM-PAS, 2025 WL 1116157, at *12 (D.R.I. Apr. 15, 2025). And the "essence" of an action encompasses two components: the "source of the rights upon which the plaintiff bases its claim" and "the type of relief sought (or appropriate)." *Piñeiro v. United States*, No. 08-CV-2402, 2010 WL 11545698, at *5 (D.P.R. Jan. 26, 2010) (cleaned up).

The Court addresses the elements of this framework in turn below.[7]

1. Source of the Rights

First, the Court considers the source of the States' rights. After examining the Complaint, the Court finds that, like in *Woonasquatucket* and *Massachusetts v. NIH*, the "gravamen" of the States' allegations "does not turn on terms of a contract between the parties; it turns" largely "on federal statutes and regulations put in place by Congress" and HHS. *Woonasquatucket*, 2025 WL 1116157, at *13; *Massachusetts v. NIH*, 2025 WL 702163, at *6 (D. Mass. Mar. 5. 2025.). And this case is even clearer than either *Woonasquatucket* or *Massachusetts* because the States also assert constitutional claims alongside its APA claims.

To be more precise: the source of the States' claims do not arise in any contract, but the APA—particularly its provisions forbidding arbitrary and capricious action, action contrary to law, and action in excess of statutory authority and the Constitution's Spending Clause and underlying separation of powers principles.[8] These are precisely the type of claims that belong in district court. *See, e.g.*, *K-Mar*

[7] While the First Circuit has not formally adopted the "rights and remedies" test that several other circuits have, district courts within it have used the test to determine whether the "essence" of an action is truly contractual. *See Woonasquatucket*, 2025 WL 1116175, at *12–15; *Massachusetts v. NIH*, No. 25-CV-10338, 2025 WL 702163, at *4–*8 (D. Mass. Mar. 5, 2025); *R.I. Hous. & Mortg. Fin. Corp.*, 618 F. Supp. 2d at 138; *Piñeiro*, 2010 WL 11545698, at *5.

[8] HHS goes on at length about the States' attempts to avoid jurisdiction by amending their complaint. (ECF No. 68 at 14–18.) But the States' motivation for exercising their right under the Federal Rules of Civil Procedure to amend is none of the Court's concern. Fed. R. Civ. P. 15 (a)(1). Before the Court are claims arising from violations of regulations, statutes, and the Constitution.

Indus., Inc. v. U.S. Dep't of Def., 752 F. Supp. 2d 1207, 1214 (W.D. Okla. 2010) ("The source of the rights alleged in this action is not contractual, it is the procedures put in place by the defendants.") To illustrate the point: throughout their briefing, the States have not pointed the Court to specific terms and conditions in their grant agreements. Instead, the States challenge the process HHS undertook in implementing the Public Health Funding Decision based on HHS' alleged violations of federal law. Ultimately, this case concerns the process the Government undertook when terminating the funding based on the end of the pandemic, meaning that the States have not put the specific terms and conditions of their agreements at issue.

To be clear, the fact that there are underlying contractual relationships between the States and HHS does not automatically "convert a claim asserting rights based on federal regulations into one which is, at its essence, a contract claim." *Normandy Apartments, Ltd. v. U.S. Dep't of Hous. & Urb. Dev.*, 554 F.3d 1290, 1299 (10th Cir. 2009) (cleaned up). As in *Massachusetts* and *Woonasquatucket*, the States "have not requested the Court to examine any contract or grant agreement created between the parties." *Massachusetts*, 2025 WL 702163, at *6; *Woonasquatucket*, 2025 WL 1116157, at *13. Instead, they "have asked this Court to review and interpret the governing federal statute and regulations." *Id.*

2. Type of Relief Sought

Having recognized that the source of the States' rights is based on federal law rather than on contract, the Court now turns to the relief sought. There is a "distinction between an action at law for damages," which provides monetary

compensation, and "an equitable action for specific relief," which might still require monetary relief. *Bowen*, 487 U.S. at 893; *see Great-W. Life & Annuity Ins. v. Knudson*, 534 U.S. 204, 213 (2002) ("Whether [restitution] is legal or equitable depends on the basis for [the plaintiff's] claim and the nature of the underlying remedies sought.") (cleaned up).

Simply because "a judicial remedy may require one party to pay money to another" does not necessarily "characterize the relief as money damages." *Bowen*, 487 U.S. at 893. A hallmark of such equitable actions is the existence of prospective relief in ongoing relationships. *Compare Bowen*, 487 U.S. at 905 (holding that the district court had jurisdiction because declaratory or injunctive relief was appropriate to clarify petitioner state's ongoing obligations under the Medicaid plan), *with Me. Cmty. Health Options v. United States*, 590 U.S. 296, 298 (2020) (holding that petitioners properly relied on the Tucker Act to sue for damages in the Court of Federal Claims because plaintiffs were strictly concerned with "specific sums already calculated, past due, and designed to compensate for completed labors").

The States dispel HHS' attempts to categorize their relief sought as "money damages," which would fall outside the APA's waiver of sovereign immunity under § 702, by highlighting that they have asked the Court for purely prospective, equitable relief. (ECF No. 60 at 22—23.) Rather than seeking compensation for past harm, the States ask the Court to enjoin HHS' likely unlawful termination of promised public health funding. Merely because their requested equitable relief would result in the

disbursement of money is not a sufficient reason to characterize the relief as money damages. *Bowen*, 487 U.S. at 893.

The Government's efforts to categorize the States' relief as money damages are to no avail when they have asked for a specific equitable remedy—an injunction to halt an agency's likely unlawful termination of critical public health funding. The States have asked this Court to vacate the unlawful terminations of grant money under the APA to access federal funds that were already appropriated. When a consequence of "a judicial remedy may require one party to pay money to another," it does not necessarily "characterize the relief as money damages." *Bowen*, 487 U.S. at 893. Absent equitable relief, the States stand to suffer devastating consequences to their public health systems and initiatives. It is clear that the States' primary purpose in bringing their claims is to secure an injunction, and not money damages arising out of a breach of contract claim.

The Court finds that this case does not concern contractual obligations or money damages for past harm. Rather, the States ask for a review of an agency's alleged unlawful action and seek prospective relief based on their ongoing relationship with the federal government to prevent harm to their local health jurisdictions.

3. *Department of Education v. California*

HHS argues that the U.S. Supreme Court's recent stay order in *Department of Education v. California*, 145 S. Ct. 996 (Apr. 4, 2025), makes its Tucker Act argument even clearer. The Court disagrees. True, the Supreme Court noted that noted the

APA's waiver of sovereign immunity does not apply to claims seeking money damages, but it also reaffirmed the general rule that "a district court's jurisdiction 'is not barred by the possibility' that an order setting aside an agency's action may result in the disbursement of funds." *Id.* at 968 (quoting *Bowen*, 487 U.S. at 910). The Government overreads the three-page stay order. *See Nken v. Holder*, 556 U.S. 418, 434 (2009) (explaining that the issuance of a stay "is dependent upon the circumstances of the particular case"). The Supreme Court's brief treatment of *Bowen* and *Great-West Life* in *California* and the cursory mention of potential jurisdictional issues do not appear to settle all jurisdictional issues here, despite HHS' arguments to the contrary.[9]

The Court recognizes the tension between *Bowen* and *California*. But the Court is not positioned to disregard *Bowen* and its progeny, even if it appears that it is now in tension with *California*. *See Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023) (explaining that district courts "should follow the case which directly controls, leaving to [the Supreme] Court the prerogative of overruling its own decisions."). This holds true even when the lower court "thinks the precedent is in tension with some other line of decisions"—or here, rather than an entire competing

[9] Notably, the States point out that in *California*, the Supreme Court weighed the potential harm to the government because the grantees had not promised to return withdrawn funds if the terminations were reinstated and found that the recipients did not stand to suffer irreparable harm while the case played out because they could recover any wrongfully withheld funds in the proper forum. *See California*, 145 S. Ct. at 967. And the States maintain that is not the case here because unlike the plaintiffs in *California*, they do not have the financial wherewithal to keep their public health programs running in the meantime. (ECF No. 65 at 8.)

"line of decisions," a single three-page per curiam order granting a stay.[10] *See Merrill v. Milligan*, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J., concurring) ("The Court's stay order is not a decision on the merits"). The case that "directly controls," and the one that the Court must follow, is *Bowen*.[11]

B. Likelihood of Success on the Merits

The Court now turns to the States' likelihood of success on the merits. They bring seven total claims.[12] The first four claims arise under the APA. Under Count I, the States argue that HHS' sudden termination of $10 billion in grants exceeds its statutory authority—in other words, a violation of the Major Questions Doctrine. (ECF No. 59 ¶¶ 101-102.) Under Counts II and III, the States allege that HHS' termination of two subsets of grants—those for SAMHSA and CDC—ran afoul of statutory and regulatory requirements. *Id.* ¶¶ 111, 126–127. In abruptly terminating the SAMHSA grants, HHS violated three provisions of § 300x-55: its provision

[10] In its supplemental briefing, HHS submits that the Court should treat the Supreme Court's decision in *California* as binding precedent on whether there is jurisdiction. (ECF No. 80 at 2 n.1.) Still, the Supreme Court's limited analysis in *California* is not a decision on the merits. And the source of the plaintiff-states' rights and their requested relief in *California* bears key differences from the States' claims here.

[11] District courts adjudicating similar claims agree that *California* did not divest them of jurisdiction. *See Woonasquatucket,* 2025 WL 1116157, at *14; *Maine v. United States Dep't of Agric.*, No. 1:25-CV-00131-JAW, 2025 WL 1088946, at *19 (D. Me. April 11, 2025); *New York v. Trump*, No. 25-cv-39-JJM-PAS, ECF No. 182 at 5–9 (D.R.I. Apr. 14, 2025); *State of Rhode Island, et al. v. Trump et al*, No. 25-cv-128-JJM-LDA, ECF No. 57 at 14—18.

[12] At this stage, the States need only show a substantial likelihood of success on one of their seven claims. *See, e.g.*, *Worthley v. Sch. Comm. of Gloucester*, 652 F. Supp. 3d 204, 215 (D. Mass. 2023) (collecting cases).

limiting funding terminations to cases where states, "materially failed to comply" with the grant agreements, as well as separate requirements for pre-termination investigation and hearing. *Id.* ¶ 111. And in abruptly canceling the CDC grants, HHS ran afoul of its own regulations, as laid out in 45 C.F.R. § 75.372(a)(2). *Id.* ¶¶ 126–27. Finally, under Count IV, the States allege that HHS' termination was arbitrary and capricious. *Id.* ¶¶ 134. They raise a host of arguments under this count, but their overarching point is that the decision was neither "reasonable" nor "reasonably explained," and each is independently fatal to its viability. *See id.*; *Ohio v. EPA*, 603 U.S. 279, 292 (2024).

The last three claims are constitutional. Under Count V, the States argue that the Executive's actions are an attempt to "unilaterally decline to spend funds," in violation of fundamental Separation of Powers principles and the Take Care Clause. *Id.* ¶ 149-150. Under Count VI, the States argue that the terminations violate the Spending Clause, because they improperly altered the relationship between the States and Congress. *Id.* ¶ 157. Finally, under Count VII, the States argue generally that HHS "lacked statutory or constitutional authority" to terminate the funds, so an injunction is necessary. *Id.* ¶ 164.

The States argue that they have shown a strong likelihood of success on the merits because HHS' Public Health Funding Decision and its implementation was contrary to law, arbitrary and capricious, and violates the Constitution. (ECF No. 60 at 23.) In turn, HHS reaffirms its position that this Court lacks jurisdiction over the States' claims, and that they cannot succeed on the merits. (ECF No. 68 at 21.) Even

aside from those "jurisdictional obstacles," HHS insists that the States have failed to show a likelihood of success on the merits because its actions "were not contrary to law or arbitrary and capricious, nor did they violate the Constitution." *Id.*

1. Threshold APA Issues

Before reaching the merits of the APA claims, though, the Court must determine two more threshold issues. First is whether HHS' actions constitute "final agency action," and second is whether, even if so, HHS' actions were of the narrow category "committed to agency discretion" and thus unreviewable under the APA.

A "final agency action" under 5 U.S.C. § 704 has two components: first, it "marks the consummation of the agency's decision-making process" and second, it is either an action "by which rights or obligations have been determined, or from which legal consequences will flow." *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 808 (2024) (cleaned up).

As to the first element, the States argue that HHS' actions "announce[d] the agency's final decision on the matter," and were effective as of the date set out in the Notice of Award, which was either March 24 or 25. (ECF No. 60 at 24, ECF No. 4-40, Ex. A at 1, 5.) As to the second prong, the States reason that there are "clear legal consequences" because the States immediately lost funding in the wake of HHS' Public Health Funding Decision. (ECF No. 60 at 24.) They also contend that the APA does not preclude bringing this challenge as a single action. *Id.*

Not directly contesting that its actions constituted final agency action, HHS instead argues that its "terminations were consistent with the applicable statutory

and regulatory provisions," meaning that "no further review under the APA is available." (ECF No. 68 at 18.) Even if these claims were reviewable under the APA, HHS says that the terminations were "quintessential agency actions" and "committed to agency discretion by law" under § 701(a)(2). *Id.* In response, the States explain that HHS' actions do not belong in the narrow class of agency actions which are "committed to agency discretion by law" and that "there are applicable statutory or regulatory standards that cabin agency discretion" and "meaningful standard[s] by which to judge the [agency]'s action." (ECF No. 60 at 24.) Thus, the States maintain that HHS' Public Health Terminations are reviewable by this Court. *Id.*

On both fronts, the States have the better of the argument. First, HHS' actions in terminating the public health funding at issue satisfy both prongs of the final agency test. The termination notices announced HHS' decision to cut the funding immediately. An immediate termination of funds surely marks the culmination of HHS' decision to cut the funding; there are no further steps HHS needs to take to determine whether it would cut the funding. As to the second prong, there are clear legal consequences of HHS' Public Health Terminations: the States cannot access previously available funds and consequently, will be forced to lay off highly trained specialists, disband infectious disease research teams, and eliminate public health programs that were created to vaccinate vulnerable populations and rural communities, and to treat those struggling with mental health or substance abuse related issues. *See, e.g.*, ECF Nos. 4-3 ¶ 48; 4-6 ¶¶ 4-7; 4-15 ¶ 17; 4-40 ¶ 11; 4-41 ¶ 3.

As to HHS' other argument: the Court disagrees that the Public Health Terminations were "committed to agency discretion by law" under § 701(a)(2) and thus unreviewable. To start, the APA "embodies a basic presumption of judicial review," and it "instructs reviewing courts to set aside agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Dep't of Com. v. New York*, 588 U.S. 752, 771 (2019) (cleaned up) (citing 5 U.S.C. § 706(2)(A)). And the Supreme Court has read the "committed to agency discretion" exception to judicial review for actions committed to agency discretion "quite narrowly." *Id.* It is restricted to only "rare circumstances" where a court "would have no meaningful standard against which to judge the agency's exercise of discretion." *Id.* (cleaned up).

That is not the case here. There are applicable constitutional, statutory, and regulatory standards that cabin HHS' discretion as an agency. Whether HHS had the requisite authority to implement the Public Health Terminations is exactly the type of legal question district courts are well-equipped to handle. Whether HHS exceeded statutory authority or violated the Constitution by eliminating Congressionally appropriated funds cannot be committed to agency discretion. *See California v. U.S. Dep't of Educ.*, 132 F.4th 92, 97–98 (1st Cir. 2025) *opinion stayed on other grounds*, (explaining that "applicable regulations cabin the [agency's] discretion as to when it can terminate existing grants" which creates a meaningful standard for the court to judge the agency's action); *see also Pol'y & Rsch., LLC v. HHS*, 313 F. Supp. 3d 62, 75–78 (D.D.C. 2018) (concluding that agency's sudden halt on funding to a program was reviewable under the APA because applicable

regulations cabin its termination authority and consequently, provide a standard for judicial review).

While the Government relies on *Lincoln v. Vigil*, 508 U.S. 182 (1993), to support its position that "[a]n agency's determination of how to allot appropriated funds among competing priorities and recipients is classic discretionary agency action that is not susceptible to APA review," the States respond that this case does not concern the allocation of lump-sum appropriations. (ECF No. 68 at 19, ECF No. 69 at 11.) The determination of whether HHS had the authority to eliminate the Congressionally appropriated funds based on its own assessment that the appropriations were "no longer necessary" due to the end of the COVID-19 pandemic is certainly not a question about agency discretion. *See In re Aiken Cnty.*, 725 F.3d 255, 261 n.1 (D.C. Cir. 2013) (explaining that the Executive "does not have unilateral authority" to refuse to spend funds appropriated by Congress). Similarly, HHS' implementation of the terminations of public health grants already allocated and awarded concerns the application of statutory and regulatory "for cause" provisions, an analysis which district courts "routinely perform." *Pol'y & Rsch., LLC*, 313 F. at 83 (Jackson, J.).

The Supreme Court clarified in *Lincoln* that "an agency is not free simply to disregard statutory responsibilities: Congress may always circumscribe agency discretion to allocate resources by putting restrictions in the operative statutes." *Lincoln*, 508 U.S. at 193 (labeling an action unreviewable because Congress left the decision about how to spend the money up to the agency's discretion). With that in

mind, courts have held that § 701(a)(2) does not apply when the agency's actions contravene (1) appropriations laws and (2) other applicable regulatory and statutory authority. *California*, 132 F.4th at 97–98; *Pol'y & Rsch., LLC*, 313 F. at 75–78. The States claim that judicial review is proper under both grounds. (ECF No. 69 at 12.)

The Court agrees. First, Congress directed HHS to spend the appropriated funds on specific initiatives per the applicable statutes. Nor is this a case where Congress expressly delegated discretion to HHS. Notably, when reviewing the statutory authority for tribal grants under the CARES Act, the D.C. Circuit concluded that it was "nothing like the statutes at issue in *Lincoln*," and thus not entitled to a presumption of non-reviewability. *See Shawnee Tribe v. Mnuchin*, 984 F.3d 94, 100 (D.C. Cir. 2021) ("Congress has not left the Secretary any flexibility to shift funds within a particular appropriation account so that [he] can make necessary adjustments for unforeseen developments and changing requirements.") (internal quotation marks omitted). So too here.

Second, unlike the lump-sum appropriations in *Lincoln* which were left to agency discretion, HHS' decision to terminate is clearly reviewable when applicable statutory and regulatory language provide a clear standard for the Court's review. *See, e.g.*, 45 C.F.R. § 75.372(a)(2) ("[An] award may be terminated . . . for cause"); 42 U.S.C. § 300x-55(a) (A grant may be "terminated for cause" when "a State has materially failed to comply with the agreements or other conditions"). This is not one of "those rare circumstances where the relevant statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of

discretion." *Dep't of Com.*, 588 U.S. at 772. The Government's attempt to frame the Public Health Terminations as matters where it had discretion to choose how Congressionally appropriated funds are spent among competing priorities is without merit. *See Pol'y & Rsch., LLC*, 313 F. Supp. at 75–78.

Having held that the States are likely to establish that the Public Health Terminations constitute a "final agency action" under the APA and that they are not "committed to agency discretion by law," the Court moves to the merits.

2. Count I: Public Health Funding Decision

The States first argue that HHS' Public Health Funding Decision violated the APA in two ways. First, in determining that the congressionally appropriated funds were no longer necessary, the States argue that HHS overstepped its statutory authority. And second, the States maintain that HHS acted contrary to law in terminating the grants "for cause" for two reasons: (1) the States complied with the terms and conditions of their awards and HHS has not alleged otherwise and (2) HHS has not pointed to relevant authority which allows termination for cause based on the end of the pandemic, which was over two years ago. In turn, HHS insists that there is "no question" it had the express authority to terminate the public health grants for cause by applicable regulations. (ECF No. 68 at 23.)

Starting with the "excess of statutory authority" argument, the States say that HHS, in unilaterally terminating the programs despite Congress's decision not to, violated the major questions doctrine. Their argument goes like this: starting in 2020, Congress appropriated funds to grant-in-aid programs and provided specific

purposes and instructions on how to spend the money. In doing so, Congress expressly tied certain programs and funding to the end of the pandemic. And in 2023, Congress reviewed COVID-related appropriation statutes after the pandemic ended and rescinded $27 billion of appropriations. *See* Fiscal Responsibility Act, Pub. L. No. 118-5 137 Stat. 10 (2023) Div. B, § 2(3) (rescinding certain unobligated funds "with the exception of $2,127,000,000 and—(A) any funds that were transferred and merged with the Covered Countermeasure Process Fund"). Since then, Congress did not revoke any of the funding at issue here; it reviewed it and left it in place. As a result, the States insist that leaving the funding in place signaled Congress's determination that the end of the pandemic did not mean that certain programs and appropriated funds were no longer needed.

The Court presumes that "Congress intends to make major policy decisions itself" rather than leaving those decisions to agencies. *West Virginia v. EPA*, 597 U.S. 697, 723 (2022). Congress must "speak clearly" if it wishes to charge an agency with a decision of "vast economic and political significance." *Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 594 U.S. 758, 764, (2021) (cleaned up). Thus, an agency "literally has no power to act—including under its regulations—unless and until Congress authorizes it to do so by statute." *FEC v. Cruz*, 596 U.S. 289, 301 (2022). And "where the statute at issue is one that confers authority upon an administrative agency, that inquiry must be shaped, at least in some measure, by the nature of the question presented—whether Congress in fact meant to confer the power the agency has asserted." *W. Virginia v. EPA*, 597 U.S. 697, 721 (2022).

The power that HHS has asserted here is a broad one: terminating $11 billion worth of funding based on its determination that the money is no longer necessary. The Court cannot see how it can claim that power based on the history of congressional action described above. *See Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014).

The Court recognizes that is not the typical "major questions doctrine" case, where the parties can point to—and argue about—one specific grant of power in one part of one statute. *Cf. Biden v. Nebraska*, 600 U.S. 477, 494 (2023) ("We hold today that the Act allows the Secretary to 'waive or modify' existing statutory or regulatory provisions applicable to financial assistance programs under the Education Act, not to rewrite that statute from the ground up."); *Alabama Ass'n of Realtors*, 594 U.S. at 763 ("The Government contends that the first sentence of § 361(a) gives the CDC broad authority to take whatever measures it deems necessary to control the spread of COVID–19, including issuing the moratorium.").

But that is a problem of HHS' making. In fact, it makes the States' case even clearer, given that no specific language satisfies the "speak clearly" test with regard to the $10 billion decision affecting funds across six statutes made here. And in any event, broader context including "background legal conventions," constitutional structure, and even "common sense," should inform the Court's analysis of an agency's assertion of power. *Biden v. Nebraska*, 600 U.S. at 510–513 (Barrett, J., concurring). That is true even without a single textual hook.

All three factors—background legal conventions, constitutional structure, and common sense—caution against accepting HHS' assertion of authority. Congress already considered the appropriations at issue here and clearly determined that some programs and services were still necessary, no matter when the pandemic ended. More importantly, when undertaking this review in June 2023, Congress did not grant HHS authority to rescind or reallocate the funds, nor did it authorize such drastic action. In the interpretation of statutes, the express mention of one thing is to the exclusion of others. *See, e.g.*, *N.L.R.B. v. SW Gen., Inc.*, 580 U.S. 288, 302 (2017) ("If a sign at the entrance to a zoo says, 'come see the elephant, lion, hippo, and giraffe,' and a temporary sign is added saying 'the giraffe is sick,' you would reasonably assume that the others are in good health.") Thus, Congress's express decision to eliminate some COVID-era public health funding, but leave alone the funding at issue here, signals its intent to continue that funding.

Consequently, HHS' Public Health Funding Decision usurped Congress's power to control these public health appropriations. If Congress intended to charge HHS with such a determination, it would have done so at some point—like in June 2023, when it went line-by-line and rescinded some COVID-era funding but left other funding in place. With that in mind, the Court holds that the States are likely to succeed on Count I.

3. Count II: SAMHSA Terminations

The States next assert that the SAMHSA terminations were contrary to law and in excess of statutory authority. Their argument is that HHS departed from

three key statutory requirements governing SAMHSA funding under § 300x-55. (ECF No. 60 at 27.) And in the States' view, each is sufficient to establish a successful claim. The Court lays out these three arguments below before addressing them.

First, under 42 U.S.C. § 300x-55(a), the Secretary may "terminate the grant for cause" only "if the Secretary determines that a State has materially failed to comply with the agreements or other conditions required for the receipt of a grant." Despite this requirement, the States claim that HHS "never asserted that any grantee materially failed to comply with agreements or other required conditions." *Id.*; *see, e.g.*, ECF. Nos. 4-6 ¶ 12., 4-41 ¶ 42. Rather, HHS merely stated that "[t]he end of the pandemic provides cause to terminate COVID-related grants. Now that the pandemic is over, the grants are no longer necessary." (ECF. No. 4-6, 4-41.)

Second, under § 300x-55(e), the Secretary shall provide to the State involved adequate notice and an opportunity for a hearing" "[b]efore taking action against a State . . . ." The States submit that HHS did not provide notice to the States or an opportunity for a hearing before taking action to terminate the grant funding, contrary to statutory requirements.

Finally, § 300x-55(g) bars HHS from withholding any funds without "an investigation concerning whether the State has expended payments under the program involved in accordance with the agreements required under the program." The States argue that HHS ignored this requirement. Just as there was no notice, in violation of § 300x55(e), there was also no investigation. HHS claims that it

terminated the SAMHSA funding "for cause" that is, the end of the pandemic, and consequently, the statutory requirements for non-compliance are inapplicable.

On this record, it is clear that HHS ignored multiple statutory requirements that govern the termination of block grant programs. HHS argues that Section 300x-55 does not apply to the terminations here because that section is only implicated upon a determination that a State has materially failed to comply with the grant terms or conditions. (ECF No. 68 at 27-28.) But that is a puzzling argument given that HHS relied on Section 300x-55 as its authority to terminate the funding when it issued the termination letters. *See* ECF No. 4-6 ¶ 12; 4-41 Ex. D at 1.

Because § 300x-55 applies, the Court struggles to see how the Government's decision to terminate the funds as "no longer necessary" satisfies the process laid out in the statute.[13]

The Government's argument that the States' material failure to comply is based on the notion that they were "not spending the money that had been allocated for COVID-19 relief purposes" is unavailing. (ECF No. 68 at 28.) Congress did not expressly limit the funds to COVID-19 related programs and services. *See* ARPA,

[13] To be sure, each State receives a block grant under SAMHSA based on a statutory formula. *See* 42 U.S.C. § 300x(a) (the Secretary "shall make an allotment each fiscal year for each State in an amount determined in accordance with section 300x–7"). With respect to block grants, agencies have no discretion and must distribute the funds based on the statutory formula. *See City of Providence v. Barr*, 954 F.3d 23, 27 (1st Cir. 2020). Regarding SAMHSA, Congress outlined specific circumstances in which HHS is not required to spend the funds. *See* § 300x-55(a) (A grant may be "terminated for cause" when "a State has materially failed to comply with the agreements or other conditions."). Accordingly, HHS lacked the requisite authority to refuse to spend the funds for any other reason.

Pub. L. No. 117-2, §§ 2701, 2702, 135 Stat. 4, 45-46 (2021) (appropriating $1.5 billion for services related to mental health and $1.5 billion for services related to substance abuse "to remain available until expended"); Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (Div. M of the Consolidated Appropriations Act, 2021), Pub. L. No. 116-260, 134 Stat. 1182 (2020) ("$1,650,000,000 shall be for grants for the substance abuse prevention and treatment block grant program" and "$1,650,000,000 shall be for grants for the community mental health services block grant program"). If Congress intended to tie these funds to the end of the pandemic, it would have done so.

And HHS' offering a hearing after terminating the funds only serves to strengthen the States' position that the Government acted contrary to law. Recall that under § 300x-55(e), the Secretary must provide the State involved adequate notice and an opportunity for a hearing "[b]efore taking action." Without that hearing prior to termination, HHS' Public Health Funding Decision and its implementation ran contrary to the States' statutory rights.

4. Count III: CDC Terminations

The States claim that HHS' termination of CDC grants "had no legal basis for its actions because of the end of the pandemic nearly two years ago. Defendants acted contrary to law and in excess of statutory authority." (ECF No. 60 at 28, 30.) According to the States, the CDC funding was terminated "for cause" based on "HHS regulations," presumably 45 C.F.R. § 75.372(a)(2). *Id.* at 28. The States say that the end of the pandemic, nearly two years ago, surely does not qualify when it has

previously construed "for cause" as a material failure to comply. *Id.* In turn, HHS says that the "for cause" provision is distinct from non-compliance, and that it was permitted to terminate the grants. (ECF No. 68 at 23.)

Again, the States have the better of the argument. The Court sees no reason to accept HHS' novel interpretation of the "for cause" termination requirement in its regulations, particularly in light of the Supreme Court's guidance on similar questions. *See Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 155–56 (explaining that "an agency's interpretation of its own ambiguous regulation" should not receive deference when the agency's interpretation "is nothing more than a convenient litigating position" or a "post hoc rationalization advanced by an agency seeking to defend past agency action against attack," or when it would cause an "unfair surprise" to the regulated parties).

When examining the "for cause" language in the past, HHS has generally construed it to involve a failure to comply with a grant's terms and conditions.[14] *Id.* Similarly, "for cause" has been construed as substantially the same as "failure to comply." *See* OMB, Guidance for Grants and Agreements, 85 Fed. Reg. 49506,49508 (Aug. 13, 2020). What's more, HHS has signaled its intent to adopt the OMB's

[14] *See R.I. Substance Abuse Task Force Ass'n*, DAB No. 1642 (1998), 1998 WL 42538, at *1 (H.H.S. January 15, 1998) ("When a grantee has materially failed to comply with the terms and conditions of the grant, [the Public Health Service] may . . . terminate the grant for cause."); *Child Care Ass'n of Wichita/Sedgwick Cnty.*, DAB No. 308 (1982), 1982 WL 189587 at *2 (H.H.S. June 8, 1982) ("'For cause' means a grantee has materially failed to comply with the terms of the grant."). This is consistent with the standard application of "for cause" terminations in statute and regulation. *See, e.g.*, 42 U.S.§ 300x-55(a); 10 C.F.R § 600.25 (allowing "for cause" award termination on the basis of noncompliance or debarment).

interpretation and eliminate the "for cause" provisions, illustrating how it has admitted that it sees the provision as an unnecessarily duplicative part of its regulatory scheme *See* HHS, Health and Human Services Adoption of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 89 Fed. Reg. 80055, 80055 (Oct. 2, 2024) (effective October 2025) ("for cause" regulation substantially duplicative of "failure to comply regulation"). Nor would the end of the pandemic nearly two years ago seem to require termination when the appropriation statutes at issue extended the funding for purposes beyond the pandemic and Congress determined not to rescind the funds at issue in June 2023.

The States have thus shown a strong likelihood of success in proving that the CDC terminations were contrary to law.

5. Count IV: "Arbitrary and Capricious" Claim

Next, the States argue that the Public Health Funding Decision was arbitrary and capricious because the Government's termination of critical public health funding based on the end of the pandemic nearly two years ago is not substantively reasonable nor was it reasonably explained. (ECF No. 60 at 30.) In turn, HHS says that its conduct is not reviewable under the APA and even so, it did not act arbitrarily and capriciously because its decision to terminate the funds was lawful and agencies have discretion on how to allocate funds thus, the decision did not require any additional explanation. (ECF No. 60 at 31-32.)

The APA requires reviewing courts to "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). An agency action is arbitrary or capricious "if it is not reasonable and reasonably explained." *Ohio v. EPA*, 603 U.S. 279, 292 (2024). The Court cannot "substitute its judgment for that of the agency," but it must take care to "ensure" that the agency has "offered a satisfactory explanation for its action, including a rational connection between the facts found and the choice made." *Id.* (cleaned up). And "an agency cannot simply ignore an important aspect of the problem." *Id.* (cleaned up).

First, the States argue that HHS failed to provide a rational basis for the Public Health Funding Decision. Merely relying on a conclusory explanation that the funds are no longer necessary because the pandemic is over does not demonstrate a "rational connection between the facts found and the choice made." *Ohio*, 603 U.S. at 292. The Government's determination was unreasonable in light of Congress's direction that the appropriations at issue be used beyond the pandemic and to better prepare for future public health threats. *See, e.g.*, ARPA, §§ 2402, 2404, 2501, 135 Stat. at 41-42.

This holds particularly true when Congress expressly limited some appropriations to the end of the pandemic. *See Russello v. United States*, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") Even so, in June 2023, Congress undertook a review of COVID-era spending and passed the Fiscal Responsibility Act of 2023 and rescinded $27 billion of

appropriations that were no longer necessary due to the end of the public health emergency. *See* Pub. L. No. 118-5 Div. B, Title I (2023). Given Congress's clear intent to keep the appropriations at issue intact, the Court cannot say HHS provided any rational basis to justify its decision to terminate the funds based on the end of the pandemic. That is sufficient to end the analysis, but to be thorough, the Court will address additional "arbitrary and capricious" arguments.

Next, the States claim that HHS' actions were arbitrary and capricious because it failed to undertake an individualized assessment or acknowledge the important public health initiatives supported by the grants, failing "to consider an important aspect of the problem." (ECF No. 60 at 32.) (quoting *State Farm*, 463 U.S. at 43)). In turn, HHS says that "it is not arbitrary and capricious for an agency to provide the same explanation across multiple decisions." (ECF No. 68 at 32.)

Still, the determination that funding appropriated by Congress is no longer necessary requires an assessment of the grantees' compliance with the agreements, which HHS declined to do. Recall that § 300x-55(g) bars HHS from withholding any SAMHSA funds without "an investigation concerning whether the State has expended payments under the program involved in accordance with the agreements required under the program." And based on its own interpretations, HHS may terminate awards "for cause" when a party has failed to comply with the terms and conditions of the grant under § 75.372(a). There is no evidence that happened here.

Third, the States allege that HHS failed to provide a reasoned explanation for its sudden change in position that appropriations Congress determined were needed

to fund public health initiatives beyond the pandemic were no longer necessary. Such a drastic change of course would require HHS to "show that there are good reasons for the new policy." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). While HHS acknowledged its change of position, it provided no explanation to the States as to why it did so suddenly and contrary to Congress's will that certain COVID-era spending was needed beyond the immediate public health emergency that ended in May 2023.

Fourth, HHS' Public Health Funding Decision was arbitrary and capricious because it failed to consider the States' reliance interests on the funds and the devastating consequences that would result from abruptly terminating critical public health appropriations. The Government asserts that is an "incorrect premise" because the States "failed to draw down over $160 million of the funds while they were available" and thus, cannot now claim they relied on the funds. (ECF No. 68 at 33.) That said, agencies must consider reliance interests when changing course because "longstanding policies may have engendered serious reliance interests that must be taken into account." *Dep't of Homeland Sec.*, 591 U.S. at 30 (cleaned up); *Fox Television Stations*, 556 U.S. at 515 (explaining that it is arbitrary and capricious to ignore reliance interests). The States and their local agencies and programs relied on this funding and had no reason to suspect that it would be abruptly canceled without process or explanation. The States were granted extensions in some cases through June 2027, and HHS issued guidance on how to appropriately use the funds beyond COVID-related initiatives. *See* ECF Nos. 4-3 ¶¶ 10, 13, 21–22, 48; 4-24 ¶¶

11, 22; 4-32 ¶ 19. Indeed, it appears HHS gave no consideration to the programs and services that would be impacted by these terminations when it decided the funds were no longer necessary based on the end of the pandemic.

HHS maintains that the Court should ignore the States' claimed reliance on these appropriations for two reasons: certain funds were not yet obligated or drawn down by the States and HHS allocated the funds that were statutorily required. (ECF No. 68 at 33.) Indeed, HHS says that it identified over $86 million in SAMHSA funding and nearly $79 million in CDC grants that had not yet been obligated or drawn down while available. *Id.* Still, Congress has already spoken. With respect to SAMHSA, the States had until September 2025 to spend the funds. Pub. L. 117-2, §§ 2701, 2702, 135 Stat. 4, 45-46. And with CDC, the funds were to be obligated by September 2024, but the States have an additional five years to spend those funds. *See* CARES Act Title VIII, 134 Stat. 281, 554; 31 U.S.C. §§ 1552(a), 1553(a).

The Government's decision to allocate, in some cases, more than it was statutorily required to does not alleviate HHS of its obligation to expend the appropriated funds under legislative directives. Notably, in the CARES Act, Congress even outlined specific purposes for the appropriated funds to be used beyond the pandemic including public health data surveillance, infrastructure modernization, disease detection, and emergency response, and surveillance, epidemiology, laboratory capacity, infection control, mitigation, communications, and other preparedness and response activities. *See* CARES Act Title VIII, 134 Stat. 281, 554–555. Based on Congress's direction that the funds remain available, the

Government's argument that it met some of the statutory requirements in the appropriation acts is irrelevant; it is certainly not dispositive of any questions about its refusal to spend the remaining funds because it believes the money is no longer necessary.

Lastly, the States insist that the Government's conduct was arbitrary and capricious because it violated statutory and regulatory authority as HHS never alleged that the States failed to comply with the terms and conditions of the awards. *See* ECF No. 60 at 33. They also say that HHS did not explain its sudden departure from its longstanding position that the funds would extend beyond the pandemic and Congress's express decision to leave the funding in place. *Id.*

The Court agrees that HHS acted arbitrarily and capriciously when it applied "for cause" terminations here because contrary to statutory and regulatory authority, HHS never claimed any failure on part of the States to comply with their grant agreements. *See* § 300x-55(g); § 75.372(a). Instead, HHS merely relied on the end of the pandemic as "cause" to terminate the funds, despite this application being contrary to statutory and regulatory authority and inconsistent with Congress's directive that the funds remain available beyond the pandemic.

Once again, the States have demonstrated a strong likelihood of success on their claim that these terminations were arbitrary and capricious in violation of the APA.

6. Count V: Separation of Powers

Finally, the States are likely to succeed on the merits of their claim that HHS' Public Health Terminations and its implementation violate Separation of Powers. The States argue that, drawing analogies to cases directly about presidential power, HHS is operating at its "lowest ebb," because no constitutional or statutory provision authorizes HHS, as an agent of the Executive Branch, to unilaterally terminate funding appropriated by Congress. (ECF No. 60 at 34.) Rather, "the Executive has taken measures that are incompatible with the express will of Congress related to public health appropriations." *Id.* For their part, HHS insists that it had "inherent authority to spend the money that Congress allocates consistent with the limits Congress sets." (ECF No. 80 at 10.) As such, HHS says that its decision to exercise its discretion within those confines "is entirely consistent with separation-of-powers principles and is an action committed to agency discretion by law for which the APA does not provide an avenue for review. *Id.*

It is axiomatic that "[t]he United States Constitution exclusively grants the power of the purse to Congress, not the President." *City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1231 (9th Cir. 2018); U.S. Const. art. I, § 9, cl. 7 (Appropriations Clause)1; U.S. Const. art. I, § 8, cl. 1 (Spending Clause). It naturally follows that the same is true of the President's agents. "Congress may attach conditions on the receipt of federal funds, and has repeatedly employed the power 'to further broad policy objectives by conditioning receipt of federal moneys upon

compliance by the recipient with federal statutory and administrative directives.'" *Id.* at 1232 (quoting *South Dakota v. Dole*, 483 U.S. 203, 206–07 (1987)).

In contrast, "[t]here is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes." *Id.* (quoting *Clinton v. City of New York*, 524 U.S. 417, 438 (1998)). Simply put, "the President is without authority to thwart congressional will by canceling appropriations passed by Congress" and "does not have unilateral authority to refuse to spend the funds." *Id.* Nor may the President "decline to follow a statutory mandate or prohibition simply because of policy objections." *Id.* "No matter the context, the President's authority to act necessarily 'stem[s] either from an act of Congress or from the Constitution itself.'" *Trump v. United States*, 603 U.S. 593, 607 (2024) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 634 (1952) (Jackson, J., concurring)). And again, the same is true of the Executive's agents. The Separation of Powers and these core principles are integral to our democracy. Meaning that, "liberty is threatened" when "the decision to spend [is] determined by the Executive alone." *Clinton*, 524 U.S. at 451 (Kennedy, J., concurring).

HHS' actions here clearly usurped Congress's authority to spend and allocate funds how it deems appropriate. *See City & Cnty. of S.F. v. Trump*, 897 F.3d 1225, 1235 (9th Cir. 2018) (explaining that without authorization from Congress, "the Administration may not redistribute or withhold properly appropriated funds in order to effectuate its own policy goals.") The power to spend lies solely with the Legislative branch. *See id.* at 1231-32; *see also* U.S. Const. art. I, § 9, cl. 7

(Appropriations Clause); U.S. Const. art. I, § 8, cl. 1 (Spending Clause). With this comes the "exclusive power" to impose conditions on appropriated funds. *Id.* at 1231. In contrast, the Executive's role is to "take care that the laws be faithfully executed," and agencies are there to serve that same end. U.S. Const. art. II, § 3.

As a federal agency, HHS "can spend, award, or suspend money based only on the power Congress has given to them—they have no other spending power." *New York v. Trump*, No. 25-CV-39-JJM-PAS, 2025 WL 715621, at *1 (D.R.I. Mar. 6, 2025), *denying stay pending appeal*, 2025 WL 914788 (1st Cir. Mar. 26, 2025). HHS' Public Health Funding Decision contradicts Congress's decision to appropriate funds to the States to address public health concerns. The Government had no statutory authority to decide that the funds were no longer necessary, particularly considering the Legislative's clear intent that the funds remain available beyond the pandemic. The Government's decision to allocate, in some cases, more than it was statutorily required to does not alleviate HHS of its obligation to expend the appropriated funds pursuant to Congress's intent. Indeed, the Legislature even outlined specific purposes for the appropriated funds to be used beyond the time of the pandemic to better prepare the country for future public health threats. Congress intended that the States have until September 30, 2025, to expend the SAMHSA funds and until 2029 with respect to the CDC grants. HHS even granted extensions to the States, in some cases through June 2027, and issued guidance on how to appropriately use the funds beyond COVID-related concerns. *See* ECF Nos. 4-3 ¶¶ 10, 13, 21–22, 48; 4-24

¶¶ 11, 22; 4-32 ¶ 19. As an agent of the Executive, HHS had "literally has no power to act" unless Congress authorized it to do so. *FEC,* 596 U.S. at 301.

In sum, the Government's unilateral determination that these funds were no longer needed based on the end of the pandemic violated core Separation-of-Powers principals because Congress made its directives clear in the appropriations statutes and once again when it chose not to rescind the funds in June 2023. The States have therefore demonstrated a strong likelihood of success on the merits of their claim that HHS' actions violated the Separation of Powers.

7. Count VI and Count VII

Having held that the States are likely to succeed on five of their seven claims, including a constitutional claim, the Court declines to address the sixth and seventh for purposes of resolving this motion for preliminary relief. *See Woonasquatucket*, 2025 WL 1116157, at *13; *Worthley*, 652 F. Supp. 3d at 215.

C. Irreparable Harm

While HHS insists that the States' motion "should be denied solely because they have failed to demonstrate irreparable harm," the Court disagrees. (ECF No. 68 at 35–36.) The States have submitted copious examples of irreparable harm flowing directly from HHS' decision to terminate this funding directly to their local health jurisdictions. *See* ECF Nos. 4-1—4-48.

Plaintiffs seeking preliminary injunctive relief face an uphill battle and must demonstrate "that irreparable injury is likely in the absence of an injunction." *Winter v. NRDC, Inc.*, 555 U.S. 7, 22 (2008) (emphasis omitted). True, "[p]reliminary

injunctions are strong medicine, and they should not issue merely to calm the imaginings of the movant." *Matos ex rel. Matos v. Clinton Sch. Dist.*, 367 F.3d 68, 73 (1st Cir. 2004). Harm that is "unlikely to materialize or purely theoretical will not do." *Id.* Rather, irreparable harm is based on "something more than conjecture, surmise, or a party's unsubstantiated fears of what the future may have in store." *Charlesbank Equity Fund II v. Blinds To Go, Inc.*, 370 F.3d 151, 162 (1st Cir. 2004).

Preliminary relief is appropriate when the alleged injuries cannot adequately be compensated "either by a later-issued permanent injunction, after a full adjudication on the merits, or by a later-issued damages remedy." *Rio Grande Cmty. Health Ctr., Inc. v. Rullan*, 397 F.3d 56, 76 (1st Cir. 2005); *see also Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 217 F.3d 8, 13 (1st Cir. 2000) (*Ross-Simons II*). "The necessary concomitant of irreparable harm is the inadequacy of traditional legal remedies. The two are flip sides of the same coin: if money damages will fully alleviate harm, then the harm cannot be said to be irreparable." *K-Mart Corp. v. Oriental Plaza, Inc.*, 875 F.2d 907, 914 (1st Cir. 1989). District courts have "broad discretion to evaluate the irreparability of alleged harm." *Ross-Simons II*, 217 F.3d at 13 (cleaned up).

Before the Court is an extensive record from the States detailing the harm they stand to suffer in the wake of HHS' Public Health Funding Decision. The States divide these examples to three categories: protecting public health, the elimination of healthcare services, and impact on public health infrastructure. The Court discusses each below.

1. Protecting Public Health

The States assert that the termination in funding would impair their ability to protect public health because it will cause layoffs of essential staff. (ECF No. 60 at 38.) "Threats to public health and safety constitute irreparable harm that will support an injunction." *Cigar Masters Providence, Inc. v. Omni Rhode Island, LLC*, No. CV 16-471-WES, 2017 WL 4081899, at *14 (D.R.I. Sept. 14, 2017); *Sierra Club v. U.S. Dep't of Agric., Rural Utilities Serv.*, 841 F. Supp. 2d 349, 358 (D.D.C. 2012).

The Minnesota Department of Health ("MDH") will be required to layoff approximately 200 employees, or 12 percent of its staff. (ECF No. 4-24 ¶ 41.) These layoffs will include "epidemiologists, research scientists, and other highly skilled and trained workers." *Id.* There is a risk that MDH will not be able to hire back all staff who were separated, many of whom have subject matter expertise that would be difficult to replace. *Id.* Loss of funds and workforce has significant and immediate implications for programs fulfilling critical public health functions in Minnesota. *E.g.*, the ELC supplemental funds[15] impact MDH's ability to perform disease surveillance and monitoring work for COVID-19 variants, including wastewater surveillance. *Id.* ¶ 44.

Washington state stands to lose 200 employees, including 150 full-time employees that are responsible for planning and responding to communicable disease

[15] The CDC established the Epidemiology and Laboratory Capacity for Prevention and Control of Emerging Infectious Diseases ("ELC") Cooperative Agreement to fund the country's ability to detect, prevent, and respond to infectious disease outbreaks. (ECF Nos. 4-4 ¶ 7; 4-13 ¶ 8; 4-21 ¶ 22.)

cases and outbreaks and related laboratory testing and disease surveillance. (ECF No. 4-40 ¶¶ 5, 8–9.) Without these employees, the state would be at greater risk for a variety of infectious diseases, some of which cause severe illness, disability, or death. *Id.* ¶ 17.

Colorado will lose all but one of the employees in its Immunization Program. (ECF No. 4-10 ¶ 53.) "The loss in staff will result in the loss of customer service for our vaccine providers through the immunization information system help desk, and the loss of the ability to provide notification to parents and patients regarding the need for both COVID-19 and routine vaccinations, including flue and the measles, mumps, and rubella (MMR) vaccine during a time of increased measles cases and outbreaks in the U.S." *Id.*

Termination of the funding will also reduce staffing and capacity and resources in programs that address gaps in vaccine access by supporting mobile and community-based clinics, particularly in communities that are underserved and experience barriers in access to care and can be deployed for emergency response such as testing and post-exposure prophylaxis during outbreaks. *Id.* ¶¶ 55–56. Decreased access to and education regarding routine vaccinations will increase cases and outbreaks, which result in lives lost and increased health care costs for those infected. *Id.* ¶ 57.

In Delaware, the termination of a community health worker grant will end support for "33.5 [Community Health Worker] positions across six organizations, including federally qualified health centers and community-based organizations."

(ECF No. 4-14.) And here in Rhode Island, health officials will have to dismantle the Project Firstline team, which would stop the state's Department of Health from providing infection control education to healthcare facilities to prevent outbreaks. (ECF No. 4-39 ¶ 34.) The loss of Epidemiology and Laboratory Capacity Enhancing Detection Expansion funds will also impact the staffing of nurses, epidemiologists, and disease intervention specialists, and the funding of equipment and support software. *Id.* ¶¶ 31–32, 38–39.

Absent an injunction, HHS' termination of this funding will leave the States no choice but to shutter their programs and begin layoffs of highly trained and specialized employees that will be difficult to hire back. *See, e.g.*, ECF Nos. 4-3 ¶ 38; 4-7 ¶¶ 12–13, 42, 46, 54; 4-8 ¶¶ 23, 26, 31–37, 44, 54; 4-9 ¶¶ 49–50, 53, 56, 59–60, 80–81, 108; 4-10 ¶ 20.

2. Elimination of Healthcare Services to States

Next, the States submit that the loss of critical funding will curtail their healthcare services to residents. This includes treatment to those struggling with mental health and substance use disorder, the funding of vaccines to vulnerable populations, and services to address infectious disease outbreaks.

a. Mental Health and Substance Abuse Services

In Connecticut, the termination of the Department of Mental Health and Addiction Services' SAMHSA grants will eliminate "housing and employment supports, regional suicide advisory boards, harm reduction, perinatal screening,

early-stage treatments, and increased access to medication assisted treatment." (ECF No. 4-12 ¶¶ 16, 29.)

In Illinois, the termination of mental health block grants means that providers will be unable to provide services through the state's "mobile crisis response units that assist people at risk of suicide." (ECF No. 4-17 ¶ 16.) And without that funding, "providers will simply be unable to help people in suicidal crisis." *Id.*

In New Mexico, the terminated mental health care block grants will cut funding to fifty-four providers who treat over 64,000 people for critical behavioral and mental health services. (ECF No. 4-28 ¶ 14.)

In California, the termination of the substance use disorder prevention and early intervention services for youth in at least eighteen of its counties risk increased substance use among young people. (ECF No. 4-6 ¶ 61).

New Jersey stands to lose funds that support forty-five direct care treatment programs which provide critical live saving services, including crisis intervention and behavioral health treatment services that allow intervention for individuals experiencing mental health and or substance use crises. (ECF No. 4-26 ¶ 7)

And in North Carolina, the termination of SAMHSA funds has halted the work of mental health professionals including therapists and substance use treatment specialists. (ECF No. 4-25 ¶ 7) The loss of funds has also led to termination of a program that helps address substance use recovery and mental health in local universities and colleges. *Id.* ¶ 8. And the termination of funding will also impact

programs designed to address the opioid epidemic by providing naloxone kits and support to opioid community clinics. *Id.*

b. States' Public Health Programs

Without the funding, California's Immunization and Vaccines for Children program will not be able to provide vaccines for measles, influenza, and COVID-19 to approximately 4.5 million children, roughly half of California's youth population. (ECF No. 4-3 ¶ 17.)

In Minnesota, the funding was being used to address "gaps in infection control practices, training, and resources, identified during the COVID-19 pandemic as a major concern of the operators of long-term care facilities serving older adults." (ECF No. 4-24 ¶ 48.) Because of the terminations, the Minnesota Department of Health had to cancel grants that would have provided infection prevention and control training to more than sixty skilled nursing facilities across the state, potentially exposing over 3,000 long-term care residents to a greater risk of infection. *Id.* Likewise, the terminations forced the cancelation of infection prevention and control training programs for 150 nursing and assisted living facilities, "potentially impacting 7,000 long-term care residents." *Id.*

In Rhode Island, the loss of the Health Disparities grant will curtail efforts to support "community education, mitigation, and response efforts in the state's hardest hit communities" including preparedness and response capacity to the state's designated rural community, Block Island. (ECF No. 4-38 ¶ 17(a).) The loss of COVID-19 vaccination supplemental funding will impact a planned vaccination clinic

for vulnerable populations in Rhode Island, including those living in nursing homes and assisted living communities. *Id.* ¶ 25.

Consequently, HHS' Public Health Funding Decision is not merely an economic loss when it threatens the "very existence" of key mental health, substance abuse, and other healthcare programs in the States, worsening public health outcomes and placing their residents at risk. *See Packard Elevator v. I.C.C.*, 782 F.2d 112, 115 (8th Cir. 1986) (explaining that "economic loss does not, in and of itself, constitute irreparable harm . . . [r]ecoverable monetary loss may constitute irreparable harm only where the loss threatens the very existence of the [programs]").

3. Impact on States' Public Health Infrastructure Projects

Lastly, while these funds were initially awarded to help with the COVID-19 pandemic, CDC recognized that most States lacked the necessary disease surveillance and laboratory infrastructure to respond to future health threats, so it encouraged and allowed States to invest these funds in strengthening these capacities. (ECF No. 60 at 17.) The States insist they have "long relied on the CDC's ELC support for infectious disease programs and projects." *Id.*

For instance, some of the funds supported data systems upgrades that facilitate better disease reporting and surveillance. (ECF No. 4-40 ¶ 13.) Washington DOH had planned to use the funding to bring a new system online over the next fourteen months after investing more than $12 million of CDC funding in its development. *Id.* Stopping now would be a loss of the benefits of that investment. *Id.* In Connecticut, the loss of funding impacts data system upgrades for infectious

disease and symptom surveillance. *See* ECF 4-13 ¶ 20 ("tens of millions of dollars spent to date [in updating data systems] will be wasted"). Similarly, Hawaii used the funds to make long overdue investments in its health department's efficiency, effectiveness, and capacity to effectively respond to current and future disease threats. (ECF No. 4-45 ¶¶ 15-17.) Abrupt termination of these funds will result in waste of government resources if the systems being developed cannot be implemented as planned. *Id.* Lastly, ELC funds were budgeted by New Jersey through July 2026 including the Communicable Disease Reporting and Surveillance System ("CDRSS"), an electronic web-enabled system where public health partners timely report and rack incidences of communicable diseases, which is critical for responding to current and future public health threats. (ECF No. 4-27 ¶ 24.) There are needed enhancements for security and improvement and with the loss of ELC funding, NJDOH will not be able to keep CDRSS operation. *Id.*

The Court could go on. The States have clearly demonstrated they are likely to suffer irreparable harm absent preliminary injunctive relief. Here, there is ample evidence to support the States' position that the Public Health Funding Decision is causing immediate damage to their healthcare programs and the safety of their residents. While the Court acknowledges HHS' position that it may be unable to recover the grant funds if it later prevails, Congress's direction that the funds remain intact and the States' reliance on the continuation of the funding overshadows that argument. (ECF No. 68 at 39.) And unlike in *California*, the States here cannot keep their critical public health programs and services running in the meantime, so much

that a later award for money damages would be wholly inappropriate. *See California*, 145 S. Ct. at 967; ECF No. 60 at 14; ECF No. 65 at 8.

D. Balance of the Equities and Public Interest

To conclude, the balance of the equities and public interest strongly favor preliminary relief for the States. Not only do the States have a substantial interest in the effective operation of their public health systems, but the States have also represented that HHS' Public Health Decision, and its implementation, would result in devastating consequences to their local jurisdictions. (ECF No. 60 at 39.) As discussed in the preceding sections, the healthcare funding terminations would constrain the States' infectious disease research, thwart treatment efforts to those struggling with mental health and addiction, and impact the availability of vaccines to children, the elderly, and those living in rural communities. *See, e.g.*, ECF Nos. 4-3 ¶ 48; 4-6 ¶¶ 4-7; 4-15 ¶ 17; 4-40 ¶ 11; 4-41 ¶ 3. Not to mention that the terminations were effective immediately, ignoring the States' reliance on the funds. As a result, the States submit that they will be forced to "take immediate action to curtail their public health programs and undergo massive layoffs of highly trained employees and contractors." (ECF No. 60 at 40.) In comparison, the Government's argument that it is the one who stands to suffer irreparable harm in the meantime is unavailing. (ECF. 68 at 40.)

The Court weighs the "balancing of the equities and analysis of the public interest together, as they 'merge when the [g]overnment is the opposing party.'" *Does 1-6 v. Mills*, 16 F.4th 20, 37 (1st Cir. 2021) (quoting *Nken v. Holder*, 556 U.S. 418,

435, 129 S.Ct. 1749, 173 L.Ed.2d 550 (2009)). The States' interest in safeguarding its public health systems is clearly paramount.

While the Court acknowledges the Government's position that it may be forced to spend money inconsistent with the Executive's agenda, an injunction would strongly serve the public interest in maintaining the States' healthcare systems and initiatives. (ECF No. 68 at 40-41.) "[T]he wisdom" of the Executive's decisions "[are] none of our concern." *Dep't of Homeland Sec.*, 591 U.S. at 35 (cleaned up). Rather, this case is one "about the procedure" (or lack thereof) that HHS followed in trying to enact the Executive's policies. *Id.* Agencies do not have unfettered power to further a President's agenda, particularly when Congress appropriated this money to the States to fund their public health systems and initiatives. Thus, when the Court weighs an agency's unreasoned, unsubstantiated, and likely unlawful determination that funding was "no longer necessary," against the States' interest and reliance on the funds to safeguard their public health outcomes, the balance of the equities and public interest are undeniably in the States' favor.

E. Bond

Federal Rule of Civil Procedure 65(c) states that the court may issue a preliminary injunction "only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." The Government asks the Court to require the States to provide a bond. (ECF No. 68 at 45–46.) The Court declines.

Rule 65(c) "has been read to vest broad discretion in the district court to determine the appropriate amount of an injunction bond," *DSE, Inc. v. United States*, 169 F.3d 21, 33 (D.C. Cir. 1999), "including the discretion to require no bond at all," *P.J.E.S. ex rel. Escobar Francisco v. Wolf*, 502 F. Supp. 3d 492, 520 (D.D.C. 2020) (internal quotation omitted). A bond "is not necessary where requiring [one] would have the effect of denying the plaintiffs their right to judicial review of administrative action." *Nat. Res. Def. Council, Inc. v. Morton*, 337 F. Supp. 167, 168 (D.D.C. 1971) (collecting cases); *cf. Nat'l Ass'n of Diversity Officers in Higher Educ. v. Trump*, No. 25-CV-333, 2025 WL 573764, at *30 (D. Md. Feb. 21, 2025) (setting a nominal bond of zero dollars because granting the defendants' request "would essentially forestall [the] [p]laintiffs' access to judicial review"). In a case where HHS is alleged to have unlawfully terminated large sums of appropriated and committed funds to numerous recipients against Congress's will and in excess of HHS' statutory authority, it "would defy logic—and contravene the very basis of this opinion—to hold" the States "hostage for the resulting harm." *Woonasquatucket*, 2025 WL 1116157, at *24.

IV. PRELIMINARY INJUNCTION

Upon consideration of the States' Motion for a Preliminary Injunction (ECF No. 60), it is hereby ORDERED:

1) Defendants and all their respective officers, agents, servants, employees and attorneys, and any persons in active concert or participation with them who receive actual notice of this order (collectively "Enjoined Parties") are hereby preliminarily enjoined from implementing or enforcing through any

means the decision made on or about March 24, 2025 that numerous health programs and appropriations responsible for $11 billion of critical federal financial assistance were "no longer necessary" because the "COVID-19 pandemic is over" ("Public Health Funding Decision"), including any funding terminations, or from taking any action to reinstitute the Public Health Funding Decision for the same or similar reasons. This injunction is limited to funding for Plaintiff States, including their local health jurisdictions and any bona fide fiscal agents of Plaintiff States or their local health jurisdictions.

2) The Enjoined Parties shall immediately treat any actions taken to implement or enforce the Public Health Funding Decision, including any funding terminations, as null and void and rescinded. The Enjoined Parties must immediately take every step necessary to effectuate this order, including clearing any administrative, operational, or technical hurdles to implementation.

3) Defendants' counsel shall provide written notice of this order to all Defendants and agencies and their employees, contractors, and grantees by the end of the day on Tuesday, May 20, 2025.

4) By the end of the day on Tuesday, May 20, 2025, the Defendants SHALL FILE on the Court's electronic docket a Status Report documenting the actions that they have taken to comply with this Order, including a copy of the notice and an explanation as to whom the notice was sent.

5) For the reasons stated in the Court's Order, the Court finds that a bond is not mandatory under these circumstances and exercises its discretion not to require one.

IT IS SO ORDERED.

Mary S. McElroy,
United States District Judge

Date: May 16, 2025

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

The Sustainability Institute *et al.*,

Plaintiffs,

v.

Donald J. Trump, in his official capacity as President of the United States; Kevin Hassett, in his official capacity as Assistant to the President for Economic Policy and Director of the National Economic Council; United States Office of Management and Budget; Russell Vought, in his official capacity as Director of the United States Office of Management and Budget; United States Environmental Protection Agency; Lee Zeldin, in his official capacity as Administrator of the United States Environmental Protection Agency; United States Department of Agriculture; Brook Rollins, in her official capacity as Secretary of Agriculture; United States Department of Transportation; Sean Duffy, in his official capacity as Secretary of the United States Department of Transportation; United States Department of Energy; Chris Wright, in his official capacity as the Secretary of the United States Department of Energy; United States Department of Government Efficiency Service, Amy Gleason, in her official capacity as Acting Administrator of the United States DOGE Service; Elon Musk, in his official capacity as Senior Advisor of the United States DOGE Service,

Defendants.

Case No. 2:25-cv-2152-RMG

ORDER

Plaintiffs, recipients of 38 federal grants, brought this action against various federal agencies and governmental officials in their official capacities alleging that the freezing and/or terminating of their grants violated their rights under the United States Constitution and the Administrative Procedures Act ("APA"). (Dkt. No. 23). Plaintiffs allege that their grants were frozen and/or terminated because they were funded by appropriations under the Inflation Reduction Act ("IRA"), the Inflation Investment and Jobs Act ("IIJA"), or other mandatory legislation which Defendants oppose. Plaintiffs filed a motion for preliminary injunctive relief on March 26, 2025, which the parties have fully briefed. (Dkt. No. 24, 56, 64).

Defendants advised the Court in a submission of May 16, 2025 that they "do not contest judgment on the merits of [Plaintiffs'] APA claims" for 32 of the 38 grants at issue in this litigation. (Dkt. No. 153 at 1).[1] The 32 grants in which Defendants no longer oppose relief under the APA were funded by the IRA, the IIJA or other mandatory congressional legislation. While Defendants do not contest the entry of judgment for the Plaintiffs in 32 of the 38 claims, they oppose injunctive relief for Plaintiffs while Defendants contest on appeal the Court's jurisdiction under the APA. (Dkt. No. 153 at 1, n. 1). As discussed below, the Court enters judgment under the APA for Plaintiffs on the 32 grants no longer contested by Defendants and then addresses Plaintiffs' prayer for equitable relief on these APA claims.[2]

[1] Dkt. No. 136-1 (attached as Exhibit A), which was prepared by Defendants, lists the 38 grants under challenge in this litigation. Defendants have advised the Court that they do not contest the entry of judgment regarding Grants 1-26 and 33-38.

[2] Defendants earlier advised the Court that they had restored grant funding for Grants 8, 13, 14, 15, 17, 18, 20, 21, 24, 25, 26, 34, 35, 36. (Dkt. No. 136-1; 147-4, ¶ 10). The Court thereafter entered an order directing Defendants "not to subsequently freeze or terminate these grants without notice to the Court and authorization from the Court that the freezing and/or termination may proceed." (Dkt. No. 146 at 17). This Order remains in effect until modified or rescinded by this Court or an appellate court.

The Court further addresses below Plaintiffs' assertion of nonstatutory review jurisdiction for the alleged ultra vires acts of Defendants, acting in their official capacities, in freezing and/or terminating their grants in violation of the United States Constitution. Plaintiffs assert that Defendants actions in targeting grants based on their opposition to previously adopted acts of Congress constitute a failure to "faithfully execute[]" the laws of the United States, as mandated by Article II, Section 3 of the United States Constitution. Plaintiffs point to a long line of United States Supreme Court decisions and the Fourth Circuit's recent decision in *Strickland v. United States*, 32 F.4th 311, 363-366 (2022), upholding nonstatutory review jurisdiction of the federal courts to provide parties equitable relief in actions against federal officials in their official capacities for actions taken outside their legal authority and/or in violation of the United States Constitution.

Finally, the Court addresses Plaintiffs' request for preliminary injunctive relief regarding six grants that were funded by general appropriations to the United States Department of Agriculture ("USDA"). Defendants continue to contest their liability under the APA regarding those six claims.[3]

I. Factual Background

On January 20, 2025, President Donald Trump issued an executive order which directed all agencies to "immediately pause the disbursements of funds appropriated through the Inflation Reduction Act of 2022 . . . or the Infrastructure Investment and Jobs Act . . . ." Executive Order 14154, 2025 WL 315844 (January 20, 2025). That directive was under a section titled "Terminating the Green New Deal." *Id.* There was initially some uncertainty within the federal

[3] These six claims still contested by Defendants under the APA are Grants 27-32. (Dkt. No. 136-1) (Exhibit A).

agencies whether the directive applied only to matters related to the Green New Deal or to all appropriations arising under the IRA and IIJA. Two Office of Management and Budget (OMB) memoranda were issued shortly after the executive order that appeared to direct all agencies of the federal government to temporarily pause all spending on IRA and IIJA appropriated projects. (Dkt. No. 1-1, 1-2). Within days, various federal agencies, including the Environmental Protection Agency (EPA) and the USDA, issued directives that that all spending of funds related to the IRA and IIJA be immediately paused. (Dkt. No. 21-2, 21-3, 21-4, 21-8). Hundreds of previously awarded and active federal grants to non-profit organizations and local governments were summarily frozen with no notice or process. Numerous lawsuits similar to this action soon followed.

The 32 grants funded by mandatory legislation were primarily funded by IRA or the IIJA. For example, many of the EPA grants at issue in this litigation were funded under the Environmental and Climate Justice Block Grants program, a $2.8 billion dollar appropriation that provided that the Administrator "shall . . . award grants for periods of up to 3 years . . . that benefit disadvantaged communities . . . ." 42 U.S.C. § 7438(a)(1), (b)(1).[4] In implementing the Administrator's instruction to eliminate all grants funded by the IRA and the IIJA, internal EPA records document that Environmental and Climate Justice Block Grants were specifically targeted for freezing and/or termination. (Dkt. Nos. 1-4, 149-3, 149-4).

The Government Defendants in this and other similar suits initially denied that the freezing of the grants was on the basis that they were funded by the IRA and IIJA. Instead, Defendants

[4] The Administrator was authorized to award grants under the Act for such purposes as "community-led air and other pollution monitoring," "mitigating climate and health risks," "climate resiliency," and "reducing indoor toxins and indoor air pollution." §7438(b)(2)(A).

claimed with little explanation that the mass freezing of federal grants was due to a change in agency priorities or policies. In a parallel action in Rhode Island, involving many of the same Government Defendants, defendants contended that there was "no singular freeze" but "thousands of individual decisions made by agencies about whether particular grants or other funding should be paused." *Woonasquatucket River Watershed Council v. United States Department of Agriculture*, C.A. No. 1:25-cv-97, Dkt. No. 31 at 31 (D.R.I. March 27, 2025). The Rhode Island Court and another district court confronted with this defense in a recent grant funding case found it "unfathomable" and "truly doubtful" that "agencies suddenly began exercising their own discretion to suspend funding across the board at the same time." *Woonsaquatucket River Watershed Council v. United States Department of Agriculture*, 2025 WL 1116157 at *11 (D.R.I. April 15, 2025); *National Council of Nonprofits v. Office of Management and Budge*t, 2025 WL 597959 at *7 (D.D.C. February 25, 2025).

After similar arguments were made in this case, the Court ordered Defendants to produce all documents related to "freezing, pausing, and/or terminating of grant funds to the grant recipients who are parties to this litigation." (Dkt. No. 45 at 5-7). Defendants produced thousands of documents, not one showing any individualized review of decisions to freeze or terminate grants of the Plaintiffs in this action. (Dkt. Nos. 79-91, 95-103, 106-132).

The Defendants thereafter advised the Court that they had resumed the funding for 14 of the 38 grants at issue in this litigation, terminated four grants, and were processing the termination of six other grants. (Dkt. No. 136-1). The Court noted that these actions appeared to be a pivot by the Defendants away from freezing grants and reflected a move by Defendants toward terminating a smaller group of grants. Defendants claimed at a recent hearing that the grants were being terminated only after an individualized review of each grant. (Dkt. No. 142 at 35). To determine

the veracity of this representation, the Court ordered Defendants to produce all documents related to the termination or the proposed termination of grants at issue in this action to determine whether any such individualized review had actually been conducted. (Dkt. No. 146 at 15).

Defendants produced over 500 additional pages of documents in response to the Court's discovery order. (Dkt. No. 147-1 to 147-10). Not one document showed any individualized review of the grant of any Plaintiff in this action before the grant was terminated or designated for termination. Defendants' response included a declaration from senior EPA official Travis Voyles, claiming that on February 25, 2025 he had made an "individualized review" of an unidentified number of EPA grants, including many involved in this litigation, and determined that they were "terminated for policy reasons." (Dkt. No. 147-4). Mr. Voyles further stated that he orally communicated his termination decisions to another EPA official who then began the termination process. (*Id*. at 2-3). Not a single document was produced which evidenced any review by the EPA. The Court finds it hard to believe that numerous active federal grants, some totaling millions of dollars, were summarily terminated by a high-ranking government official without the production of a single document to detail the review and decision making process.

On May 16, 2025, the last business day before the Court's oral argument on Plaintiffs' motion for preliminary injunction, Defendants informed the Court that they "do not contest judgment on the merits of Plaintiffs' APA claims" and recognized that a judgment would "require Defendants to fund or negotiate grant agreements for 32 of 38 awards . . . ." (Dkt. No. 153 at 1). Defendants excluded from this concession six grants which were reportedly funded by general appropriations to the USDA. (*Id*.). Defendants further advised the Court that in the event that the Court provided injunctive relief to the Plaintiffs on their APA claims, they intended to seek to stay

of any such relief while they continued to pursue a challenge to the Court's jurisdiction under the APA. (*Id*. at n.1).

II. The Uncontested APA Claims

The 32 APA claims in which Defendants no longer contest were part of the widespread agency action freezing or terminating grants that were funded by mandatory congressional legislation, primarily the IRA and IIJA. These grants were funded by legislation that mandated that the funds be expended for a specific purpose and left no discretion to agency heads to disregard the legislative mandates because current officials did not approve of the purposes of the previously appropriated programs. Plaintiffs have produced substantial, highly persuasive evidence to support their claims that their grant funds were frozen and/or terminated because Defendants disfavored previously authorized congressional appropriations and that such actions were outside of the legal authority of the agency Defendants and in violation of the Constitution's separation of powers. Plaintiffs focus their APA claims primarily on statutory provisions which prohibit agency actions which are "not in accordance with law" or which are "contrary to" any constitutional right or power. 5 U.S.C. § 706(2)(A), (B). Based on the full record and the concession of the Defendants on May 16, 2025 (Dkt. No. 153), the Court hereby enters judgment for Plaintiffs on the 32 grants no longer contested.[5]

The Court now turns to the issue of remedy. The APA provides district courts authority to "hold unlawful and to set aside agency action" found "not to be in accordance with law." 5 U.S.C.

[5] Judgment is rendered regarding Grants 1-26 and 33-38, (Dkt. No. 136-1) (Exhibit A). These grants involved the following agencies: EPA (Grants 2-15), USDA (Grants 16-26), United States Department of Energy ("DOE") (Grant 1), and the United States Department of Transportation ("DOT") (Grants 37-38).

§ 706(2)(A). To that end, the Court grants Plaintiffs that are recipients of Grants 1-26 and 33-38 the following relief:

A. A declaration that the freeze and/ or termination of Grants 1-26 and 33-38 were ultra vires acts outside the legal authority of the EPA, USDA, DOE, and DOT (hereafter the "Enjoined Agencies") and in violation of the United States Constitution, constituting unlawful agency action under 5 U.S.C. § 706(2)(A) and (B);

B. Sets aside the freeze and/or termination of Grants 1-26 and 33-38 and directs the Enjoined Agencies to restore Plaintiffs access to grant funds immediately;

C. Enjoins the Enjoined Agencies from freezing, terminating or otherwise interfering with the funding of Grants 1-26 and 33-38 without written authorization from this Court[6]; and

D. Directs the Enjoined Agencies to submit a certification to this Court within seven days of this Order confirming compliance with this Order.

Defendants seek a stay of this Court's injunctive relief pending appeal. A stay of relief to the losing party after judgment is certainly "not a matter of right" and involves the exercise of judicial discretion "dependent upon the circumstances of a particular case." *Nken v. Holder*, 556 U.S. 418, 433 (2009) (citing *Virginia R. Co. v. United States*, 272 U.S. 658, 672-3 (1926)). The party requesting the stay bears the burden of persuasion. The Supreme Court in *Nken* laid out four factors to consider in addressing a motion for a stay after judgment: (1) whether the stay applicant

[6] The Court finds it necessary to maintain supervision over the continued functioning of the unlawfully frozen or terminated grants because Defendants in this and parallel litigation have provided shifting post hoc justifications for their actions, at times appearing to be as a means to evade court orders. To the extent Defendants have legitimate and lawful reasons to terminate or freeze grant funding, the Court will promptly give consideration to any such submission by Defendants.

has made a strong showing of likelihood of success on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether the granting of the stay will substantially injure the prevailing party; and (4) where the public interest lies. 556 U.S. at 433. The first two factors from *Nken* are the most critical. *Id.*

After carefully considering the Defendants motion to stay, the Court finds that a stay of the Court's injunctive relief is not appropriate under these circumstances. First, the Court finds that Defendants are not likely to succeed on the merits. The Court addressed in detail, in its April 29, 2025 Order, the Court's jurisdiction in this case, finding that Supreme Court precedent supports Plaintiffs' argument that their claims for declaratory and injunctive relief can properly be heard by an Article III court under the APA. (Dkt. No. 146 at 1-12). Plaintiffs' already strong jurisdictional arguments have been further strengthened by the Court's additional finding below of nonstatutory jurisdiction related to Defendants' alleged ultra vires and unconstitutional acts, since such claims are plainly beyond the jurisdiction of the Court of Claims. The only forum in which Plaintiffs may adjudicate all of their pending claims is in an Article III court.

Second, Defendants cannot sustain their burden of demonstrating that they would suffer irreparable injury from the granting of injunctive relief to Plaintiffs. Indeed, Defendants have not offered any evidence to support such a claim. Third, Plaintiffs, which include many nonprofits heavily dependent on the challenged grants to sustain their mission, administrative functions, and staffing, have confronted significant challenges to their ongoing operations and experienced staff layoffs due to the abrupt freezing of grant funds. Plaintiffs have further experienced significant challenges to their good will and reputations by withdrawing services to community groups and individuals who were relying upon Plaintiffs' services and assistance. (See Dkt. No. 64-2 at 2-5). Fourth, the public interest lies in upholding the rule of law and providing an effective remedy for

those injured by the unlawful actions of government officials. For these reasons, Defendants' motion to stay is denied.[7]

III. Plaintiffs' Claims for Relief under the Court's Nonstatutory Review Jurisdiction

Plaintiffs additionally assert claims under the Court's nonstatutory review jurisdiction for equitable relief against federal officials in their official capacities on the basis that those federal officials exceeded the scope of their authority and/or acted unconstitutionally by failing to "faithfully execute[]" the laws of the United States. U.S. Const. Article II, Section 3. (Dkt. No. 23, ¶¶ 285-307). Plaintiffs expressly reference in their complaint the Fourth Circuit's recent decision in *Strickland v. United States* in support of their claim for nonstatutory review. Plaintiffs assert these claims as a second and independent basis for federal jurisdiction and seek preliminary injunctive relief on these claims. (Dkt. No. 24-1 at 16-20).

Defendants have to date focused their opposition to Plaintiffs' federal jurisdiction almost entirely on whether this Court has jurisdiction under the APA. By earlier order, the Court found that Plaintiffs have jurisdiction with this Court under the APA and that their claims were exclusively for equitable and declaratory relief. (Dkt. No. 146). The Court now turns its attention to Plaintiffs' claims referred to by *Strickland* as "nonstatutory review claims" or as "the *Larson-Dugan* exception to sovereign immunity." *Strickland* 32 F.4th at 363.

A. Jurisdiction:

The United States Supreme Court has long recognized nonstatutory federal jurisdiction over claims which involve (1) an action against a federal official; (2) asserted in his official capacity; (3) based on allegations that the federal official has acted beyond his statutory or

[7] Defendants have repeatedly argued that Plaintiffs' claims are for money damage, not equitable relief. Plaintiffs' Amended Complaint requests only equitable remedies, and the Court's remedy set forth above exclusively provides equitable relief.

constitutional authority; and (4) a request for equitable relief. *See*, *Leedom v. Kyne*, 358 U.S. 184, 188-89 (1958); *Larson v. Domestic and Foreign Commerce Corporation*, 337 U.S. 682, 689 (1949). The *Strickland* court reversed a district court decision which "mistakenly overlooked the long-established line of precedent establishing that parties can seek to enjoin federal officials in their official capacities from exceeding the scope of their authority or acting unconstitutionally." 32 F.4th at 365. *Strickland* quoted approvingly from an amicus brief submitted in that action by Professors Erwin Chemerinsky and Aziz Huq which traced the history of nonstatutory review claims back to *Marbury v. Madison*, 5 U.S. 137, 166 (1803).[8] *Strickland*, 32 F.4th at 365; *see also*, *International Refugee Assistance Project v. Trump*, 883 F.3d 233, 287-88 (4th Cir. 2018) (en banc) (J. Gregory, concurring).

Plaintiffs' Separation of Powers and ultra vires claims (Counts I and II) plainly state a claim for nonstatutory review. (Dkt. No. 23, ¶¶ 285-307). Plaintiffs have sued federal officials in their official capacities and have alleged that their actions freezing and/or terminating their grants because they were funded by now disfavored federal laws were in violation of their duty Article II, Section 2 of the United States Constitution to "faithfully execute[]" the laws of the United States. Plaintiffs seek exclusively equitable remedies, declaratory and preliminary and permanent injunctive relief. (*Id*., ¶¶ 89-91). The Court finds that it has jurisdiction over Plaintiffs' nonstatutory review claims.

[8] The Court has filed the Chemerinsky and Huq amicus brief cited in the *Strickland* decision onto the docket in this case because its details the strong line of precedents supporting nonstatutory review jurisdiction. (Dkt. No. 156).

B. Standing

Defendants have challenged Plaintiffs' standing. (Dkt. No. 56 at 17-18). After a careful review of the record and the arguments of the parties, the Court finds that Plaintiffs have standing to assert their claims.

To establish Article III standing, a plaintiff "must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct . . . and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). Injury in fact is "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Id.* at 339. Because Plaintiffs here seek declaratory and injunctive relief, they must establish an ongoing or future injury in fact. *O'Shea v. Littleton*, 414 U.S. 488, 495–96 (1974) ("Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects."). "An allegation of future injury may suffice if the threatened injury is certainly impending, or there is a substantial risk that the harm will occur." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (internal quotation marks omitted).

In a case involving multiple plaintiffs, "[a]t least one plaintiff must demonstrate standing for each claim and form of requested relief" for that claim to proceed. *Kenny v. Wilson*, 885 F.3d 280, 287 (4th Cir. 2018); *see also Bostic v. Schaefer*, 760 F.3d 352, 370 (4th Cir. 2014) ("[T]he Supreme Court has made it clear that the presence of one party with standing is sufficient to satisfy Article III's case-or-controversy requirement.") (internal quotation marks omitted). Consequently, once it is established that at least one party has standing to bring the claim, no further inquiry is required as to another party's standing to bring that claim. *Horne v. Flores*, 557 U.S. 433, 446–47 (2009) (declining to analyze whether additional plaintiffs had standing when one plaintiff did);

Watt v. Energy Action Educ. Found., 454 U.S. 151, 160 (1981) ("Because we find [one plaintiff] has standing, we do not consider the standing of the other plaintiffs.").

Plaintiffs have offered detailed statements of organizational and reputational harm arising from the abrupt freezing and/or terminating of their grants without notice. (Dkt. Nos. 24-2, 24-3, 24-4, 24-6, 24-9, 24-10). Plaintiff Sustainability Institute stated that the funding freeze had caused "disruptions in . . . day to day operations, causing a slowdown and budgetary challenges." (Dkt. No. 24-2, ¶ 37). Plaintiff Agrarian Trust detailed "extreme distress to . . . staff members, farmers, and community partners" from the grant freeze. (Dkt. No. 24-3, ¶ 15). Other Plaintiffs have offered similar unchallenged statements or organizational injury and reputational damage from Defendants' action under challenge in this litigation. The record fully supports findings that numerous Plaintiffs have suffered injury in fact, that the injuries are fairly traceable to Defendants' challenged conduct, and that it is likely that these injuries are redressable by a favorable judicial decision. Finding that Plaintiffs have standing, the Court proceeds to consider the merits of the motion.

C. Plaintiffs' Motion for a Preliminary Injunction:

"The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). To obtain a preliminary injunction, a party must make a "clear showing" that (1) he is likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 21 (2008). Plaintiff bears the burden of showing that each factor supports his request for preliminary injunction. *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 811 (4th Cir. 1991).

The Court addresses the four *Winter* factors in turn below.

1. Likelihood of Success on the Merits:

The record before the Court contains ample evidence that the 32 grants Defendants no longer challenge under the APA were frozen and/or terminated because they were funded by mandatory congressional legislation that the Agency Official Defendants do not favor. While Defendants have contended that the grants were individually reviewed and frozen or terminated for undefined "policy reasons," the Court-ordered discovery in this case failed to produce a single document showing any individualized review of the Plaintiffs' grants or discussion of any basis for freezing or terminating the grants other than disapproval of the purposes of the funding. (*See* Dkt. Nos. 1-1, 1-2, 21-2, 21-3, 21-4, 21-8, 149-3, 149-4). These documents provide strong support for Plaintiffs' claim that the freezing and/or termination of the 32 grants constituted a violation of the Agency Official Defendants duty to "faithfully execute[]" the laws of the United States.

It is worthwhile to note that Plaintiffs' nonstatutory review claims and Plaintiffs' APA claims which Defendants have elected not to contest are, for all practical purposes, mirror images of each other. The 32 grants no longer under challenge under the APA all were frozen and/or terminated because they were funded by now disfavored legislation. The APA claims challenged agency actions that were "not in accordance with law" and "contrary to constitutional right" based on the official actions of Defendants acting outside their authority and in violation of the Separation of Powers. 5 U.S.C. § 706(2)(A) and (B). Plaintiffs' nonstatutory review claims are based on the argument that Defendants, have failed to "faithfully execute[]" the laws and rely on the identical facts and conduct that constitute the now uncontested APA claims.

In sum, the Court finds that Plaintiffs have shown a likelihood of success on the merits on their nonstatutory review claims concerning the 32 grants Defendants no longer contest regarding APA liability.

2. Irreparable Injury

A plaintiff seeking injunctive relief must demonstrate the presence of irreparable injury. "A showing of irreparable harm is the *sine qua non* of injunctive relief." *Northeastern Fla. Chapter of the Ass'n of Gen. Contractors of Am. v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir.1990) (citing *Frejlach v. Butler*, 573 F.2d 1026, 1027 (8th Cir.1978)). "The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held." The second prong of the *Winter* test requires the plaintiff to make a "clear showing" that they are likely to suffer irreparable harm in the absence of preliminary relief. *Winter*, 555 U.S. at 21. Irreparable injury must be both imminent and likely; speculation about potential future injuries is insufficient. *Winter*, 555 U.S. at 22.

First, the Nonprofit Plaintiffs offer several forms of harm they face, including disruptions in their day-to-day operations, financial strain, personnel actions including dismissal and furloughs, operations being curtailed or ended, and damage to their credibility and reputation. (Dkt. No. 24-1 at 29-34).

The Government responds that: (1) Plaintiffs allegations are speculative and not sufficiently likely to occur under the *Winter* standard; and (2) Plaintiffs have failed to establish the harm they face is irreparable and could not be cured by a monetary award after judgment. (Dkt No. 56 at 31-4).

Plaintiffs have adequately demonstrated both the likelihood of their injury as well as its irreparability. In their Complaint, their preliminary injunction motions, and the twenty declarations

filed in support, the Plaintiffs have laid out dozens of examples of obligated funding and the harms that the withholding thereof has caused. (Dkt. Nos. 1, 23, 24, 44). The court's analysis in *New York v. Trump* is relevant:

> It is so obvious that it almost need not be stated that when money is obligated and therefore expected (particularly money that has been spent and reimbursement is sought) and is not paid as promised, harm follows—debt is incurred, debt is unpaid . . . services stop, and budgets are upended. And when there is no end in sight to the Defendants' funding freeze, that harm is amplified because those served by the expected but frozen funds have no idea when the promised monies will flow again.

New York, 2025 WL 715621, at *13 (D.R.I. Mar. 6, 2025). Indefinitely pausing funding "unquestionably make it more difficult" for the Plaintiffs to "accomplish their primary [mission]" and is a form of irreparable harm. *Woonasquatucket River Watershed Council*, 2025 WL 1116157, at *22 (citing *League of Women Voters of United States v. Newby*, 838 F.3d 1 (D.C. Cir. 2016)).

Second, the City Plaintiffs submit that the pause in funding presents harms such as negative impacts on their budget due to reliance on federal funding, an inability to honor agreements with third parties, and delays or cancelations to projects. (Dkt. No. 64 at 18). The Government responds that the Municipalities are sufficiently well-resourced whose projects are not "the type of activities that establish irreparable harm to justify extraordinary relief." (Dkt No. 56 at 34-5). The government's argument is insufficient. A few examples show the variety of irreparable harms. Plaintiff City of San Diego has hired four employees using their USDA funding, those positions are now at risk. (Dkt. No. 24-20, ¶ 8). Plaintiff City of Columbus would be forced to draw down funds from other projects and divert money from other budgetary requirements, causing a ripple effect of budgetary issues. (Dkt. No. 24-16, ¶ 19). Plaintiff City of Madison has contractual agreements made with sub-grantees in reliance on the EPA funding and are unable to honor those agreements. (Dkt. No. 24-17, ¶ 24).

Congress enacted these laws and appropriated funding to these agencies, the funding freeze unconnected to legal authorization causes significant and irreparable harms to Plaintiffs. In their Complaint and subsequent filings, Plaintiffs have demonstrated dozens of examples of obligated funding and the harms they face when those funds are withheld.

Plaintiffs have adequately demonstrated irreparable harm arising from Defendants' actions.

3. Balance of Equities and Public Interest

The balance of the equities and public interest weigh in favor of granting Plaintiffs' request for preliminary injunctive relief. "The[] final two factors—balance of the equities and weighing the public interest—'merge when the Government is the opposing party.'" *Am. Fed'n of State, Cnty. & Mun. Emps., AFL-CIO v. Soc. Sec. Admin.*, No. 25-1411, 2025 WL 1249608, at *63 (4th Cir. Apr. 30, 2025) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). "'Balancing the equities' when considering whether an injunction should issue, is lawyers' jargon for choosing between conflicting public interests." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 329 n.10 (1982) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 609–610 (1952) (concurring opinion)).

Here, Plaintiffs assert an interest in "[e]nsuring [that] Congressional and local priorities are achieved," "having governmental agencies abide by federal laws that govern their existence and operations" and "protecting constitutional rights," (Dkt. No. 24-1 at 36), while the Government emphasizes the potential that it will be unable to recover "millions of taxpayer dollars" disbursed pursuant to a preliminary injunction if a court later determines that the Government's decision to freeze or terminate the grants was lawful. (Dkt. No. 56 at 35). The Government also argues that "[r]equiring the Executive to financially support specific projects that may be within the statutory

parameters of a program but nevertheless at odds with the Executive's priorities negatively impacts the public interest." (*Id.*).

The Court finds that the balance of the equities tips strongly in favor of Plaintiffs. The Government "is in no way harmed by [the] issuance of a preliminary injunction which prevents the [government] from enforcing restrictions likely to be found unconstitutional" and "if anything, the system is improved by such an injunction." *Leaders of a Beautiful Struggle v. Baltimore Police Dep't*, 2 F.4th 330, 346 (4th Cir. 2021). The Court has determined that Plaintiffs have demonstrated a substantial likelihood of success on the merits of their ultra vires claims challenging Grants 1-26 and 33-38—in other words, a substantial likelihood that Agency Official Defendants have acted unconstitutionally by encroaching upon the domain of the Legislature. And if the Court's constitutional concerns alone were not enough to tip the scales in Plaintiff's favor, the Court considers sufficient the threat to Plaintiffs' survival in the face of suddenly and inexplicably paused and/or terminated funding, culminating in their need to furlough staff and pause services to the communities whom they operate to serve. (Dkt. No. 24-1 at 2; *see generally* Dkt. No. 23). Given that the Government no longer even challenges Plaintiffs' APA claims (excluding those asserted against the Secretary of Agriculture regarding grants under the Partnership for Climate-Smart Commodities ("PCSC")), the Court finds that it would be confounding indeed to credit the Government's assertion of its interests in retaining taxpayer funds over that of Plaintiffs in receiving these congressionally-allocated funds where the Government no longer even maintains that it followed lawful procedures in freezing and terminating those funds. (Dkt. No. 153).

"The Government is not harmed where an order requires them to disburse funds that Congress has appropriated and that Agencies have already awarded, ... [a]nd an agency is not harmed by an order prohibiting it from violating the law." *Woonasquatucket River Watershed*

Council, 2025 WL 1116157, at *23. "On the other hand, without injunctive relief to pause the categorical freeze of IIJA and IRA funds, the funding that the Nonprofits are owed (based on the Agencies' own past commitments) creates an indefinite limbo." *Id.* "Because the public's interest in not having trillions of dollars arbitrarily frozen cannot be overstated," the Court finds that the balance of equities tips indisputably in Plaintiffs' favor on their ultra vires claims. *Nat'l Council of Nonprofits v. Off. of Mgmt. & Budget*, No. 25-cv-239, 2025 WL 597959, at *19 (D.D.C. Feb. 25, 2025)

The public interest also favors a preliminary injunction. The perpetuation of unlawful agency action is contrary to the public interest, and there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations. *See League of Women Voters of United States*, 838 F.3d at 12. "Government actions in contravention of the Constitution are always contrary to the public interest." *Turner v. U.S. Agency for Glob. Media*, 502 F. Supp. 3d 333, 386 (D.D.C. 2020). Given the Court's finding that Plaintiffs are likely to succeed on the merits of their constitutional claims, a preliminary injunction here ensures that the agencies do not act in excess of their authority or in violation of the Constitution. Preserving fairness, accountability, and balance of power in governance serves the public interest and granting Plaintiffs preliminary injunctive relief does just that.

Defendants argue that they are serving the public interest by protecting and seeking to recover "millions of taxpayer dollars." But the relief Plaintiffs seek only allows them to access funds that have been appropriated by Congress; obligated prior to this suit; can only be used for specific, approved purposes; and will only be released as the Plaintiffs implement their grant program plans. Sufficient procedures have already taken place or are already in place to protect taxpayer dollars.

Because Plaintiffs have made clear showing under the four *Winters* factors, the Court grants Plaintiffs motion for preliminary injunction on Claims I and II as to Grants 1-26 and 33-38. The Court orders the following relief:

A. Enjoins Lee Zeldin, in his official capacity as Administrator of the EPA, Brook Rollins, in his official capacity as Secretary of USDA, Sean Duffy, in his official capacity as Secretary of the Secretary of DOT, and Chris White, in his official capacity as Secretary of DOE (hereafter "Enjoined Individual Defendants") from freezing and/or terminating Grants 1-26 and 33-38 and directs that Plaintiffs access to funding for these grants be immediately restored;

B. Enjoins the Enjoined Individual Defendants from freezing, terminating or otherwise interfering with the funding of Grants 1-26 and 33-38 without written authorization from the Court[9];

C. Directs the Enjoined Individual Defendants to submit a certification to this Court within seven days of this Order confirming compliance with this Order.

D. Bond

Plaintiffs urge this Court to set a nominal bond of zero dollars in this case. (Dkt. No. 24 at 3). Plaintiffs cite recent decisions by other district courts that have considered the issue with respect to nonprofits contesting the freezing of grant funds. *See, e.g.*, *Maryland v. United States Dep't of Agric.*, No. 25-cv-0748, 2025 WL 800216, at *26 (D. Md. Mar. 13, 2025) ("it would be prohibitive to require plaintiffs to bear up front the total cost of the alleged governmental wrongdoing"); *Nat'l Ass'n of Diversity Officers in Higher Educ. v. Trump*, No. 25-cv-333, 2025 WL 573764, at *29

[9] See Footnote 6 for further explanation regarding this condition of the preliminary injunction.

(D. Md. Feb. 21, 2025) (setting a nominal bond of zero dollars because requested bond "would essentially forestall [the] [p]laintiffs' access to judicial review").

Rule 65 provides that "[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). A district court "retains the discretion to set the bond amount as it sees fit or waive the security requirement." *Pashby v. Delia*, 709 F.3d 307, 331-332 (4th Cir. 2013) (*abrogated on other grounds as recognized by Stinnie v. Holcomb*, 37 F.4th 977 (4th Cir. 2022)). "In some circumstances, a nominal bond may suffice." *Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 421 (4th Cir. 1999) (citing *International Controls Corp. v. Vesco,* 490 F.2d 1334 (2d Cir.1974)). District courts often waive the bond requirement in public interest cases, recognizing that the failure to do so could prevent certain plaintiffs from obtaining meaningful judicial review. *See Defenders of Wildlife v. U.S. Fish and Wildlife Service*, 530 F. Supp. 3d 543, 560 (D.S.C. 2021) (collecting cases).

The Government contests Plaintiffs' request for the imposition of nominal bond and "request[s] that the Court require Plaintiffs to post security . . . for any taxpayer funds distributed during the pendency of the Court's Order," citing a presidential memorandum opposing the waiver of injunction bonds. White House memorandum states that "it is the policy of the United States to demand that parties seeking injunctions against the [government] must cover the costs and damages incurred if the [g]overnment is ultimately found to have been wrongfully enjoined or restrained." (Dkt. No. 56 at 36) (citing Presidential Memorandum, Ensuring the Enforcement of Federal Rule of Civil Procedure 65(c), available at https://www.whitehouse.gov/presidential-actions/2025/03/ensuring-the-enforcement-of-federal-rule-of-civil-procedure-65c/ (Mar. 11,

2025)). This Court is not bound by the memorandum and declines to adopt any policy that would have the effect of blocking opponents of the government from the courts. *See, e.g.*, *Nat'l Ass'n of Diversity Officers in Higher Educ. v. Trump*, No. 25-CV-333, 2025 WL 573764, at *30 (D. Md. Feb. 21, 2025) (setting a nominal bond of zero dollars because granting the defendants' request "would essentially forestall [the] [p]laintiffs' access to judicial review"). This Court agrees with the District of Rhode Island that, "[i]n a case where the Government is alleged to have unlawfully withheld large sums of previously committed funds to numerous recipients, it would defy logic—and contravene the very basis of this opinion—to hold the Nonprofits hostage for the resulting harm." *Woonasquatucket River Watershed Council*, 2025 WL 1116157, at *24. The Court thus imposes a nominal bond of zero dollars.

IV. Plaintiffs' Claims for Relief Regarding Grants Funded by General Appropriations of the USDA

The six grants which Defendants continue to contest arise were administered by the USDA and were funded under the Commodity Credit Corporation, an entity under the control of the USDA. The grants were awarded under a program titled Partnerships for Climate Smart Commodities. ("PCSC"). Defendants have represented to the Court PCSC funding derived exclusively from the general appropriations of the USDA. Defendants assert that the USDA Secretary has broad discretion in the use of these funds, which differs from appropriations under the IRA, IIJA, or other mandatory congressional legislation. (Dkt. No. 142 at 42-43).

Defendants have informed the Court that that "PCSC has been converted into the Advancing Markets for Producers" to "reprioritize efforts so that more money goes directly to farmers." (Dkt. No. 153 at 2). As part of this new program, USDA has imposed a requirement that 65% of the federal funds must go to the producers. (*Id*. at 2-3). Six grants of Plaintiffs (Exhibit A, Grants 27-32) have been terminated because they allegedly do not meet the newly imposed 65%

requirement. (*Id*. at 3). The termination notices invite Plaintiffs to submit new proposals under the redesigned program by June 20, 2025. (*Id*.). Plaintiffs challenge the termination of the six USDA grants on the basis that the newly adopted program with the 65% requirement "emerged out of nowhere" and USDA provided "no explanation how its new 65% threshold was derived." (Dkt No. 149 at 14-15).

There is a very limited record before the Court on the termination of Grants 27-32. Plaintiffs assert that these six grants were summarily terminated at or about the time of the other 32 grants with no notice or reasoned explanation. According to Defendants, the funding of these grants was exclusively from generally appropriations and were not part of any mandatory legislation.[10] Thus, the challenges to the termination of these grants are based on an alleged failure to follow proper APA procedures, rather than a violation of USDA's duty to "faithfully execute[]" the laws. Further, the explanation provided by USDA officials for the termination of the six grants was not based on an undifferentiated attack on the purposes set forth in congressional legislation but on an effort to reduce administrative costs so that producers receive a greater share of the benefits of the federal funds. Moreover, affected Plaintiffs are invited to submit applications under the revised grant program.

Under the *Winter* factors, a threshold, critical issue is whether Plaintiffs can carry the burden of showing a likelihood of success on the merits to entitle them to the "extraordinary remedy" of preliminary injunctive relief. *Winter*, 555 U.S. at 20. On this record, the Court finds that Plaintiff cannot meet this standard. It may be with a fuller record and with further

[10] The Plaintiffs stated in the Amended Complaint that "upon information and belief," a portion of the PCSC grants was funded by the IRA. (Dkt. No. 23). Based on the present information before the Court, this appears not to be correct.

developments Plaintiffs establish a basis for an APA claim but at this time preliminary injunctive relief is not appropriate.

V. Conclusion

Based on the foregoing, the Court has ruled as follows:

A. Under Section II, the Court enters judgment for Plaintiffs regarding the uncontested APA claims (Exhibit A, Grants 1-26, 33-38). Plaintiffs are provided declaratory and permanent injunctive relief. Defendants' motion to stay is denied.

B. Under Section III, The Court finds that it has jurisdiction over Plaintiffs' nonstatutory review claims and that Plaintiffs' have standing to assert those claims. The Court further grants Plaintiffs preliminary injunction for Grants 1-26 and 33-38 regarding the nonstatutory review claims.

C. Under Section IV, the Court denies Plaintiffs preliminary injunctive relief regarding Grants 27-32.

s/ Richard Mark Gergel
Richard Mark Gergel
United States District Judge

May 20, 2025
Charleston, South Carolina

EXHIBIT F

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SOUTHERN EDUCATION FOUNDATION, Plaintiff, v. UNITED STATES DEPARTMENT OF EDUCATION, LINDA MCMAHON, UNITED STATES SECRETARY OF EDUCATION, and DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES OF AMERICA, Defendants.	Civil Action No. 25-1079 (PLF)

OPINION

Since its founding in 1867 shortly after the conclusion of the Civil War, the Southern Education Foundation, Inc. ("SEF") has worked to advance equitable education practices and policies in the South. From educating formerly enslaved persons after the Civil War to advocating against the then-lawful practice of segregation in public education, SEF has dedicated itself to fostering academic opportunity for over 150 years. In 2022, the United States Department of Education ("the Department") recognized SEF's work by awarding SEF a federal grant to operate EAC-South, a technical assistance center designed to confront federal school

desegregation cases in the South. Since receiving the grant, SEF has invested significant time and resources into operating EAC-South.

But EAC-South's programming grinded to a halt when the Department terminated SEF's grant award on February 13, 2025. The basis for the termination: the Department's efforts to eliminate "[i]llegal [diversity, equity, and inclusion] policies and practices." In view of the history of race in America and the mission of SEF since the Civil War, the audacity of terminating its grants based on "DEI" concerns is truly breathtaking.

On April 23, 2025, SEF filed a motion for a preliminary injunction, challenging the Department's decision to terminate SEF's grant and requesting immediate injunctive relief. See Plaintiff's Motion for a Preliminary Injunction/Temporary Restraining Order ("Pl. Mot.") [Dkt. No. 11]. The Court held oral argument on SEF's motion for a preliminary injunction on May 12, 2025. Upon careful consideration of the parties' filings, the oral arguments, and the relevant legal authorities, the Court concludes that SEF is likely to succeed on the merits of its APA claims. The Court therefore will grant SEF's motion for a preliminary injunction.[1]

[1] The Court has reviewed the following documents and attachments thereto in connection with the pending motion: Complaint ("Compl.") [Dkt. No. 1]; Plaintiff's Motion for Preliminary Injunction/Temporary Restraining Order [Dkt. No. 11]; Plaintiff's Memorandum of Law in Support of its Motion for Preliminary Injunction/Temporary Restraining Order ("Pl. Mot.") [Dkt. No. 11-1]; Defendants' Opposition to Plaintiff's Motion for Preliminary Injunction ("Defs. Opp.") [Dkt. No. 18]; Plaintiff's Reply In Further Support of its Motion for Preliminary Injunction ("Pl. Rep.") [Dkt. No. 19]; Plaintiff's Consent Motion to Supplement the Record ("Pl. Mot. to Suppl.") [Dkt. No. 25]; and Plaintiff's Supplemental Complaint For Declaratory and Injunctive Relief ("Am. Compl.") [Dkt. No. 26].

I. BACKGROUND

A. Plaintiff

After the Civil War ended in 1865 – and the Thirteenth, Fourteenth, and Fifteenth Amendments were added to our Constitution – foundations were formed to train qualified teachers, provide educational materials, and build schools for the education of formerly enslaved persons and poor Whites in southern states. See Am. Compl. ¶ 25. In 1937, most of these foundations were consolidated to form what is now the Southern Education Foundation, the plaintiff in this case. See id. For over 150 years, SEF "has advanced equitable education policies across the Southern United States, including supporting Thurgood Marshall's legal team in Brown v. Board of Education, 347 U.S. 483 (1954)." Pl. Mot. at 1.

B. The Grant Program

To effectuate the Supreme Court's ruling in Brown v. Board of Education to desegregate schools "with all deliberate speed," Congress enacted Title IV of the Civil Rights Act of 1964 ("Title IV"), which directs the Department of Education to provide technical assistance to facilitate public school desegregation initiatives. See Am. Compl. ¶¶ 28-29; see also 42 U.S.C. §§ 2000c et seq. The Department established "Desegregation Assistance Centers" ("the Centers") to "provide technical assistance in the preparation, adoption, and implementation of plans for [the] desegregation of public schools." Am. Compl. ¶ 29; see also 42 U.S.C. § 2000c-2; 34 C.F.R. § 270.1. Though the Centers' work initially focused on desegregation, see Am. Compl. ¶ 29, they later expanded to helping all students excel academically, "regardless of race, sex, national origin, linguistic differences, cultural and social characteristics, economic circumstances, and disability." Id.

In 2016, the Department renamed the Centers from "Desegregation Assistance Centers" to "Equity Assistance Centers" ("EACs") to reflect the Centers' broadened mission. Am. Compl. ¶ 30. Today, the EAC Program is "one of the Department's longest-standing investments in technical assistance and plays a vital role in ensuring that all students have equitable access to learning opportunities . . . ." Program History, U.S. Dep't of Educ., https://www.ed.gov/grants-and-programs/grants-birth-grade-12/training-and-advisory-services--equity-assistance-centers [https://perma.cc/NT7E-2UTV] (last visited Apr. 29, 2025).

Every year, Congress has appropriated funds under Title IV for training and technical assistance and has directed the Department to distribute those funds. See Am. Compl. ¶ 5. The Department of Education then obligates these grant funds through the EAC Program. See id. Following a competitive application process, the Department awards grants to eligible entities, and the entities use the grant funds "to operate regional centers that offer technical assistance at the request of public schools." See Defs. Opp. at 2. After signing cooperative grant agreements with the Department, the grantees draw down (or spend) the obligated funds during a pre-approved budget period until September 30th of each budget year. See Am. Compl. ¶ 5.

C. SEF's Grant and Cooperative Agreement

On February 15, 2022, the Department published a Notice Inviting Applications for the FY 2022 EAC grant competition. See 87 F.R. 8564-8570; Am. Compl. ¶ 41. The Notice stated that grants would be awarded for a maximum period of five years. See 87 F.R. 8567. The EAC competition included the following Priority: Promoting Equity Through Diverse Partnerships. See 87 F.R. 8566; Am. Compl. ¶ 42. The EAC grant program's authorizing statutes set forth grant application procedures. See 37 C.F.R. 270.

On May 16, 2022, SEF submitted an application for a grant to operate the EAC program for Region II, or "EAC-South." See Am. Compl. ¶ 43. EAC-South "addresses educational disparities based on race, national origin, sex, and religion" in "Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia, and the District of Columbia." Pl. Mot. at 1-2. As of May 2024, the states in Region II contained 130 of the 132 open federal school desegregation cases. See id.; see also id. at Ex. 1 [Dkt. No. 11-4] at 13. In its grant application, SEF outlined a five-year plan for the grant funding and provided annual milestones it hoped to reach, one of which was the "implementation of targeted and intensive technical assistance to public schools" in the South, with a "specific focus on the active school desegregation cases in federal courts." Am. Compl. ¶ 44.

In October 2022, the Department awarded SEF a five-year discretionary grant under Title IV to operate EAC-South. See Compl. at Ex. B [Dkt. No. 1-2]; see also Am. Compl. ¶ 45; Defs. Opp. at 2. The grant totaled $8.6 million. See Defs. Opp. at 2. The grant is the "sole source of funding for EAC-South." Am. Compl. ¶ 45. The initial Grant Award Notification ("GAN") letter that SEF received from the Department contained details about the grant, budget periods, and compliance provisions. See id. at Ex. B. The GAN letter classifies SEF's grant award as "a cooperative agreement," Compl. at Ex. B; see also Defs. Opp. at 2, with the terms of the agreement set forth in a separate document. See Pl. Mot. at Ex. 1 at 31.

Since receiving the grant, "SEF, through EAC-South, has provided free services to public schools within [Region II]," including consulting with school districts to improve student equity, helping teachers foster an environment for all students to succeed, "and other services related to addressing elements of segregation in public education." Am. Compl. ¶ 47.

D. Change of Administration and Executive Orders

On January 20, 2025, President Trump was sworn in as President of the United States. That same day, he signed Executive Order 14151, titled "Ending Radical and Wasteful Government DEI Programs and Preferencing." See Exec. Order No. 14151, Ending Radical and Wasteful Government DEI Programs and Preferencing, 90 Fed. Reg. 8339 (Jan. 20, 2025) (In order to "mak[e] America great," all DEI programs "end[] today"). Executive Order 14151 directs "[e]ach agency, department, or commission head" to, inter alia, "terminate, to the maximum extent allowed by law . . . all 'equity action plans,' 'equity' actions, initiatives, or programs, [and] 'equity-related' grants or contracts . . . ." Id. § 2(b)(1), Implementation ("the Termination Provision") (emphasis added).

The next day, on January 21, 2025, President Trump signed Executive Order 14173, titled "Ending Illegal Discrimination and Restoring Merit-Based Opportunity." See Exec. Order No. 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, 90 Fed. Reg. 8633 (Jan. 21, 2025). Ostensibly in order to enforce "longstanding civil-rights laws and to combat illegal private-sector DEI preferences, mandates, policies, programs, and activities," § 2, Executive Order 14173 directs "all executive departments and agencies" to "terminate all discriminatory and illegal preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, consent orders, and requirements." Exec. Order No. 14173 at § 2.

E. February 2025 Termination of SEF's Grant

On February 13, 2025, SEF received a letter from the Department, which reads:

> This letter provides notice that the United States Department of Education is terminating your federal award, S004D220011. See 2 C.F.R. § 200.340–43; see also 34 C.F.R. § 75.523.

> It is a priority of the Department of Education to eliminate discrimination in all forms of education throughout the United States. The Acting Secretary of Education has determined that, per the Department's obligations to the constitutional and statutory law of the United States, this priority includes ensuring that the Department's grants do not support programs or organizations that promote or take part in diversity, equity, and inclusion ("DEI") initiatives or any other initiatives that unlawfully discriminate on the basis of race, color, religion, sex, national origin, or another protected characteristic. Illegal DEI policies and practices can violate both the letter and purpose of Federal civil rights law and conflict with the Department's policy of prioritizing merit, fairness, and excellence in education. In addition to complying with the civil rights laws, it is vital that the Department assess whether all grant payments are free from fraud, abuse, and duplication, as well as to assess whether current grants are in the best interests of the United States.
>
> The grant specified above provides funding for programs that promote or take part in DEI initiatives or other initiatives that unlawfully discriminate on the basis of race, color, religion, sex, national origin, or another protected characteristic; that violate either the letter or purpose of Federal civil rights law; that conflict with the Department's policy of prioritizing merit, fairness, and excellence in education; that are not free from fraud, abuse, or duplication; or that otherwise fail to serve the best interests of the United States. The grant is therefore inconsistent with, and no longer effectuates, Department priorities. See 2 C.F.R. § 200.340(a)(4); see also 34 C.F.R. § 75.253. Therefore, pursuant to, among other authorities, 2 C.F.R. § 200.339–43, 34 C.F.R. § 75.253, and the termination provisions in your grant award, the Department hereby terminates grant No. S004D220011 in its entirety effective 2/13/25.

Compl. at Ex. D ("the Termination Letter") [Dkt. No. 1-4]. In addition to the Termination Letter, SEF received an updated GAN letter that stated that its grant is "deemed to be inconsistent with, and no longer effectuates, Department priorities." Compl. at Ex. E [Dkt. No. 1-5] (citing 2 C.F.R. 200.340(a)(4) and 34 C.F.R. 75.253).

The Termination Letter set forth an informal appeal process for SEF to follow if it "wish[ed] to object to or challenge" the termination of its grant. Compl. at Ex. D. The Letter directed SEF to "submit information and documentation supporting [its] position in writing

within 30 calendar days of the date of this termination notice." Id. The Letter mandated that an "appeal should contain the following: 1. a copy of the written notice of termination; 2. the date you received written notice of termination; 3. a brief statement of your argument and the disputed factual, legal, or other issues; 4. the amount of funds or costs in dispute, if any; and 5. any other relevant documents." Id. Lastly, the Letter provided the name and contact information of the Department official to whom appeals should be forwarded. See id.

SEF submitted a timely appeal to the Department on or about March 10, 2025, see Am. Compl. ¶ 90, then withdrew its appeal on May 16, 2025. Id. ¶ 92. On May 14, 2025, the Department of Education remitted an electronic payment of $293,681.78 for outstanding expenses incurred by SEF on or before February 13, 2025, the date of the grant termination. Id. ¶ 93. "In spite of this payment," the EAC-South grant remains terminated. Id. As a result of the grant termination, SEF alleges that it has lost the "sole source of funding for EAC-South," id. ¶ 75, and is "currently unable to operate EAC-South." Id. ¶ 80. SEF alleges that "the loss of funding is economic harm so significant that it threatens the very existence of EAC-South." Id. ¶ 76. Specifically, SEF alleges that the termination of the grant "will result in [a] $3,371,108 overall loss," id. ¶ 88, "the loss of employment for the dedicated staff and partners who ensure EAC-South run daily," Am. Compl. ¶ 83, and "[the] loss of goodwill and injury to reputation with the school districts [SEF] service[s] through EAC-South." Id. ¶ 84.

F. Procedural History

On April 9, 2025, SEF filed this lawsuit against Donald J. Trump, in his official capacity as President of the United States, Linda McMahon, in her official capacity as Secretary of Education, and the Department of Education. See Am. Compl. ¶¶ 22-24. SEF claims that the Department's termination of SEF's grant violates the Administrative Procedure Act ("APA"),

see Pl. Mot. at 7-13 (Counts One, Two, and Three); the Fifth Amendment to the United States Constitution, see id. at 16-17 (Count Four); Title VI of the Civil Rights Act, see id. at 13-16 (Count Five); the First Amendment to the United States Constitution, see id. at 21-19 (Count Seven); and constitutes an ultra vires act of impoundment of congressionally approved funds. Pl. Mot. at 17-21 (Count Six). SEF seeks declaratory and injunctive relief. See Am. Compl. at 37-38. As noted, SEF filed a motion for a preliminary injunction/temporary restraining order, see Pl. Mot., and the Court held oral argument on the motion on May 12, 2025.

On May 16, 2025, SEF filed a consent motion to supplement the record pursuant to Rule 15(d) of the Federal Rules of Civil Procedure. See Consent Motion to Supplement the Record ("Pl. Mot. to Suppl.") [Dkt. No. 25]. To its motion, SEF attached a letter that it sent to the Department on May 12, 2025, formally withdrawing its administrative appeal challenging the Department's grant termination decision. Id. at Ex. A [Dkt. No. 25-1]. The Court granted SEF's motion by minute order, and gave SEF leave to serve a supplemental pleading. See Minute Order of May 16, 2025. On May 19, 2025, SEF filed an amended complaint alleging that it had withdrawn its administrative appeal before the Department. See Am. Compl. ¶ 1. SEF also advised the Court that the Department had "remitted payment of the outstanding balance of $293,681.78 for expenses incurred on or before . . . the date of the [EAC-South] grant's termination." Am. Compl. ¶ 2.

II. JURISDICTION

Defendants argue that this Court lacks subject matter jurisdiction for two reasons. First, they argue that because SEF seeks reinstatement of the grant agreement, its claims sound in contract and therefore belong in the Court of Federal Claims—and not this Court—under the

Tucker Act. See Defs. Opp. at 6-9. Second, they argue that because SEF administratively appealed the Department's termination decision, SEF's claims are not ripe. Id. at 9-10.

A. The Tucker Act

Because the "United States is immune from suit unless it unequivocally consents," Maine Cmty. Health Options v. United States, 590 U.S. 296, 322 (2020), a plaintiff requesting emergency relief against the government must "identify an unequivocal waiver of sovereign immunity." Franklin-Mason v. Mabus, 742 F.3d 1051, 1054 (D.C. Cir. 2014). SEF points to Section 702 of the APA as such a waiver that applies to it. See Pl. Mot. at 18 (citing 5 U.S.C. § 702). Indeed, the APA provides "a limited waiver of sovereign immunity" for persons "adversely affected or aggrieved by agency action." Crowley Gov't Servs., Inc. v. Gen. Servs. Admin. ("Crowley"), 38 F.4th 1099, 1105-06 (D.C. Cir. 2022) (quoting 5 U.S.C. § 702). But Section 702's waiver is not without limits: For one, it only applies to claimants "seeking relief other than money damages." 5 U.S.C. § 702. For another, "Section 702's sovereign immunity waiver does not apply [ ] 'if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.'" Crowley, 38 F.4th at 1106 (quoting Perry Cap. LLC v. Mnuchin ("Perry Cap. LLC"), 864 F.3d 591, 618 (D.C. Cir. 2017) and 5 U.S.C. § 702).

Defendants contend that the Tucker Act "impliedly forbids" the APA's waiver of sovereign immunity in this case. See Defs. Opp. at 6. The Tucker Act waives the government's sovereign immunity from actions "founded . . . upon any express or implied contract with the United States." 28 U.S.C. § 1491(a)(1). The D.C. Circuit has explained that the Tucker Act grants the Court of Federal Claims "exclusive jurisdiction over breach of contract claims against the United States seeking more than $10,000 in damages." Crowley, 38 F.4th at 1106 (quoting Hammer v. United States, 989 F.3d 1, 2 (D.C. Cir. 2021)) (emphasis added). So if SEF's claims

are "'at [their] essence' contractual," then they fall within the scope of the Tucker Act and this Court has no power to resolve them. Crowley, 38 F.4th at 1106 (quoting Megapulse, Inc. v. Lewis ("Megapulse"), 672 F.2d 959, 967 (D.C. Cir. 1982)); see also 5 U.S.C. § 702 (providing that the APA's waiver of sovereign immunity is inapplicable where "any other statute . . . impliedly forbids the relief which is sought.").

The Supreme Court has cautioned, however, that "[n]ot every claim invoking the Constitution, a federal statute, or a regulation is cognizable under the Tucker Act." United States v. Mitchell, 463 U.S. 206, 216 (1983). For example, the Court of Federal Claims generally is not the appropriate forum to consider requests for injunctive relief because it "has no power to grant equitable relief." Bowen v. Massachusetts ("Bowen"), 487 U.S. 879, 905 (1988) (quoting Richardson v. Morris, 409 U.S. 464, 465 (1973) (per curiam)). The D.C. Circuit has also made clear that the Tucker Act should not be interpreted "so broad[ly] as to deny a court jurisdiction to consider a claim that is validly based on grounds other than a contractual relationship with the government." Megapulse, 672 F.2d at 968. "[T]he mere fact that a court may have to rule on a contract issue does not, by triggering some mystical metamorphosis, automatically transform an action . . . into one on the contract and deprive the court of jurisdiction it might otherwise have." Megapulse, 672 F.2d at 968 (emphasis added). Further, "[t]he fact that a judicial remedy may require one party to pay money to another is not a sufficient reason to characterize the relief as 'money damages'" such that Section 702 of the APA's waiver of sovereign immunity is inapplicable. Bowen, 487 U.S. at 893.

B. The Essence of SEF's Claims

To determine whether jurisdiction over this action lies with this Court or with the Court of Federal Claims, the Court must assess whether SEF's claims are "at [their] essence"

contract claims such that they fall under the Tucker Act. Crowley, 38 F.4th at 1106 (quoting Megapulse, 672 F.2d at 967-68).[2] That inquiry hinges on (1) "the source of the rights upon which [SEF] bases its claims," and (2) "the type of relief sought (or appropriate)." Crowley, 38 F.4th at 1106 (quoting Megapulse, 672 F.2d at 968); see also Widakuswara v. Lake ("Widakuswara II"), Civil Action No. 25-5144, 2025 WL 1288817, at *3 (D.C. Cir. May 3, 2025) (finding that Megapulse's "rights and remedies" rule also "applies to claims for breach of grant agreements executed through binding government contracts.") (citing Columbus Reg'l Hosp. v. United States, 990 F.3d 1330, 1338-40 (Fed. Cir. 2021)).

The Court concludes that it has subject matter jurisdiction over this action because SEF's claims are not "in essence" contract claims and therefore jurisdiction does not lie exclusively in the Court of Federal Claims. See Megapulse, 672 F.2d at 967-68; Climate United Fund v. Citibank, N.A. ("Climate United Fund"), Civil Action No. 25-698 (TSC), 2025 WL 1131412, at *9-10 (D.D.C. Apr. 16, 2025); AIDS Vaccine Advoc. Coal. v. United States Dep't of State ("AIDS Vaccine Advoc. Coal."), Civil Action No. 25-0400 (AHA), 2025 WL 752378, at *9 (D.D.C. Mar. 10, 2025).

1. The "Rights and Remedies" Rule of Megapulse

First, the source of SEF's rights. In identifying the source of a plaintiff's rights, courts must consider factors such as whether "the plaintiff's asserted rights and the government's

[2] SEF argued—for the first time at oral argument—that the cooperative agreement between SEF and the Department does not qualify as a "contract" for purposes of the Tucker Act. See Transcript of Record, Southern Education Foundation v. U.S. Department of Education, Case No. 25-1079 (May 13, 2025) [Dkt. No. 22] at 5:8-7:3. The Court need not resolve that issue because, even assuming the cooperative agreement constitutes a "contract," the Megapulse test makes clear that the cooperative agreement is not the source of the rights upon which SEF bases its claims.

purported authority arise from statute," and "whether the plaintiff's rights exist prior to and apart from rights created under the contract." Crowley, 38 F.4th at 1107 (quoting Megapulse, 672 F.2d at 969 and Spectrum Leasing Corp. v. United States, 764 F.2d 891, 894 (D.C. Cir. 1985) (internal quotations and alterations omitted)). Defendants argue that SEF's "APA and non-APA claims are all based expressly on [SEF's] grant and cooperative agreement," and therefore the "source of the rights upon which [SEF] bases its suit is [EAC-South's] grant award and cooperative agreement (S004D220011)." Defs. Opp. at 7. The Court recognizes that SEF's claims implicate the grant agreement; indeed, SEF would have no standing to advance its claims before this Court if the Department had not terminated the grant agreement. But as noted, the "mere fact that a court may have to rule on a contract issue does not, by triggering some mystical metamorphosis, automatically transform an action . . . into one on the contract and deprive the court of jurisdiction it might otherwise have." Megapulse, 672 F.2d at 968 (emphasis added); see also Crowley, 38 F.4th at 1110 ("Granted, [plaintiff's] claim presupposes the existence of a contract, as without one the [defendant] would have no invoices to audit . . . [b]ut the right [plaintiff] seeks to vindicate is not a contract right and its action in district court only 'require[s] some reference to or incorporation of [the] contract.'" (citation omitted)).

This lawsuit is not at its essence a suit to vindicate a contractual right to grant funds or about a breach of a grant agreement's terms. Rather, SEF's claims turn entirely on examining the federal statutes and regulations governing SEF's grant award. While a grant agreement may operate as a contract, the Court need not look to the terms of the grant agreement at all to adjudicate SEF's claims. See AIDS Vaccine Advoc. Coal. at *9 ("[I]t would be quite extraordinary to consider Plaintiffs' claims to sound in breach of contract when they do not at all depend on whether the terms of particular awards were breached—they instead challenge

whether the agency action here was unlawful, irrespective of any breach."); see also Maryland Dep't of Hum. Res. v. Dep't. of Health and Hum. Servs., 763 F.2d 1441, 1449 (D.C. Cir. 1985) (concluding that though plaintiff's "claims arise under a federal grant program," they "turn on the interpretation of statutes and regulations rather than on the interpretation of an agreement negotiated by the parties" and therefore "are not contract claims for Tucker Act purposes."); Climate United Fund at *10 (holding that terminated grant agreements were not the source of grantee-plaintiffs' statutory and constitutional claims).

Second, the type of relief SEF seeks. SEF does not seek money damages. SEF requests this Court to enjoin defendants from terminating SEF's EAC-South grant award and from "withholding any funds due to [SEF] under the grant or taking any adverse action based on the February 13, 2025, Termination Letter." Pl. Mot. at Proposed Order [Dkt. No. 11-7]. SEF also asks the Court to direct defendants to "restore [SEF's] access to all grant funds." Id. Defendants argue that SEF "seek[s] a contractual remedy in the form of an order to essentially pay money due under the grant and Cooperative Agreement." Defs. Opp. at 7. But as previously noted, "[t]he fact that a judicial remedy may require one party to pay money to another is not a sufficient reason to characterize the relief as 'money damages.'" Bowen, 487 U.S. at 893; see also Crowley, 38 F.4th at 1108 ("[E]xclusive jurisdiction in Claims Court under the Tucker Act does not lie 'merely because [a plaintiff] hints at some interest in a monetary reward from the federal government or because success on the merits may obligate the United States to pay the complainant.'") (quoting Kidwell v. Dep't of Army ("Kidwell"), 56 F.3d 279, 284 (D.C. Cir. 1995)); Kidwell, 56 F.3d at 284 ("[A] claim is not for money merely because its success may lead to pecuniary costs for the government or benefits for the plaintiff.") (internal quotations omitted); Vietnam Veterans v. Sec'y of the Navy, 843 F.2d 528, 534 (D.C. Cir. 1988).

Nor does SEF ask the Court to order specific performance under the grant agreement. Rather, SEF seeks equitable relief vindicating its rights under federal statutes and the Constitution, and asks the Court to "declare [the Department's termination of the grant] unlawful and set [it] aside." Am. Compl. at 37; see also 5 U.S.C. § 706(2) (providing that courts "shall . . . hold unlawful and set aside agency action" that violates the APA's substantive standards). That is "precisely the relief that is afforded—indeed, required—by and routinely granted under the APA." AIDS Vaccine Advoc. Coal., 2025 WL 752378, at *8. Any money that flows to SEF as a result of this action "would not come from [this] court's exercise of jurisdiction, but from the structure of statutory and regulatory requirements governing compensation." Tootle v. Sec'y of Navy, 446 F.3d 167, 175 (D.C. Cir. 2006) (citation omitted). SEF's requested relief therefore "is not a claim for money damages, although it is a claim that would require the payment of money by the federal government." Bowen, 487 U.S. at 894. Because SEF's "rights and remedies" do not sound in contract, this Court—not the Court of Federal Claims—is the appropriate forum to adjudicate SEF's suit.

2. The Case Law

To support their argument that the Court of Federal Claims has exclusive jurisdiction over this action, defendants cite two recent appellate opinions—one from the Supreme Court and one from the D.C. Circuit—that examine the Tucker Act's applicability to federal grant termination cases. The Court addresses each in turn.

a. Department of Education v. California

On April 4, 2025, the Supreme Court issued a per curiam opinion in Department of Education v. California ("Department of Education"). 145 S. Ct. 966 (2025). There, the

plaintiffs were grantees of the Department, see id. at 968, until they received termination letters stating that their grants had been terminated because the grants "provide[ ] funding for programs that promote or take part in [diversity, equity, and inclusion (DEI)] initiatives or other initiatives that unlawfully discriminate on the basis of race, color, religion, sex, national origin, or another protected characteristic . . . ." California v. U.S. Dep't of Education, 132 F.4th 92, 95 (1st Cir. 2025). Plaintiffs brought suit, challenging the Department's termination of their grants under the APA. See Department of Education, 145 S. Ct. at 968.

The district court entered a temporary restraining order, finding that the plaintiffs were likely to succeed on the merits of their APA claims and requiring the Department to restore the status quo as it stood prior to the terminations. See California v. U.S. Dep't of Education, Civil Action No. 25-10548 (MJJ), 2025 WL 760825, at *5 (D. Mass. Mar. 10, 2025). Specifically, the TRO enjoined the government from terminating the grants and required the government to "pay out past-due grant obligations and to continue paying obligations as they accrued" to the plaintiffs. Department of Education, 145 S. Ct. at 968. The government appealed and moved for a stay pending appeal, which was denied. See id. The government then filed an application with the Supreme Court to vacate the TRO. See id.

The Supreme Court stayed the district court's TRO. See Department of Education, 145 S. Ct. at 969. The Court found that "the APA's limited waiver of [sovereign] immunity does not extend" to the district court's injunction, which the Court construed as an "order[ ] 'to enforce a contractual obligation to pay money.'" Id. at 968 (quoting Great-West Life & Annuity Ins. Co. v. Knudson ("Great-West Life"), 534 U.S. 204, 212 (2002)). The Court acknowledged that "a district court's jurisdiction 'is not barred by the possibility' that an order setting aside an agency's action may result in the disbursement of funds." Id. (quoting

Bowen, 487 U.S. at 910). But the Court nonetheless concluded that the district court likely "lacked jurisdiction to order the payment of money under the APA" because "the Tucker Act grants the Court of Federal Claims jurisdiction over suits based on 'any express or implied contract with the United States.'" Id. (quoting 28 U.S.C. § 1491(a)(1)). The Court suggested that because plaintiffs' claims to continued grant payments arose from the Department's contractual obligations under the grant agreements, the suit was governed by the Tucker Act and thus belonged in the Court of Federal Claims. See id.

The instant case is distinguishable from Department of Education. First, the plaintiffs in Department of Education brought only APA claims; they did not assert that the Department violated any other statutory provisions or infringed the United States Constitution. See California v. U.S. Dep't of Education, 2025 WL 760825, at *2. Here, SEF alleges that the Department violated the APA, the Civil Rights Act of 1964, the Impoundment Control Act of 1974, the U.S. Constitution, and various other statutes and regulations. See supra Section I.F. Second, the Supreme Court found that the plaintiffs in Department of Education would not suffer irreparable harm sufficient to preclude a stay because they had "the financial wherewithal to keep their programs running" without the grants, such that any irreparable harm "would be of their own making." Department of Education, 145 S. Ct. at 969. That is not the case here—the grant was EAC-South's "sole source of funding." Am. Compl. ¶ 45. SEF alleges that it is "currently unable to operate EAC-South," id. ¶ 80, and that the grant termination has inflicted "economic harm so significant that it threatens the very existence of EAC-South." Id. ¶ 76.

Lastly, the Supreme Court's stay order in Department of Education does not displace governing law that guides this Court's assessment of whether SEF's claims are essentially contract claims such that jurisdiction properly lies with the Court of Federal Claims.

See Department of Education, 145 S. Ct. at 968 (citing Bowen, 487 U.S. at 910). For example, in Bowen, the Supreme Court drew a "distinction between an action at law" for money damages, which provides monetary compensation, and "an equitable action for specific relief," which might still require monetary relief. See 487 U.S. at 893; see also Great-West Life, 534 U.S. at 213 ("Whether [restitution] is legal or equitable depends on the basis for [the plaintiff's] claim and the nature of the underlying remedies sought.") (cleaned up). The Court in Bowen found that even where a district court's order likely would result in the government paying money to the plaintiff, as it would in the instant case, such payments are not necessarily "money damages," and such orders are not always "excepted from" the APA's waiver of sovereign immunity in Section 702. Bowen, 487 U.S. at 910. Rather, in such cases, the government's payment of money to the plaintiff may be "a mere by-product of [the district] court's primary function of reviewing the Secretary's interpretation of federal law." Bowen, 487 U.S. at 910 (emphasis added); see also id. at 893 ("The fact that a judicial remedy may require one party to pay money to another is not a sufficient reason to characterize the relief as 'money damages.'").

Applying Bowen's reasoning to the instant case leads to the same conclusion. While an order enjoining the Department from terminating SEF's grant would effectively require the government to keep funding the grant, that is "a mere by-product of [this] court's primary function of reviewing the Secretary's interpretation of federal law." See Bowen, 487 U.S. at 909-10. It is "not a sufficient reason to characterize [SEF's requested] relief as 'money damages'" such that the APA's waiver of sovereign immunity is inapplicable. See id. at 893.

Defendants make no attempt to square Department of Education with Bowen, and offer no reason why the Court should disregard Bowen's teachings in favor of the Supreme Court's brief analysis in Department of Education. See Woonasquatucket River Watershed

Council v. U.S. Dep't of Agric., Civil Action No. 25-0097 (MSM), 2025 WL 1116157, at *15 (D.R.I. Apr. 15, 2025) (concluding that the court "cannot disregard Bowen . . . [e]ven if it looks like [Department of Education] has 'implicitly overruled'" it.). Absent a clear indication from the Supreme Court that Bowen is no longer good law, the Court applies Bowen's settled principles to conclude that SEF's suit is not necessarily a "contract dispute over money" simply because the government would have to continue paying grant money to SEF if its requested relief is granted. See Cmty. Legal Servs. in E. Palo Alto v. United States Dep't of Health & Hum. Servs., Civil Action No. 25-02847 (AMO), 2025 WL 1168898, at *3 (N.D. Cal. Apr. 21, 2025) ("Department of Education does not represent a significant change in law.").[3]

b. Widakuswara v. Lake

The D.C. Circuit also recently examined the applicability of the Tucker Act in federal grant termination cases. In Widakuswara v. Lake, the United States Agency for Global Media ("USAGM") terminated two of its affiliates' grant agreements for the 2025 fiscal year. See Widakuswara II, 2025 WL 1288817, at *1. The grantees filed suit in this Court,

[3] It is worth noting that the Supreme Court's decision in Department of Education was made in the context of an emergency application for a stay pending appeal, with "barebones briefing, no argument," and two pages of analysis. See Department of Education, 145 S. Ct. at 969 (Kagan, J., dissenting). Its precedential value therefore is limited. See Climate United Fund, 2025 WL 1131412, at *9-12 (concluding that Department of Education does not strip the court of jurisdiction over plaintiffs' grant termination claims); Rhode Island v. Trump, Civil Action No. 25-128 (JJM), 2025 WL 1303868, at *6 (D.R.I. May 6, 2025) (concluding that Department of Education's "precedential value is limited," and "does not render this Court an improper forum for [plaintiffs'] claims under the APA."); Woonasquatucket River Watershed Council v. U.S. Dep't of Agric., Civil Action No. 25-0097 (MSM), 2025 WL 1116157, at *15 (D.R.I. Apr. 15, 2025) (finding that the court retains jurisdiction over plaintiffs' APA claims challenging the government's federal funding freeze, and Department of Education "is not to the contrary."); Maine v. United States Dep't of Agric., Civil Action No. 25-0131 (JAW), 2025 WL 1088946, at *19 n.8 (D. Me. Apr. 11, 2025) ("The Supreme Court's April 4, 2025 decision [in Department of Education] does not change the Court's determination that it is a proper forum for this dispute under the APA.").

challenging the USAGM's termination of their grants, bringing claims under the APA, the United States Constitution, various congressional appropriations acts, "and numerous other statutory provisions." Widakuswara v. Lake (Widakuswara I"), Civil Action No. 25-1015 (RCL), 2025 WL 1166400, at *5 (D.D.C. Apr. 22, 2025). Judge Lamberth granted plaintiffs' motion for a preliminary injunction, and ordered the government to "restore the FY 2025 grants" and "disburse[ ] to [the grantees] the funds Congress appropriated." Id. at *18. The government appealed to the D.C. Circuit and filed a motion to stay this Court's order to restore the grantees' fiscal year 2025 grants. See Widakuswara II, 2025 WL 1288817, at *2.

A motions panel of the D.C. Circuit granted the government's motion for a stay, finding that this Court likely lacked jurisdiction to restore the grants. See Widakuswara II, 2025 WL 1288817, at *1, 3. Relying on the Supreme Court's opinion in Department of Education, the panel majority found that the government, through its grant agreement with the plaintiffs, "promised to pay the appropriated funds" and "[i]n return, [plaintiffs] promised to use the funds to advance statutory objectives and to comply with all program requirements." Id. at *3. "These exchanges of promises—reflecting offer, acceptance, consideration, mutuality of intent, and action by an official with authority to bind the government—constitute government contracts for Tucker Act purposes." Id. (citing Columbus Reg'l Hosp. v. United States, 990 F.3d at 1338-39). The panel majority held that "[w]hether phrased as a declaration that [the grant] agreements remain in force, or an order to pay the money committed by those agreements," this Court's injunction "in substance order[ed] specific performance of the grant agreements—a quintessentially contractual remedy." Id. at *4. The panel majority concluded that the "inherently contractual nature" of the district court's relief "makes the [Court of Federal Claims] the exclusive forum for this suit." Id.

Widakuswara II is an unpublished opinion that may not be binding on this Court.[4] And respectfully, the Court does not find the panel majority's reasoning persuasive. The panel majority held that "it is the inherently contractual nature of the relief afforded—not any characterization of the relief as money damages"—that confers jurisdiction on the Court of Federal Claims. Widakuswara II, 2025 WL 1288817, at *4. But as Judge Pillard pointed out in dissent, it is the "type of relief sought," not "the inherently contractual nature of the relief afforded" that determines whether a plaintiff's claims are "in essence" contract claims for purposes of the Tucker Act. Widakuswara II, 2025 WL 1288817, at *13 (Pillard, J., dissenting). The plaintiffs in Widakuswara II sought injunctive and declaratory relief: "No count [in their complaint] sound[ed] in contract, and none [sought] money damages for breach." Id. (Pillard, J., dissenting). And because the Court of Federal Claims is a specialized forum that can only issue "naked money judgment[s] against the United States," Bowen, 487 U.S. at 905, the injunctive relief the Widakuswara II plaintiffs sought would be unavailable to them in the Court of Federal Claims. See id. (Pillard, J., dissenting).

For these reasons, the Court declines to apply the Widakuswara II panel's reasoning to the instant case.[5]

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[4] D.C. Circuit Rule 32.1(b)(1)(B) provides that unpublished opinions entered on or after January 1, 2002, "may be cited as precedent," not that the Court must treat them as such. And D.C. Circuit Rule 36(e)(2) provides that, "[w]hile unpublished dispositions may be cited to the court . . . a panel's decision to issue an unpublished disposition means that the panel sees no precedential value in that disposition." Read together, these two procedural rules seem to advise litigants that they may cite unpublished opinions as precedent in their court filings, but the panel's decision not to publish the opinion "means that the panel sees no precedential value" in that opinion. Defendants offer no reason for the Court to imbibe Widakuswara II with precedential value, especially when the Circuit declined to do so itself.

[5] On May 5, 2025, the Widakuswara II plaintiffs filed a petition for rehearing en banc. See Civil Action No. 25-5144 [Dkt. No. 2114398]. At the time of this opinion, the D.C.

C. Ripeness

Defendants' second jurisdictional argument is that SEF's claims are not ripe because SEF had a "pending" administrative appeal challenging the grant termination. See Defs. Opp. at 9-10. But on May 12, 2025, SEF withdrew its administrative appeal. See Pl. Mot. to Suppl. at Ex. A. SEF filed an amended complaint on May 19, 2025, to reflect that it had withdrawn its administrative appeal. See Am. Compl. ¶ 1. These developments resolve any risk of a concurrent administrative process that might preclude judicial review, and render defendants' ripeness argument moot. See Scahill v. D.C., 909 F.3d 1177, 1184 (D.C. Cir. 2018) (holding that a plaintiff may cure jurisdictional defects by filing an amended pleading, thereby avoiding "the unnecessary hassle and expense of filing a new lawsuit when events subsequent to filing the original complaint have fixed the jurisdictional problem.").

Ripeness "is a justiciability doctrine" that is "'drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction.'" Devia v. Nuclear Regul. Comm'n ("Devia"), 492 F.3d 421, 424 (D.C. Cir. 2007) (quoting Nat'l Park Hospitality Ass'n v. Dep't of the Interior, 538 U.S. 803, 807-08 (2003)). In determining "whether the facts of a particular case meet th[e] standard of ripeness," courts apply a two-pronged analysis, evaluating (1) the fitness of the issues for judicial decision, and (2) the hardship to the parties of withholding court consideration. See id. at 424; American Petroleum Institute v. EPA ("American Petroleum Institute"), 683 F.3d 382, 387 (D.C. Cir. 2012). The first prong of ripeness—fitness of the issue for judicial decision—turns on three factors: "[1] whether [the issue] is purely legal, [2] whether consideration of the issue would benefit from a more

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Circuit has not yet resolved plaintiffs' petition. On May 7, 2025, the en banc D.C. Circuit administratively stayed the panel majority's stay order and the district court's injunction went back into effect. See id. Order of May 7, 2025 [Dkt. No. 2114884].

concrete setting, and [3] whether the agency's action is sufficiently final." American Petroleum Institute, 683 F.3d at 387.

The Court finds, and the parties do not dispute, that the first and second factors under the first prong are satisfied: The questions SEF raises—whether the Department's actions violate statutory and constitutional provisions—are purely legal inquiries. See Atlantic States Legal Found. v. EPA, 325 F.3d 281, 284 (D.C. Cir. 2003) ("Claims that an agency's action is arbitrary and capricious or contrary to law present purely legal issues."); Beach Commc'ns, Inc. v. FCC, 959 F.2d 975, 986 (D.C. Cir. 1992) (holding that an equal protection claim presents a purely legal question). And given the immediate harm SEF faces, see infra Section III.C, SEF's claims would not necessarily "benefit from a more concrete setting." See American Petroleum Institute, 683 F.3d at 387. Only the third factor under the first prong—"whether the agency's action is sufficiently final"—was contested. In their opposition, defendants argued that this factor was not satisfied because SEF had an administrative appeal that was pending before the Department and, "a challenge to [an] appealed agency decision is not ripe." See Defs. Opp. at 9-10.

For the reasons discussed in Section III.C, the Court concludes that the Department's termination of SEF's grant and SEF's withdrawal of its administrative appeal satisfy the finality factor. Therefore, all three factors of the first ripeness prong are satisfied.[6]

[6] SEF argues that the second ripeness prong—hardship to the parties of withholding court consideration—weighs heavily in their favor. See Pl. Rep. at 4. Defendants do not contest this point. The Court finds that the direct and immediate harms alleged by SEF are sufficient to outweigh the institutional interest in the deferral of judicial review. See Am. Petroleum Inst. v. EPA, 683 at 389 (finding that in order to outweigh the "institutional interest[ ] in the deferral of [judicial] review, any hardship caused by that deferral must be immediate and significant." (internal quotations and citation omitted)). With both ripeness prongs satisfied, the Court concludes that SEF's claims are ripe for judicial review.

III. SEF'S REQUEST FOR A PRELIMINARY INJUNCTION

A. Legal Standard

SEF seeks a preliminary injunction under Rule 65 of the Federal Rules of Civil Procedure. A movant seeking preliminary injunctive relief must make a "clear showing that four factors, taken together, warrant relief: likely success on the merits, likely irreparable harm in the absence of preliminary relief, a balance of the equities in its favor, and accord with the public interest." Archdiocese of Washington v. Wash. Metro. Area Transit Auth. ("Archdiocese of Washington"), 897 F.3d 314, 321 (D.C. Cir. 2018) (quoting League of Women Voters v. Newby 838 F.3d 1, 6 (D.C. Cir. 2016)); see also Sherley v. Sebelius, 644 F.3d 388, 392 (D.C. Cir. 2011) (noting that a preliminary injunction "may only be awarded upon a clear showing that the plaintiff is entitled to such relief." (quoting Winter v. Nat. Res. Def. Council, Inc. ("Winter"), 555 U.S. 7, 22 (2008))). Of these, the most important factor is whether the movant has established a likelihood of success on the merits. See Aamer v. Obama, 742 F.3d 1023, 1038 (D.C. Cir. 2014); see also Bailey v. Fed. Bureau of Prisons, Civil Action No. 24-1219 (PLF), 2024 WL 3219207, at *3 (D.D.C. June 28, 2024).

Before the Supreme Court's decision in Winter, courts in this Circuit weighed these four factors on a "sliding scale," under which the movant need not "make as strong a showing" on one factor if they "make[ ] an unusually strong showing" on another. Davis v. Pension Benefit Guar. Corp., 571 F.3d 1288, 1291-92 (D.C. Cir. 2009) (quoting Davenport v. Int'l Bhd. of Teamsters, 166 F.3d 356, 361 (D.C. Cir. 1999)); accord Damus v. Nielsen, 313 F. Supp. 3d 317, 326 (D.D.C. 2018). This Circuit has suggested, however, that "a likelihood of success" and "a likelihood of irreparable harm" are "independent, free-standing requirement[s] for a preliminary injunction." Sherley v. Sebelius, 644 F.3d at 392-93 (quoting Davis v. Pension

Benefit Guar. Corp., 571 F.3d at 1296 (Kavanaugh, J., concurring)); see Archdiocese of Washington, 897 F.3d at 334 (declining to resolve whether the "sliding scale" approach is still valid after Winter); Nat'l Treasury Emps. Union v. Vought, Civil Action No. 25-0381 (ABJ), 2025 WL 942772, at *19 (D.D.C. Mar. 28, 2025). Regardless, "a failure to show a likelihood of success on the merits alone is sufficient to defeat a preliminary-injunction motion." Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs, 205 F. Supp. 3d 4, 26 (D.D.C. 2016) (citing Ark. Dairy Coop. Ass'n v. U.S. Dep't of Agric., 573 F.3d 815, 832 (D.C. Cir. 2009)); see also M.G.U. v. Nielsen, 325 F. Supp. 3d 111, 117-18 (D.D.C. 2018).

For each of its claims, SEF bears the burden of persuasion. Chaplaincy of Full Gospel Churches v. England, 454 F.3d 290, 297 (D.C. Cir. 2006). SEF also "bears the burden of producing credible evidence sufficient to demonstrate [its] entitlement to injunctive relief." Workman v. Bissessar, 275 F. Supp. 3d 263, 267 (D.D.C. 2017).

B. Irreparable Harm

When considering a motion for preliminary injunction, courts typically begin their analyses by determining the movant's likelihood of success on the merits. See Archdiocese of Washington, 897 F.3d at 321. In this case, however, the Court turns first to irreparable harm.

In Brown v. Board of Education, 347 U.S. 483 (1954), the Supreme Court declared racial segregation in public education unconstitutional, and mandated its elimination "with all deliberate speed." Brown v. Bd. of Educ. of Topeka, Kan. ("Brown II"), 349 U.S. 294, 301 (1955). Today, 70 years later, there are still 132 open federal school desegregation cases. Pl. Mot. at Ex. 1 at 13. An overwhelming 130 of those cases are concentrated in states located in the South. Id. In line with Brown's constitutional mandate, SEF—through the EAC-South program—has worked tirelessly to "confront the high concentration of unresolved

federal school desegregation cases in the Southern region," and deliver "targeted support to public schools still struggling with the lingering effects of segregation that continue to limit educational opportunity for students." Am. Compl. ¶ 11. At the time the Department terminated the EAC-South grant, EAC-South was "actively working with several school districts, including districts under active federal desegregation orders." Declaration of Eshé P. Collins ("Collins Decl.") [Dkt. No. 11-2] ¶¶ 6. For example, EAC-South was assisting Fayette County Public Schools ("FCPS")—a school district that has remained under a federal desegregation order since 1965—with "ongoing desegregation initiatives" such as ensuring compliance with court-ordered monitoring and reporting requirements. Declaration of Dr. Tameka D. Lewis [Dkt. No. 11-6] ¶¶ 5, 11. The Department's termination of the EAC-South grant, has left "[s]everal districts . . . without the technical assistance they had requested and have come to rely on as part of their civil rights compliance efforts." Collins Decl. ¶ 12.

The Department's decision contravenes the very principle of "deliberate speed" mandated by Brown II. "Brown never contemplated that the concept of 'deliberate speed' would countenance indefinite delay in elimination of racial barriers in schools." Watson v. City of Memphis, 373 U.S. 526, 529-30 (1963). Nor did President Eisenhower and the courageous judges in the South who interpreted Brown. They could hardly have imagined that some future Presidential Administration would hinder efforts by organizations like SEF—based on some misguided understanding of "diversity, equity, and inclusion"—to fulfill Brown's constitutional promise to students across the country to eradicate the practice of racial segregation.

Turning to the particular harms that SEF alleges it will suffer absent immediate injunctive relief: First, SEF alleges that "[t]he Department's abrupt termination of SEF's EAC grant has caused immediate and severe financial and operational harm." Pl. Mot. at 29.

Specifically, "[t]he termination has deprived SEF of the sole source of funding for EAC-South," has "result[ed] in an immediate cessation of program operations and services," and "will result in a $1,924,031.96 annual loss to SEF, including outstanding payments of $293,681.78 for the current EAC-South program." Id.; see also Am. Compl. ¶ 88. SEF also alleges that "the termination of the grant will result in $3,371,108 overall loss, including the remaining two budget periods of a year each." Pl. Mot. at 29. In addition to monetary losses, SEF alleges that the termination of SEF's EAC-South grant "has forced SEF to shut down EAC-South entirely," resulting in "the loss of experienced staff [and] interrupt[ing] ongoing technical assistance projects." Pl. Mot. at 29. SEF contends that these financial and operational harms are an "existential threat to what SEF has built." Id.

Second, SEF alleges that the termination of its EAC grant "has inflicted serious and irreparable damage to SEF's reputation and crucial relationships built over decades." Pl. Mot. at 30. According to SEF, the "sudden disruption" of EAC-South's programming "jeopardizes SEF's credibility" with the school districts that it serves because the districts "can no longer depend on [SEF] to provide consistent, federally authorized assistance." Id. And "[i]f school districts cannot rely on SEF to help them comply with desegregation orders, they may be less likely to engage with [SEF] on other educational equity initiatives." Id.[7]

Defendants respond that SEF has not proffered any evidence that its "estimated economic loss would be unrecoverable," and that SEF "operates several programs," of which EAC-South is just one. Defs. Opp. at 11. According to defendants, "loss of experienced

[7] SEF also alleges that "[t]he termination of the EAC-South grant inflicts severe and irreparable harm on the educational agencies and students that SEF serves," and that "the harm done to SEF's free speech rights is automatically irreparable." Pl. Mot. at 30, 32. Because the Court finds that SEF's first two arguments are sufficient to demonstrate irreparable harm, the Court need not reach these arguments.

[EAC-South] staff, interrupted ongoing technical assistance projects," and other harms to EAC-South "say[ ] nothing about the degree of harm to [SEF], which is what is relevant." Id. Defendants also argue that the reputational harms alleged by SEF do not "logically follow" when, as SEF believes, "the termination was unrelated to any deficiency in [SEF's] performance under the grant." Id. at 12. Finally, defendants argue that SEF's "assertion of irreparable harm is belied by the time it took [SEF] to seek preliminary injunctive relief," noting that SEF filed its motion sixty-nine days after its grant was terminated. Id. at 13.

The Court disagrees with the defendants. When a program's "existence relies on grant money, harm is certain once the grant funds are withdrawn." Climate United Fund, 2025 WL 1131412, at *17. As a result of the termination of the EAC-South grant, "SEF was forced to halt all EAC-South operations, suspend services to multiple school districts, and reassign staff." Collins Decl. ¶ 12. The abrupt loss of funding has "directly impaired SEF's ability to fulfill its obligations under . . . current service requests by [school] districts and state agencies," id. ¶ 14, and to otherwise "fulfill its mission." Am. Compl. ¶ 80. SEF now is unable to provide assistance to "school districts seeking to resolve federal desegregation orders." Id. Without immediate relief, SEF asserts that it "stands to lose specialized employees whose expertise cannot be easily replaced, and with them, the institutional knowledge essential to [EAC-South's] work." Pl. Rep. at 7.

To constitute irreparable harm, SEF's alleged injury must be "both certain and great," "actual and not theoretical," and "beyond remediation." Brennan Ctr. for Just. at NYU Sch. of L. v. Dep't of Com., 498 F. Supp. 3d 87, 101 (D.D.C. 2020) (quoting Chaplaincy of Full Gospel Churches, 454 F.3d at 297). While economic injuries are usually insufficient to justify injunctive relief, financial harm can "constitute irreparable harm . . . where the loss threatens the

very existence of the movant's business." Wis. Gas Co. v. FERC, 758 F.2d 669, 674 (D.C. Cir. 1985). And "obstacles [that] unquestionably make it more difficult for the [plaintiff] to accomplish [its] primary mission . . . provide injury for purposes . . . [of establishing] irreparable harm." League of Women Voters v. Newby, 838 F.3d at 9. Reputational injury can also suffice to establish irreparable harm. See Patriot, Inc. v. U.S. Dep't of Hous. & Urb. Dev., 963 F. Supp. 1, 5 (D.D.C. 1997) (finding plaintiffs' business reputation would be damaged by [agency's] characterization of them as "enticing" senior citizens into meetings, and "pressuring" them to obtain reverse mortgages "under the guise of sound estate planning.").

The Court finds that SEF has sufficiently demonstrated that it will suffer irreparable harm because the defendants' actions threaten the livelihoods of SEF's employees, its professional reputation, and the very existence of its programs. See Am. Ass'n of Colleges, 2025 WL 833917, at *23 (finding that federal grant recipients whose grants were terminated would suffer irreparable harm absent an injunction); Climate United Fund, 2025 WL 1131412, at *17 (same).

C. Likelihood of Success on the Merits

SEF contends that it is likely to succeed on the merits of all of its claims: its APA claims (Counts One, Two, and Three), Fifth Amendment claim (Count Four), Civil Rights Act claim (Count Five), Ultra Vires claim (Count Six), and First Amendment claim (Count Seven). The Court concludes that SEF is likely to succeed on the merits of Count One—that the

Department's termination of the EAC-South grant was arbitrary and capricious. The Court therefore will grant SEF's motion for a preliminary injunction.[8]

1. Finality

The APA limits judicial review to "final agency action." 5 U.S.C. § 704. Agency action is "final" when two conditions are met: (1) "the action must mark the 'consummation' of the agency's decision making process—it must not be of a merely tentative or interlocutory nature," and (2) "the action must be one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow.'" Bennett v. Spear, 520 U.S. 154, 177-78 (1997) (quoting Chicago & S. Air Lines, Inc. v. Waterman S.S. Corp., 333 U.S. 103, 113 (1948), and Port of Boston Marine Terminal Ass'n v. Rederiaktiebolaget Transatl., 400 U.S. 62, 71 (1970)). Here, the "final" agency action that SEF challenges is the Department's termination of the EAC-South grant.

The Termination Letter represented that the Department had concluded its review of the EAC-South grant. See Compl. at Ex. D. at 1 ("the Department hereby terminates grant No. S004D220011 in its entirety effective 2/13/25."). The termination "was immediate, without prior notice of deficiencies or opportunity to respond." Pl. Mot. at 2. The Termination Letter immediately produced legal consequences for SEF because SEF could no longer access previously awarded funds. See Am. Ass'n of Colleges"), Civil Action No. 25-0702 (JRR), 2025 WL 833917, at *12 (finding the Department's termination of other education-related grants

[8] Although the parties briefed multiple issues, the Court need only find that SEF is likely to succeed on one of its claims for this factor to weigh in their favor. The Court therefore does not address all SEF's arguments. See Media Matters for Am. v. Paxton, 732 F. Supp. 3d 1, 27 (D.D.C. 2024), appeal dismissed, Civil Action No. 24-7059, 2025 WL 492257 (D.C. Cir. Feb. 13, 2025).

"immediately produced legal consequences."); see also Nat'l Council of Nonprofits v. Off. of Mgmt. & Budget, 2025 WL 368852, at *10 (finding Office of Management and Budget memorandum directing federal agencies to temporarily pause disbursement of federal financial assistance and to freeze all such funds "immediately produced legal consequences across the entire federal funding system").

But, perhaps most relevant, on May 12, 2025, SEF withdrew its administrative appeal. See Pl. Mot. to Suppl. at Ex. A. Then, on May 19, 2025, SEF filed an amended complaint to reflect that it had withdrawn its administrative appeal. See Am. Compl. ¶ 1. These factual developments resolve any risk of a concurrent administrative process altering the Court's analysis or obviating judicial review. See Vanda Pharms. Inc. v. Food & Drug Admin., Civil Action No. 23 2812 (CRC), 2024 WL 4133623, at *8 (D.D.C. Sept. 10, 2024) (emphasizing that what "matters" when determining whether a claim is incurably premature is if a "separate, still pending [administrative] proceeding . . . might alter the court's analysis or entirely vitiate the need for judicial review." (quoting Flat Wireless, LLC v. FCC, 944 F.3d 927, 933 (D.C. Cir. 2019)); see also Scahill v. D.C., 909 F.3d 1177, 1184 (D.C. Cir. 2018) (explaining that permitting a plaintiff to cure jurisdictional defects through amended pleadings avoids "the unnecessary hassle and expense of filing a new lawsuit when events subsequent to filing the original complaint have fixed the jurisdictional problem."). The Court is satisfied that the purpose of the incurably premature doctrine—to prevent wasteful parallel proceedings—is no longer implicated here. The Court concludes that the Department's termination of the EAC-South grant constituted final agency action.

2. Arbitrary and Capricious

SEF likely will prevail in showing that the Department's termination of the EAC-South grant was arbitrary and capricious. The APA instructs reviewing courts to hold unlawful and set aside final agency actions found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2). When assessing whether a final agency action is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," courts consider "only whether the [agency] examined 'the relevant data' and articulated 'a satisfactory explanation' for [its] decision, 'including a rational connection between the facts found and the choice made.'" Dep't of Commerce v. New York, 588 U.S. 752, 773 (2019) (quoting Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co. ("Motor Vehicle Mfrs. Assn."), 463 U.S. 29, 43 (1983)); see also FCC v. Prometheus Radio Project, 592 U.S. 414, 423 (2021) (explaining that an agency action is "arbitrary" and "capricious" if it is not "reasonable and reasonably explained."); Nat'l Tel. Coop. Ass'n v. FCC, 563 F.3d 536, 540 (D.C. Cir. 2009) ("The APA's arbitrary-and-capricious standard requires that agency rules be reasonable and reasonably explained."). "The scope of review under the 'arbitrary and capricious' standard is narrow and a court is not to substitute its judgment for that of the agency." Motor Vehicle Mfrs. Assn., 463 U.S. at 43.

In determining whether the Department's termination of the EAC-South grant was "reasonable and reasonably explained," the Court looks first to the "grounds that the [Department] invoked" when it terminated the grant. Michigan v. EPA, 576 U.S. 743, 758 (2015)); see also Motor Vehicle Mfrs. Assn., 463 U.S. at 50 (". . . an agency's action must be upheld, if at all, on the basis articulated by the agency itself."). The Termination Letter lists five theoretical bases for the grant termination, stating that SEF's grant may have

been terminated because it "promote[s] or take[s] part in DEI initiatives," or "unlawfully discriminate[s] on the basis of" protected characteristics, or "violate[s] either the letter or purpose of Federal civil rights law," or "conflict[s] with" the Department's policies, or "[is] not free from fraud, abuse, or duplication," or "otherwise fail[s] to serve the best interests of the United States." Compl. at Ex. D at 2. The Termination Letter does not identify which of these bases was the reason for the termination of SEF's grant; in fact, the Termination Letter was one of many standardized letters that the Department sent out to several education-related grant recipients. See California v. U.S. Dep't of Educ., Civil Action No. 25-10548 (MJJ), 2025 WL 760825, *2-3 (D. Mass. Mar. 10, 2025); Am. Ass'n of Colleges for Tchr. Educ. v. McMahon, Civil Action No. 25-0702 (JRR), 2025 WL 833917, at *17 (D. Md. Mar. 17, 2025).

As noted, the Supreme Court has held that a reasonable explanation must consider relevant data and articulate a satisfactory explanation for the agency's decision, "including a rational connection between the facts found and the choice made." Dep't of Commerce v. New York, 588 U.S. at 773 (quoting Motor Vehicle Mfrs. Assn., 463 U.S. at 43). Here, "[t]he Department has not provided a satisfactory explanation of the facts found or the choice made, much less a rational connection between the two." Am. Ass'n of Colleges for Tchr. Educ. v. McMahon, 2025 WL 833917, at *21. There is no evidence in the record that the Department engaged in any individualized assessment of EAC-South's programming or collected or considered any relevant data about EAC-South before terminating the grant. And the Department's use of a boilerplate letter that was issued to several other grant recipients further strengthens SEF's argument that there was no rational connection between the facts the Department found, if any, and the termination decision that it made. See Am. Ass'n of Colleges for Tchr. Educ. v. McMahon, 2025 WL 833917, at *21 (finding that an identical termination

letter "fail[ed] to provide Grant Recipients any workable, sensible, or meaningful reason or basis for the termination of their awards.").

The Court finds that the Department's Termination Letter provides no reasoned explanation for the grant termination. In fact, the Termination Letter's list of possible bases "is so broad and vague as to be limitless; devoid of import, even." Am. Ass'n of Colleges for Tchr. Educ. v. McMahon, 2025 WL 833917, at *21. For these reasons, the Court finds that SEF has shown a substantial likelihood of success on the merits of Count One. [9]

D. Equities and the Public Interest

The remaining preliminary injunction factors—the balance of the equities and assessment of the public interest—weigh in SEF's favor. These factors "merge when, as here, the Government is the opposing party.'" Singh v. Berger, 56 F.4th 88, 107 (D.C. Cir. 2022) (quoting Karem v. Trump, 960 F.3d 656, 668 (D.C. Cir. 2020)). "[C]ourts must balance the competing claims of injury and must consider the effect on each party of the granting or

[9] The arbitrary and capricious nature of the Department's termination decision is further illustrated by the Termination Letter's "appeal process." Despite providing no reasonable basis for terminating the EAC-South grant, the Termination Letter nonetheless states that if SEF "wish[es] to object or challenge [the Department's] termination decision, [SEF] must submit information and documentation supporting [its] position," including "a brief statement of [its] argument and the disputed factual, legal, or other issues." Compl. at Ex. D at 1. But absent an explanation of what exactly it did wrong, how could SEF have mounted a meaningful administrative appeal? See Am. Ass'n of Colleges, 2025 WL 833917, at *21 (faced with an identical termination letter, the court questioned: "[h]ow does one draft a 'brief statement' of a 'disputed' fact when one has no earthly idea what has been asserted, if anything?").

withholding of the requested relief[,] . . . pay[ing] particular regard for the public consequences" that would result in granting the relief sought. Winter, 555 U.S. at 24 (quotation marks omitted).

SEF has alleged economic and non-economic injuries that would occur absent immediate relief, and assert that an injunction would merely require the Department "to honor its existing legal obligations until the Court can properly review the merits of this case." Pl. Mot. at 32. SEF notes that "the Department has already appropriated and obligated funds for [EAC-South] through the current fiscal year, meaning no additional financial burden would be imposed on the government." Id. Defendants counter that the Department would be "harmed by a preliminary order to release remaining funds under the terminated grant" because it would "bear all the risk if the Court enters a preliminary injunction." Defs. Opp. at 22. Defendants also assert that public interest favors allowing the Department to end support for programs that are "inconsistent with its interpretation of 'the letter and purpose of'" civil rights laws. Id. at 21.

Defendants' arguments miss the mark. Under Winter, the Court must balance harms that may occur if an injunction is erroneously granted as opposed to denied. See Winter, 555 U.S. at 24. Defendants assert that they bear the risk of financial loss if the Court erroneously enters a preliminary injunction, but offer no evidence that SEF is unable to pay back grant monies released. As for defendants' public interest argument, any theoretical harms to members of the public who are opposed to EAC-South receiving grant funding do not outweigh the alleged concrete, irreparable harm in the form of programmatic closures and loss of funding that SEF has already experienced. And to the extent defendants assert an interest in ending financial support for programs that are "inconsistent" with their interpretation of federal civil rights laws, the Court finds that that they likely pursued an unlawful objective in an unlawful manner. See TikTok Inc. v. Trump, 490 F. Supp. 3d 73, 85 (D.D.C. 2020) ("[T]he government

'cannot suffer harm from an injunction that merely ends an unlawful practice or reads a statute as required.'") (quoting R.I.L-R v. Johnson, 80 F. Supp. 3d 164, 191 (D.D.C. 2015)); see also League of Women Voters v. Newby, 838 F.3d at 12 (holding that while "[t]here is generally no public interest in the perpetuation of unlawful agency action," "there is a substantial public interest 'in having governmental agencies abide by the federal laws that govern their existence and operation'") (quoting Washington v. Reno, 35 F.3d 1093, 1103 (6th Cir. 1994)).

The Court therefore concludes that the balance of the equities and assessment of the public interest weigh in favor of granting a preliminary injunction. Each of the preliminary injunction factors therefore weighs in favor of granting SEF's motion.

IV. SECURITY

Rule 65(c) of the Federal Rules of Civil Procedure provides that "[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the Court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." FED. R. CIV. P. 65(c). Here, defendants request that the Court require SEF "to post security in the amount of any taxpayer funds anticipated to be distributed during the pendency of the Court's order." Defs. Opp. at 22.

Courts have "broad discretion" in determining "the appropriate amount of an injunction bond, including the discretion to require no bond at all." Simms v. D.C., 872 F. Supp. 2d 90, 107 (D.D.C. 2012) (internal citation and quotation marks omitted). As the Court explained in Nat'l Treasury Emps. Union v. Trump, requiring a significant bond "would conflict with both the Court's findings that each of the preliminary injunction factors weigh heavily in [SEF's] favor and the principles of the right to seek judicial review of unlawful government action." Nat'l Treasury Emps. Union v. Trump, —— F.Supp.3d at ——, 2025 WL 1218044,

at *21. The Court, in its discretion, orders SEF to post a bond in the amount of $100 pursuant to Rule 65(c) of the Federal Rules of Civil Procedure.

V. CONCLUSION

For the foregoing reasons, SEF's Motion for a Preliminary Injunction/Temporary Restraining Order [Dkt. No. 11] is hereby GRANTED.

An Order consistent with this Opinion will issue this same day.

SO ORDERED.

Paul L. Friedman

PAUL L. FRIEDMAN
United States District Judge

DATE: 5/21/25