

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES, et al.

Defendants.

Case No. 1:25-cv-11048

**MEMORANDUM IN SUPPORT OF DEFENDANTS' CROSS-MOTION FOR
SUMMARY JUDGMENT AND OPPOSITION TO PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

TABLE OF CONTENTS

INTRODUCTION.....	1
BACKGROUND.....	5
I. Harvard’s failure to meaningfully address antisemitism on its campus.	5
II. The agencies terminate Harvard’s grants for no longer aligning with the Government’s policy against antisemitism.	10
LEGAL STANDARD	14
ARGUMENT	15
I. This Court lacks jurisdiction over Harvard’s claims to enforce its contracts.	15
A. Under the Tucker Act, contract claims against the federal government must be brought in the Court of Federal Claims.	15
B. Harvard cannot circumvent the Tucker Act by supplementing contract claims with constitutional or statutory claims.	18
1. Harvard bases its claims on rights that are contractual in nature.	19
2. The relief Harvard seeks is monetary.	25
II. Harvard has not sufficiently pleaded an <i>ultra vires</i> claim.	26
III. Harvard’s challenges to the Government’s Offer Letter and the Secretary McMahon Letter do not challenge final agency actions under the APA.	28
A. The Government’s Offer Letter is not final agency action.	29
B. The Secretary McMahon Letter is not final agency action.	31
IV. Harvard’s First Amendment claims fail.	32
A. Agencies would have terminated Harvard’s contracts regardless of the viewpoints Harvard reflected in the Rejection Letter and this lawsuit; and thus, such termination does not constitute unconstitutional retaliation.	32
B. The Government’s proposed conditions for waiving its termination rights do not violate the unconstitutional conditions doctrine.	37
V. Title VI does not govern grant terminations based on policy.	39
VI. The freeze orders and terminations do not violate the APA because they were reasonable exercises of the agencies’ authority to terminate for nonalignment with the Government’s antidiscrimination priorities.	45
A. The terminations were not arbitrary and capricious.	45
B. The agencies did not fail to consider important aspects of the problem or reliance interests before terminating funding.	48
VII. Under the APA, the appropriate remedy is limited to the agency action giving rise to the suit rather than a forward-looking injunction.	50
VIII. There is no ripe dispute as to Defendants Bondi and U.S. Department of Justice.	52
CONCLUSION	53

TABLE OF AUTHORITIES

Cases

<i>Adria Int’l Group, Inc. v. Ferré Dev. Inc.</i> , 241 F.3d 103 (1st Cir. 2001)	15
<i>Albrecht v. Comm. on Emp. Benefits of the Fed. Rsrv. Emp. Benefits Sys.</i> , 357 F.3d 62 (D.C. Cir. 2004)	18
<i>Am. Ass’n of Univ. Professors v. U.S. Dep’t of Justice</i> 25-cv-2429 (MKV) (S.D.N.Y. June 16, 2025)	3, 41
<i>Armstrong v. Exceptional Child Center, Inc.</i> , 575 U.S. 320 (2015)	27, 28
<i>Ashwander v. Tennessee Valley Auth.</i> , 297 U.S. 288 (1936)	52
<i>Bd. of Cnty. Comm’rs, Wabaunsee Cnty. v. Umbehr</i> , 518 U.S. 668 (1996)	32, 33, 37
<i>Bennett v. Spear</i> , 520 U.S. 154 (1997)	29, 30, 31
<i>Boaz Hous. Auth. v. United States</i> , 994 F.3d 1359 (Fed. Cir. 2021)	18, 23
<i>Bowen v. Michigan Acad. of Fam. Physicians</i> , 476 U.S. 667 (1986)	24
<i>Bowman Transp., Inc. v. Ark.-Best Freight Sys., Inc.</i> , 419 U.S. 281 (1974)	46, 48
<i>Burgos v. Milton</i> , 709 F.2d 1 (1st Cir. 1983)	18
<i>Burns v. Johnson</i> , 829 F.3d 1 (1st Cir. 2016)	15
<i>Califano v. Yamasaki</i> , 442 U.S. 682 (1979)	49
<i>California v. U.S. Dep’t of Educ.</i> , 132 F.4th 92 (1st Cir. 2025)	19, 22

<i>Cepero–Rivera v. Fagundo</i> , 414 F.3d 124 (1st Cir. 2005).....	33
<i>Citizens to Pres. Overton Park, Inc. v. Volpe</i> , 401 U.S. 402 (1971).....	45
<i>City of Dallas v. Stanglin</i> , 490 U.S. 19 (1989).....	35
<i>City of L.A. v. Shalala</i> , 192 F.3d (D.C. Cir. 1999).....	50
<i>Cochran v. Quest Software, Inc.</i> , 328 F.3d 1 (1st Cir. 2003).....	15
<i>Consol. Edison Co. of N.Y. v. U.S., Dep’t of Energy</i> , 247 F.3d 1378 (Fed. Cir. 2001).....	21, 25
<i>Crowley Gov’t Servs., Inc. v. GSA</i> , 38 F.4th 1099 (D.C. Cir. 2022).....	16, 25
<i>Dep’t of Com. v. New York</i> , 588 U.S. 752 (2019).....	45
<i>Dep’t of Educ. v. California</i> , 145 S. Ct. 966 (2025).....	<i>passim</i>
<i>Department of Homeland Security v. Regents of the University of California</i> , 591 U.S. 1 (2020).....	44, 48, 49
<i>Devillier v. Texas</i> , 601 U.S. 285 (2024).....	27
<i>Ethyl Corp. v. Browner</i> , 989 F.2d 522 (D.C. Cir. 1993).....	50
<i>FAA v. Cooper</i> , 566 U.S. 284 (2012).....	19, 21
<i>Falcone v. Dickstein</i> , 92 F.4th 193 (3d Cir. 2024)	35
<i>FCC v. Prometheus Radio Project</i> , 592 U.S. 414 (2021).....	45

<i>Fed. Exp. Corp. v. U.S. Dep’t of Com.</i> , 39 F.4th 756 (D.C. Cir. 2022).....	2, 26
<i>G.L. Christian & Assocs. v. United States</i> , 312 F.2d 418 (Ct. Cl. 1963).....	33
<i>Gartenberg v. Cooper Union for the Advancement of Sci. & Art</i> , 765 F. Supp. 3d 245 (S.D.N.Y. 2025), <i>reconsideration denied</i> , No. 24 CIV. 2669 (JPC), 2025 WL 602945 (S.D.N.Y. Feb. 25, 2025).....	34
<i>Genesis Healthcare Corp. v. Symczyk</i> , 569 U.S. 66 (2013).....	30
<i>Great-West Life & Annuity Ins. Co. v. Knudson</i> , 534 U.S. 204 (2002).....	22, 27, 28
<i>Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.</i> , 527 U.S. 308 (1999).....	27
<i>Guardians Ass’n v. Civil Serv. Comm’n of the City of N.Y.</i> , 463 U.S. 582 (1983).....	43
<i>Harmon v. Brucker</i> , 355 U.S. 579 (1958).....	52
<i>Holley v. United States</i> , 124 F.3d 1462 (Fed. Cir. 1997).....	24
<i>Kestenbaum v. President & Fellows of Harvard Coll.</i> , 743 F. Supp. 3d 297 (D. Mass. 2024).....	34
<i>Kidwell v. Dep’t of Army</i> , 56 F.3d 279 (D.C. Cir. 1995).....	17
<i>Koontz v. St. Johns River Water Mgmt. Dist.</i> , 570 U.S. 595 (2013).....	38
<i>Kreis v. Sec’y of the Air Force</i> , 866 F.2d 1508 (D.C. Cir. 1989).....	46
<i>Lincoln v. Vigil</i> , 508 U.S. 182 (1993).....	31
<i>Lorillard Tobacco Co. v. Reilly</i> , 533 U.S. 525 (2001).....	35

<i>Lovely v. FEC</i> , 307 F. Supp. 2d 294 (D. Mass. 2004)	4
<i>Lowe v. SEC</i> , 472 U.S. 181 (1985).....	35
<i>March v. Frey</i> , 458 F. Supp. 3d 16 (D. Me. 2020)	15
<i>Massachusetts v. Nat'l Insts. of Health</i> , No. 25-CV-10338, 2025 WL 702163 (D. Mass. Mar. 5, 2025).....	17
<i>Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak</i> , 567 U.S. 209 (2012).....	16
<i>Megapulse, Inc. v. Lewis</i> , 672 F.2d 959 (D.C. Cir. 1982)	18, 19
<i>Minneapolis & St. Louis R. Co. v. Columbus Rolling Mill</i> , 119 U.S. 149 (1886).....	30
<i>Modeski v. Summit Retail Sols., Inc.</i> , 470 F. Supp. 3d 93 (D. Mass. 2020)	44
<i>Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.</i> , 463 U.S. 29 (1983).....	45, 48
<i>Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle</i> , 429 U.S. 274 (1977).....	33
<i>Murray-Nolan v. Rubin</i> , 144 S. Ct. 2560 (2024).....	35
<i>Nat'l Foreign Trade Council v. Natsios</i> , 181 F.3d 38 (1st Cir. 1999).....	44
<i>Nat'l Park Hosp. Ass'n v. Dep't of Interior</i> , 538 U.S. 803 (2003).....	52
<i>New York v. Trump</i> , --- F. Supp. 3d --- , No. 25-cv-39, 2025 WL 715621 (D.R.I. Mar. 6, 2025)	51
<i>New York v. Trump</i> , 133 F.4th 51 (1st Cir. Mar. 26, 2025)	51

<i>Nicopure Labs, LLC v. FDA</i> , 944 F.3d 267 (D.C. Cir. 2019)	35
<i>Norton v. S. Utah Wilderness All.</i> , 542 U.S. 55 (2004)	29
<i>Nyunt v. Broad. Bd. of Governors</i> , 589 F.3d 445 (D.C. Cir. 2009)	26
<i>Oestereich v. Selective Serv. Sys. Loc. Bd. No. 11</i> , 393 U.S. 232 (1968)	2, 26
<i>Palisades Gen. Hosp. Inc. v. Leavitt</i> , 426 F.3d 400 (D.C. Cir. 2005)	50
<i>Peguero-Moronta v. Santiago</i> , 464 F.3d 29 (1st Cir. 2006)	33
<i>Peregrine Myanmar Ltd. v. Segal</i> , 89 F.3d 41 (2d Cir. 1996)	51
<i>Perry Capital LLC v. Mnuchin</i> , 864 F.3d 591 (D.C. Cir. 2017)	18
<i>Pickering v. Bd. of Ed. of Twp. High Sch. Dist. 205, Will Cnty.</i> , 391 U.S. 563 (1968)	32
<i>R.I. Dep’t of Env’t Mgmt. v. United States</i> , 304 F.3d 31 (1st Cir. 2002)	29
<i>REO Acquisition Grp. v. Fed Nat’l Mortgage Ass’n</i> , 104 F. Supp. 3d 22 (D.D.C. 2015)	30
<i>Rumsfeld v. F. for Acad. & Institutional Rts., Inc.</i> , (“FAIR”), 547 U.S. 47 (2006)	35
<i>Rust v. Sullivan</i> , 500 U.S. 173 (1991)	39
<i>Saxe v. State Coll. Area Sch. Dist.</i> , 240 F.3d 200 (3d Cir. 2001)	34
<i>Sharp v. Weinberger</i> , 798 F.2d 1521 (D.C. Cir. 1986)	25

<i>Spectrum Leasing Corp. v. United States</i> , 764 F.2d 891 (D.C. Cir. 1985)	21
<i>Stephens v. Cnty. of Albemarle</i> , No. 3:04CV00081, 2005 WL 3533428 (W.D. Va. Dec. 22, 2005)	38
<i>Suburban Mortg. Assocs., Inc. v. U.S. Dep’t of Hous. & Urb. Dev.</i> , 480 F.3d 1116 (Fed. Cir. 2007).....	17
<i>Sustainability Inst. v. Trump</i> , No. 25-1575, 2025 WL 1587100 (4th Cir. June 5, 2025).....	23
<i>Tucson Airport Auth. v. Gen. Dynamics Corp.</i> , 136 F.3d 641 (9th Cir. 1998)	21
<i>United States v. Mayendia-Blanco</i> , 905 F.3d 26 (1st Cir. 2018).....	26
<i>United States v. O’Brien</i> , 391 U.S. 367 (1968).....	35
<i>United States v. Tingey</i> , 30 U.S. (5 Pet.) 115 (1831)	40
<i>United States Conference of Catholic Bishops v. U.S. Dep’t of State</i> , 1:25-cv-00465, ---F. Supp. 3d ---, 2025 WL 763738 (D.D.C. 2025)	18, 25
<i>Up State Fed. Credit Union v. Walker</i> , 198 F.3d 372 (2d Cir. 1999).....	21
<i>Utah ex rel. Cox v. Env’t Prot. Agency</i> , No. 23-1157, 2025 WL 1354371 (D.C. Cir. May 2, 2025)	50
<i>Util. Solid Waste Activities Grp. v. Env’t Prot. Agency</i> , 901 F.3d 414 (D.C. Cir. 2018), judgment entered, 2018 WL 4158384 (D.C. Cir. Aug. 21, 2018)	50
<i>Van Drasek v. Lehman</i> , 762 F.2d 1065 (D.C. Cir. 1985)	23
<i>Volk v. United States</i> , 111 Fed. Cl. 313 (2013)	24
<i>Wells Real Estate Inv. Trust II, Inc. v. Chardon/Hato Rey P’ship, S.E.</i> , 615 F.3d 45 (1st Cir. 2010).....	15

<i>Woonasquatucket River Watershed Council v. U.S. Dep't of Agric.</i> , --- F. Supp. 3d ---, No. 1:25-CV-00097-MSM-PAS, 2025 WL 1116157 (D.R.I. Apr. 15, 2025).....	31, 44
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Constiutional Provisions

U.S. Const. art. 1, § 9, cl. 7	31
--------------------------------------	----

Statutes

5 U.S.C. § 551.....	28, 29
5 U.S.C. § 701.....	31
5 U.S.C. § 704.....	16, 28
28 U.S.C. § 1346.....	17
28 U.S.C. § 1491.....	16, 18, 39
37 U.S.C. § 204.....	24
42 U.S.C. § 2000d.....	41
42 U.S.C. § 2000d-1	40, 41, 51
42 U.S.C. § 2000d-2	<i>passim</i>

Rules

Fed. R. Civ. P. 56.....	14
Fed. R. Civ. P. 65.....	52

Regulations

2 C.F.R. § 1.105.....	42
2 C.F.R. § 200.211	39
2 C.F.R. § 200.300	39
2 C.F.R. § 200.340	<i>passim</i>
2 C.F.R. § 200.341	14, 44
2 C.F.R. § 200.342	14, 44, 45

2 C.F.R. § 200.343	14
28 C.F.R. § 42.107	42
28 C.F.R. § 42.108	42
28 C.F.R. §42.411	42
28 C.F.R. § 42.412	42
28 C.F.R. § 40.3	42
45 C.F.R. § 80.7	42
45 C.F.R. § 80.8	42
48 C.F.R. § 2.101	33
48 C.F.R. § 49.101	33
49 C.F.R. § 49.501	33
49 C.F.R. § 49.502	33
49 C.F.R. § 49.503	33
49 C.F.R. § 49.504	33
49 C.F.R. § 49.505	33
52 C.F.R. § 52.249-1	33
52 C.F.R. § 52.249-2	33
52 C.F.R. § 52.249-3	33
52 C.F.R. § 52.249-4	33
52 C.F.R. § 52.249-5	33
31 Fed. Reg. 5292 (Apr. 2, 1966)	41
89 Fed. Reg. 30046 (Apr. 22, 2024)	41
Exec. Order No. 14,188, 90 Fed. Reg. 8847 (Jan. 29, 2025)	10, 12

Federal Acquisition Regulation, Part 2.101	19
--	----

Other Authorities

Application to Vacate the Order Issued by U.S. Dist. Ct. for the Dist. of Mass. & Request for an Immediate Admin. Stay, <i>Dep't of Education v. California</i> , 145 S. Ct. 966 (No. 24A910), 2025 WL 945313 (Mar. 2025).....	22
Congressional Research Service, “Terminating Contracts for the Government’s Convenience: Answers to Frequently Asked Questions” (Dec. 18, 2015), https://www.everycrsreport.com/files/20151218_R43055_4eb3d254b321283211d130864b6a688c33852dc8.pdf	33
Harvard University, Final Report: Presidential Task Force on Combating Antisemitism and Anti-Israeli Bias (2025) (“Harvard Report”), https://www.harvard.edu/wp-content/uploads/2025/04/FINAL-Harvard-ASAIB-Report-4.29.25.pdf (“Harvard Report”).....	<i>passim</i>
National Center for Education Statistics, Fast Facts, https://nces.ed.gov/fastfacts/display.asp?id=73#:~:text=The%20five%20institutions%20with%20thePrinceton%20University%20(\$37%20billion)	1
Opposition to Vacate the Order Issued by U.S. Dist. Ct. for the Dist. of Mass. & Request for an Immediate Admin. Stay, <i>Dep't of Education v. California</i> , 145 S. Ct. 966 (No. 24A910), 2025 WL 945313 (Mar. 2025).....	22-23
Press Release, Civil Rights Division, Justice Department Announces Formation of Task Force to Combat Anti-Semitism (Feb. 3, 2025), https://www.justice.gov/opa/pr/justice-department-announces-formation-task-force-combat-anti-semitism	10
Press Release, U.S. Embassy in Israel, Anthony J. Blinken, Former Secretary of State On the Death of the Terrorist Yahya Sinwar (Oct. 17, 2023), https://il.usembassy.gov/antony-j-blinken-secretary-of-state-on-the-death-of-the-terrorist-yahya-sinwar/	5
Uniform Commercial Code § 3-601	42

INTRODUCTION

Harvard, the richest university in the history of world,¹ annually receives billions of dollars in taxpayer dollars from the federal government. As much as Harvard would like to receive these tax dollars with no strings attached, they are not charitable gratuities. Rather, the federal government grants funds to universities through contracts that include explicit conditions requiring the agreements effectuate the policy purposes of the federal government. If they fail to meet these conditions, the grants are subject to cancellation. It is the policy of the United States under the Trump Administration not to fund institutions that fail to adequately address antisemitism in their programs. Because of Harvard's acknowledged failures to address antisemitism, as Harvard itself detailed in a 311-page report, and following failed efforts to negotiate a resolution, the agencies exercised their authority, as set out in the text of Harvard's contracts, to cancel those agreements for no longer aligning with the Government's policy priorities.

Because Harvard only demands money, this Court lacks jurisdiction under the Tucker Act—which commits such suits to the exclusive jurisdiction of the Federal Court of Claims. At its core, Harvard's lawsuit contests whether agencies' terminations of Harvard's contract agreements were lawful, and Harvard seeks an order requiring the Court to reinstate those agreements and continue providing Harvard taxpayer funds pursuant to the terms of those now-cancelled contracts. But that is not a question this Court has jurisdiction to resolve. The Tucker Act of 1887 governs contract claims against the federal government, and it expressly reserves exclusive jurisdiction over claims for greater than \$10,000 to the United States Court of Federal Claims. The Court of Federal Claims' exclusive jurisdiction over these government contracts

¹ Harvard leads all universities with more than a \$50 billion endowment. National Center for Education Statistics, Fast Facts, [https://nces.ed.gov/fastfacts/display.asp?id=73#:~:text=The%20five%20institutions%20with%20the,Princeton%20University%20\(\\$37%20billion\)](https://nces.ed.gov/fastfacts/display.asp?id=73#:~:text=The%20five%20institutions%20with%20the,Princeton%20University%20($37%20billion)) (last visited Jun. 15, 2025).

cannot be circumvented by artfully pleading that the terminations were done in violation of federal statutes or the Constitution, as Harvard has attempted to do; otherwise, any aggrieved contractor could render the Tucker Act a nullity through artful pleading. Harvard is too clever by half. Indeed, the Supreme Court just recently rejected an identical argument, concluding that a challenge alleging that a party's contract was terminated in violation of statute and the Constitution was committed to the Tucker Act. *See Dep't of Educ. v. California*, 145 S. Ct. 966 (2025). This jurisdictional barrier disposes of this case.

Realizing its problems with a cause of action under the APA when the Tucker Act is the appropriate avenue, Harvard attempts a workaround. It raises free-standing constitutional and statutory *ultra vires* claims outside of the APA context. Harvard's claims that the grant terminations are *ultra vires* as violative of the First Amendment and Title VI fail because Harvard does not meet the "demanding standard" required for such claims, wherein the violation of law or the Constitution must be "plain on the record and on the face of the statute." *Fed. Exp. Corp. v. U.S. Dep't of Com.*, 39 F.4th 756, 765 (D.C. Cir. 2022) (alteration removed) (quoting *Ostereich v. Selective Serv. Sys. Loc. Bd. No. 11*, 393 U.S. 232, 238 n.7 (1968)). Additionally, since Harvard's claim of right is based on contract, their claims are actions at *law*—not *equity*—and are precluded by the Tucker Act. Harvard cannot vindicate its rights through freestanding *ultra vires* claims where Congress has provided an alternative means for it to do so. Title VI does not change the analysis, as it provides "judicial review as may otherwise be provided by law for similar action." 42 U.S.C. § 2000d-2. Here, the "law for similar action" is the Tucker Act, which directs review to the Court of Federal Claims.

Even if this court reaches the substance of Harvard's claims, however, those claims fail. *First*, Harvard focuses not upon the terminated contracts themselves, but upon the Joint Task

Force’s attempts in an April 11, 2025, letter (“Government’s Offer Letter”) to negotiate a resolution of its antisemitism concerns. ECF No. 59-1; EDHarvAR_00000003; HHSHarv_00000098; GSAHarv_00000007. Harvard asserts that terminating its contracts after the University rejected the Government’s settlement offer constitutes First Amendment retaliation, both as contrary to constitutional right under the Administrative Procedure Act and as a freestanding *ultra vires* claim. But a non-binding, opening offer that was quickly rebuffed is not a final agency action cognizable under the APA. Nor can the decision to terminate Harvard’s grants be properly characterized as retaliation for rejecting the terms offered in the Joint Task Force’s negotiating letter when the justification for the termination—Harvard’s failure to address antisemitism—was established well before the offer was ever made. The Government’s non-binding offer of conditions as part of a rejected settlement offer, moreover, do not constitute unconstitutional, viewpoint discriminatory conditions in violation of the First Amendment.

Second, Harvard tries to distinguish this case from a typical contracts case by reference to Title VI of the Civil Rights Act, which establishes enforcement procedures for revoking funding when a grantee has been found to violate *that* Act. But the agencies did not cancel their contracts with Harvard under their authority under Title VI; they did so pursuant to their authority under a bargained-for contract clause in each grant allowing cancellation for policy purposes. Here, that policy purpose is to not fund institutions that fail to address antisemitism. Nothing in Title VI forecloses agencies from negotiating terms into a contract that separately address harassment (and other policy concerns) and carry their own consequences. See *Am. Ass’n. Univ. Professors v. U.S. Dep’t of Justice*, 1:25-cv-02429-MKV, ECF No. 148 at 30 (June 16, 2025) (it is “unlikely that Title VI is the sole and exclusive ‘legal tool[]’ available to a President who instructs executive agencies to prioritize ‘combat[ting] anti-Semitism . . . on university and college campuses.’”).

Title VI is a floor, not a ceiling, and facts relevant to a Title VI claim may also provide a basis for a policy disagreement. Harvard's arguments to the contrary would severely handicap the protection of civil rights nationwide, contrary to congressional intent. Even if Title VI could distinguish this from a typical contracts case—and it does not—that statute still directs review to the Court of Federal Claims. 42 U.S.C. § 2000d-2.

Third, Harvard claims that the funding pause and grant terminations violate the APA as arbitrary and capricious, arguing that Defendants failed to consider important aspects of the decision to terminate funding and failed to consider Harvard's reliance interests on that funding. The Defendant agencies were not clearly erroneous in deciding to terminate Harvard's grants. As the record demonstrates, Harvard's grants were terminated due to, in the agencies' estimation, the inadequacy of the measures Harvard had implemented up to that point to address antisemitism. This factual assessment and the subsequent decision to terminate grants are entitled to this Court's deference. Moreover, the agencies considered the various factors relevant to their decisions, including the actions Harvard had taken to address antisemitism and the University's reliance on federal funding, even though Harvard admits that "[n]o university is entitled to funding." Mem. in Supp. of Pl.'s Mot. for Summ. J., ECF No. 70, at 45 ("Pl. MSJ Memo). The APA's deferential standard requires no more.

Finally, should the Court rule in Harvard's favor, the appropriate remedy in this matter is vacatur of the specific termination decisions only. It is well-established that vacatur is the favored remedy where an agency is found to have violated the APA. *Lovely v. FEC*, 307 F. Supp. 2d 294, 301 (D. Mass. 2004). This Court should therefore reject Harvard's arguments to forever prohibit agencies from taking "any similar action," Pl. MSJ Mot. at 17, as such a prospective remedy

precluding the agencies from correcting any errors this Court may identify is not consistent with the APA.

BACKGROUND

I. Harvard’s failure to meaningfully address antisemitism on its campus.

On October 7, 2023, Hamas, a designated foreign terrorist organization, launched a surprise attack on the State of Israel that resulted in the brutal slaughter of more than a thousand innocent Israeli citizens as well as the taking of more than two-hundred hostages. Then-Secretary of State Antony J. Blinken described the day as “the largest massacre of Jews since the Holocaust.” *See* Press Release, U.S. Embassy in Israel, Anthony J. Blinken, Former Secretary of State On the Death of the Terrorist Yahya Sinwar (Oct. 17, 2023), <https://il.usembassy.gov/antony-j-blinken-secretary-of-state-on-the-death-of-the-terrorist-yahya-sinwar/>. Israel immediately declared war on Hamas, and the ongoing conflict has resulted in a significant loss of Palestinian lives, sparking waves of protests against the war across the world and, most notably, on college campuses across the United States.

On many campuses, including Harvard, student and faculty activism devolved into anti-Jewish and anti-Israeli harassment and even outright condonation of Hamas and the October 7 attack. As Harvard’s own report on antisemitism puts it,

for some protestors, at times the anti-Zionism enunciated in the student protests crossed a line . . . [in]to a stereotyped notion: that Israel is not a state, but rather a ‘settler colony’ of white Europeans who have no real connection with the land they had stolen, that epitomized aggression, and was bereft of virtues. This view had support among segments of Harvard’s faculty, staff, and students . . . It can also be found in some Harvard curricula and study abroad programs.

Harvard University, Final Report: Presidential Task Force on Combating Antisemitism and Anti-Israeli Bias 8 (2025) (“Harvard Report”), <https://www.harvard.edu/wp-content/uploads/2025/04/FINAL-Harvard-ASAIB-Report-4.29.25.pdf>. As Harvard documented,

this antisemitism has made many Jewish students feel unwelcome and unsafe in the Harvard community. *See id.* at 7 (“Many Jews at Harvard felt this vulnerability with a particular intensity.”). This is unsurprising, given that

Jewish students were informed by peers, teaching fellows, and in some cases, faculty, that they were associated with something offensive, and, in some cases, that their very presence was an offense. Many Jewish Harvard affiliates were routinely asked to clarify that they were “one of the good ones” by denouncing the State of Israel and renouncing any attachment to it.

Id. at 5. This has led some Jewish students to feel the need “to hide their identities on campus[.]”

Id. at 8.

The consequences of antisemitism have severely interfered with Jewish students’ ability to obtain a Harvard education, leading some to “turn[] down offers of admission at Harvard Schools.”

Id. at 9. Other students in the midst of obtaining PhDs have “decided to leave for private industry because of the perception and experience of academia being unfriendly to Jews. Some . . . Jewish candidates turned down post-doctoral fellowships at Harvard . . . [and] Jewish medical school students . . . shied away from residencies at Harvard’s hospitals[.]” *Id.*

Unfortunately, as the University documented, this Jewish withdrawal from student life at Harvard is the result of a concerted “strategy” by “student activists to drive Israeli students (and Jewish students who feel connected to Israel) out of student life [through] . . . ‘shunning.’” *Id.* at 18. Jewish students express “great difficulties participating in student organizational and club life,” and have shared “alarming stories of people walking away from them mid-conversation as soon as it came up that they were from, for instance, Tel Aviv.” *Id.* In addition, they report experiencing, “verbal abuse, intimidation, and bullying.” *Id.* at 25.

Pro-Palestine activists

disrupt[ed] classes in Harvard Yard . . . defac[ed] [] hostage posters around campus with antisemitic slogans . . . and . . . post[ed] a classic antisemitic cartoon on social media . . .

[that was] reshar[ed] [] by Harvard Faculty and Staff for Justice in Palestine - ke[eping] many Jewish students on edge.

Id. In the spring semester, they set up an “encampment” that purported to show solidarity with Palestine, which made Jewish students “feel[] uncomfortable walking near” and some even experienced being followed and verbally harassed. *Id.* at 114. “Several Jewish first-year students residing near the encampment expressed distress over its proximity, noise level, and the nature of the chants.” *Id.* Protestors led antisemitic chants calling for violence against Jews, such as “Long live Palestine; long live the intifada; intifada, intifada; globalize the intifada[,]” “From the river to the sea, Palestine will be free,” and “more explicit variations of the [same] slogan were employed that substituted the word ‘Arab’ for ‘free.’” *Id.* at 110. There were also “instances of vandalism on campus and the posting of swastika stickers near Harvard Hillel’s Rosovsky Hall.” *Id.* at 26.

The antisemitic climate cannot be pinned upon student activists alone, however. Indeed—again, as Harvard itself acknowledged—blame also falls upon Harvard faculty and administrators who frequently dismissed Jewish students’ concerns or even actively engaged in antisemitic activities. *See id.* at 12. The report described certain “Harvard Schools, departments, institutes, centers, and instructors . . . as promoting or tolerating anti-Israeli critiques that blend into animosity towards Jews.” *Id.* at 27. Furthermore, “[o]stracism of many Zionist and Israeli students [] adversely affected their participation in both classroom and co-curricular settings.” *Id.* at 28.

With respect to faculty and classroom instruction, “[p]oliticization of instruction or academic settings . . . effectively made a specific view on the Israel-Hamas conflict a litmus test for full classroom participation and ended up disparately impacting many Jewish and Israeli students.” *Id.* Certain “Harvard Schools, departments, centers, and instructors” were described as “promoting or tolerating anti-Israeli critique that they felt was problematic and, in some cases

blurred into animosity towards Jews.” *Id.* at 122. Jewish students also raised concerns about “specific faculty and teaching fellows” who

“gave time at the end of class for students to promote various solidarity groups, including the Palestine Solidarity Committee (PSC)” or “ended class early on the day of a protest, which seemed like an encouragement to join the protest.” Some students complained of “one-sided syllabi” concerning the Israeli-Palestinian conflict and expressed apprehension about taking courses from instructors who had signed pro-Palestinian statements. . . . The antisemitic cartoon . . . was a particular source of anxiety for some students due to its reposting by the organization Harvard Faculty and Staff for Justice in Palestine.

Id. at 126-127.

With respect to the response from administration, students complained that it was “unclear and unconscionably slow.” *Id.* at 27. There were “widespread perceptions that anti-Israeli and anti-Jewish expression are tolerated in a way that hostile rhetoric towards other groups would not be; that . . . Harvard’s offices for Equity, Diversity, Inclusion, and Belonging have not taken antisemitism seriously; and that discipline . . . [for] engag[ing] in bullying, harassment, and intimidation has been lax.” *Id.* Harvard’s Report highlights the experience of one student who “expressed frustration with the administrative response [and] not[ed] that after they brought this to administrators’ attention eight times, ‘their response was that slogans and chants can mean different things to different people. I wonder if they would ever say the same to a member of another minority group.’” *Id.* at 127.

The administration also failed to ensure proper safeguards at its Commencement Week events, which effectively provided a platform to “two controversial Commencement Week addresses (one at Commencement itself) whose remarks appeared to engage with antisemitic themes.” *Id.* at 25. Even after the end of the tumultuous academic year, “[c]ontroversies about student discipline continued into the summer. In July, administrative boards at the College and various Schools eliminated or reduced penalties that they had imposed on undergraduate and

graduate students in connection with various protests and related events of the previous year, and in the same month the Harvard Corporation conferred degrees on 11 of the 13 seniors whose degrees had been withheld.” *Id.* The Report found that “Harvard’s response to the spring encampment protests fueled perceptions of inconsistency and a lack of transparency in its disciplinary processes, with some Schools declining to impose sanctions while others faced internal disagreements and reversals.” *Id.* at 117. Additionally,

A widespread sentiment emerged that anti-Israeli and anti-Jewish expression was tolerated to a greater degree than similar hostility toward other minority groups, such as Black or LGBTQ+ students. Numerous participants did not perceive Harvard’s offices for Equity, Diversity, Inclusion, and Belonging (EDIB) as adequately addressing antisemitism or considering it a serious form of bias within their purview.

Id. at 122.

The impact on Jewish students has been devastating.

Among Jewish students, substantial numbers reported having the following feelings to at least some extent:

- Not at home at Harvard (39%).
- Physically unsafe (26%).
- Mentally unsafe (44%).
- Unsupported in their well-being at Harvard (49%).
- Uncomfortable expressing their beliefs or opinions to people “whose political views may be in conflict with mine and/or go against my sense of identity/nationality (46%).

Id. at 26-27.

“Jewish students were twice as likely as their non-Jewish, non-Muslim peers to feel unwelcome and unsafe at Harvard.” *Id.* at 27. “Almost 60% of Jewish students reported experiencing ‘discrimination, stereotyping, or negative bias on campus due to [their] views on current events,’ and only 25% believed that there was no ‘academic or professional penalty’ at Harvard for expressing their views. *Id.* “Substantial numbers of Jewish students feel that since October 7th they have lived in an increasingly hostile atmosphere in their residences, classes,

organizations, and clubs, as well as in the public spaces of Harvard Yard and the Science Center Plaza.” *Id.*

II. The agencies terminate Harvard’s grants for no longer aligning with the Government’s policy against antisemitism.

Harvard receives more than \$8.7 billion from the federal government in the form of multi-year grant agreements and contract awards. *See* GSAHarv_00000003-4. Each of these contracts contains a provision restating or incorporating by reference 2 C.F.R. § 200.340, which states, “[t]he Federal award may be terminated in part or its entirety . . . [b]y the Federal agency or pass-through entity 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.” 2 C.F.R. § 200.340(a); *see, e.g.*, HSHarv_00000511; NASA-AR00 895; NSF_Harvard000022.

When President Trump took office, he issued an Executive Order announcing, “It shall be the *policy* of the United States to combat anti-Semitism vigorously, using all available and appropriate legal tools, to prosecute, remove, or otherwise hold to account the perpetrators of unlawful anti-Semitic harassment and violence.” Exec. Order No. 14,188, *Additional Measures to Combat Anti-Semitism*, 90 Fed. Reg. 8847, 8847 (Jan. 29, 2025) (emphasis added). Days later, the Administration announced the creation of a Joint Task Force to Combat Antisemitism (“Joint Task Force”), which stated that its “first priority will be to root out anti-Semitic harassment in schools and on college campuses.” *See* Press Release, Civil Rights Division, Justice Department Announces Formation of Task Force to Combat Anti-Semitism (Feb. 3, 2025), <https://www.justice.gov/opa/pr/justice-department-announces-formation-task-force-combat-anti-semitism>.

On February 28, 2025, the Joint Task Force announced it would be visiting 10 universities, including Harvard, to investigate “allegations that the schools may have failed to protect Jewish

students and faculty members from unlawful discrimination” and “consider[] whether remedial action is warranted.” HHSHarv_00000003. Following the visit, on March 31, the Department of Education (“ED”), the Department of Health and Human Services (“HHS”), and the General Services Administration (“GSA”), all of which are represented on the Joint Task Force, announced “a comprehensive review of federal contracts and grants at Harvard University and its affiliates.” HHSHarv_00000007. The announcement added that “The Task Force remains committed to awarding federal funds responsibly and holding institutions accountable for taking decisive action against anti-Semitic harassment.” HHSHarv_00000008. The same day, GSA sent a letter to Harvard informing it that “GSA is leading a Task Force comprehensive review of Federal contracts with certain institutions of higher education that are being investigated for potential infractions and dereliction of duties to curb or combat anti-Semitic harassment, including Harvard.” GSAHarv_00000003.

Later that week, on April 3, HHS’s Acting General Counsel, a member of the Joint Task Force, met with representatives from Harvard to attempt to negotiate a resolution of the Joint Task Force’s concerns that its agreements with Harvard no longer aligned with the Government’s priorities and that Harvard may be engaging in unlawful discrimination. *See* HHSHarv_00005230. The Joint Task Force shared its desires to see Harvard implement disciplinary reform, student group accountability, governance reforms, a “[l]egacy of antisemitism initiative,” and other changes. *See* HHSHarv_00005233-5235. The same day, the Joint Task Force sent a letter to Harvard, as “follow up to the March 31, 2025, letter,” conveying much of the same information discussed at the meeting and “outlin[ing] immediate next steps that we [the Joint Task Force] regard as necessary for Harvard University’s continued financial relationship with the United States government.” GSAHarv_00000005.

On April 11, the Joint Task Force sent another letter to Harvard that “incorporate[d] and supersede[d] the terms of the federal government’s prior letter of April 3, 2025.” Government’s Offer Letter, GSAHarv_00000007. The letter offered modified terms that, if met, then agencies would agree not to exercise their termination rights under Harvard’s contracts. *See id.* It stated, “If acceptable to Harvard, this document will constitute an agreement in principle, which the parties will work in good faith to translate into a more thorough, binding settlement agreement.” Government’s Offer Letter at 1. On April 14, Harvard sent a reply letter (“Harvard’s Rejection Letter”) squarely rejecting the terms of the Government’s Offer Letter. HHSHarv_0000104-105. It stated, “Harvard will not accept the government’s terms as an agreement in principle.” Harvard’s Rejection Letter at 2.

Upon receiving Harvard’s Rejection Letter, the Joint Task Force issued a press release stating, “The Joint Task Force to combat anti-Semitism is announcing a freeze on \$2.2 billion in multiyear grants and \$60M in multi-year contract value to Harvard University.” HHSHarv_0000010. This failure to agree and subsequent announcement prompted the Defendant agencies to begin taking steps to freeze and eventually terminate their agreements with Harvard. *See, e.g.*, HHSHarv_0000110; NSF_Harvard000001-37. This included efforts by the agencies to compile data on every funding agreement subject to possible termination. *See* GSAHarv_00000041-118.

On May 5, 2025, Education Secretary Linda McMahon sent another letter to Harvard (“Secretary McMahon Letter”) that echoed the Government’s Offer Letter and expressed disappointment with Harvard for its failure to adequately address discrimination in its programs. *See* EDHarvAR_0000008 (remarking that Harvard had become an “incubator[] of discrimination that encourage[s] resentment and instill[s] grievance[s] and racism into our wonderful young

Americans.”). She offered her perspective that Harvard should no longer bother seeking federal grant funding, as none would be provided to an institution that acted contrary to the Government’s priorities. *See* Secretary McMahon Letter at 2.

On May 6, NIH Director of Policy for Extramural Research Administration, Michelle Bulls, sent a letter to Harvard (the “NIH Letter”) providing notice that a list of NIH-funded projects would be terminated pursuant to the NIH Grants Policy Statement and 2 C.F.R. § 200.340(a)(4). NIHHarv_00000473-5. This letter confirmed that the listed grants were being terminated for a number of reasons, including that they no longer effectuated agency priorities; NIH’s policy that grant funding should only support institutions that comply with principles of nondiscrimination; that Harvard continues to discriminate on the basis of race in certain of its practices and programs; and that recent events indicated that antisemitism was continuing to persist on Harvard’s campus; about which Harvard had exhibited a “lack of concern for the safety and wellbeing of Jewish students” and “inaction in the face of repeated and severe harassment of Jewish students.” *Id.* The NIH Letter also cited the Harvard Presidential Task Force on Combating Antisemitism and Anti-Israeli Bias report on Harvard’s response to antisemitic conduct on its campus during the 2023-2024 academic year. *Id.*

On May 8, the National Aeronautics and Space Administration (NASA) began working on a request from GSA to compile information on NASA’s existing grants with Harvard. GSAHarv_00000019-40. NASA identified twenty-one existing grants and determined that it would terminate five of them. GSAHarv_00000134. On May 9, NASA Administrative Grant Officer, Rachael Down, issued a notice of termination to Harvard listing the five grants that were being terminated. NASA-AR03748-50. This notice informed Harvard that NASA continuously reviews its grants for alignment with Administration policy and for opportunities to reduce

spending, and that these five grants were “not mission essential or needed . . . to support mission activities,” and, thus, no longer effectuated NASA’s program goals or agency policies. *Id.*; *see also* NASA-AR03682 (NASA’s terminations were based on “mission impacts”). On May 12, the Department of Education, through its Office of Planning, Evaluation and Policy Development, sent a letter to Harvard notifying it that it was terminating a single award pursuant to 2 C.F.R. § 200.340-43. EDHarvAR_0001735-36. In doing so, the Department of Education cited ongoing racial discrimination in certain of its practices and programs and concerns involving the persistence of antisemitism on Harvard’s campus. *Id.* The letter also cited the findings of the report published by the Harvard Presidential Task Force on Combating Antisemitism and Anti-Israeli Bias. *Id.*

On May 13, the Joint Task Force issued a press release in support of each of the agencies that acted to terminate funding to Harvard in response to Administration policy. *See* GSAHarv_00000014-15. The press release confirmed that this “multi-agency move” was aimed at “eradicating discrimination on Harvard’s campus” and was a result of Harvard’s “repeated[] fail[ure] to confront the pervasive race discrimination and anti-Semitic harassment plaguing its campus.” *Id.* The press release also relied on Harvard’s own report on antisemitism and its response thereto, which found that Jewish students had been subject to continued acts of discrimination with “no meaningful response from Harvard’s leadership.” *Id.* As of the date of this filing, the grants administered by components of the Department of Justice have not been frozen or terminated. *See* Henneberg Decl. ¶ 3; Jamison Decl. ¶ 3; Lorah Decl. ¶ 3.²

LEGAL STANDARD

Summary judgment is properly granted where “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.

² These declarations certify the administrative record and will be provided alongside it to the Court.

Civ. P. 56(a). On a motion for summary judgment, courts must construe the record in the light most favorable to the non-movant and resolve all reasonable inferences in the non-movant's favor. *Burns v. Johnson*, 829 F.3d 1, 8 (1st Cir. 2016).

“Cross-motions for summary judgment do not alter the summary judgment standard, but instead simply ‘require [the Court] to determine whether either of the parties deserves judgment as a matter of law on the facts that are not disputed.’” *Wells Real Estate Inv. Trust II, Inc. v. Chardon/Hato Rey P’ship, S.E.*, 615 F.3d 45, 51 (1st Cir. 2010) (quoting *Adria Int’l Group, Inc. v. Ferré Dev. Inc.*, 241 F.3d 103, 107 (1st Cir. 2001)). However, “each motion should not be considered in a vacuum. Rather, a district court ordinarily should consider the motions ‘at the same time, applying the same standards to each motion.’” *March v. Frey*, 458 F. Supp. 3d 16, 30 (D. Me. 2020) (quoting *Wells Real Estate*, 615 F.3d at 51); *see also Cochran v. Quest Software, Inc.*, 328 F.3d 1, 6 (1st Cir. 2003) (explaining that the summary judgment standard is “not altered by the presence of cross-motions for summary judgment” because the court considers distinctly each motion and draws inferences against each movant in turn).

ARGUMENT

I. This Court lacks jurisdiction over Harvard’s claims to enforce its contracts.

A. Under the Tucker Act, contract claims against the federal government must be brought in the Court of Federal Claims.

This case is about money. Harvard argues it is entitled to the payment of billions of dollars pursuant to now-terminated grant agreements and contract awards. In challenging those terminations, Harvard seeks an order to enforce agencies’ contractual obligations to pay. Specifically, Harvard seeks the vacatur of agency decisions to freeze or terminate grant funding and an injunction preventing government officials from “issuing any other termination, freezing of funds, stop work orders, or withholding of payment on existing grants or other federal funding.”

See Proposed Order, ECF No. 69-1. While Harvard asserts that these freeze or termination decisions violate the APA or the Constitution, its relief is premised on—and ultimately seeks to enforce—existing contracts with the United States. In short, Harvard asks for specific performance of contractual agreements.

Those essential facts—that Harvard is seeking to enforce contractual rights and is seeking contractual remedies—triggers jurisdiction in the Court of Federal Claims under the Tucker Act. Review under the APA is meant as a fallback option when a plaintiff seeks to challenge “final agency action *for which there is no other adequate remedy in a court . . .*” 5 U.S.C. § 704 (emphasis added). Where a party seeks funding that it believes the government is obligated to pay pursuant to a contract or grant, however, the Tucker Act already affords an adequate remedy in a court, therefore judicial review is not available under the APA in such circumstances. The Tucker Act provides that the “United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded” on “any express or implied contract with the United States.” 28 U.S.C. § 1491(a)(1). And the Tucker Act’s jurisdiction, and its waiver of sovereign immunity for monetary relief, is exclusive.

The federal government is also generally “immune from suit in federal court absent a clear and unequivocal waiver of sovereign immunity.” *Crowley Gov’t Servs., Inc. v. GSA*, 38 F.4th 1099, 1105 (D.C. Cir. 2022). Although the APA provides “a limited waiver of sovereign immunity for claims against the United States” seeking non-monetary relief, *id.*, that waiver does not apply “if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought,” *Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians v. Patchak*, 567 U.S. 209, 215 (2012) (citation omitted); *Dep’t of Educ. v. California*, 145 S. Ct. at 968. That carve-out “prevents plaintiffs from exploiting the APA’s waiver to evade limitations on suit contained in other

statutes.” *Match-E-Be-Nash-She-Wish Band*, 567 U.S. at 215. Moreover, Congress has by statute explicitly forbidden district court jurisdiction for such contractual claims. 28 U.S.C. § 1346(a)(2) (“[T]he district courts shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States [unless it is for less than \$10,000].”). In sum, by statute and by virtue of the United States’ sovereign immunity, if this action is founded upon a contract with the United States, this Court must dismiss for lack of jurisdiction.

While the “jurisdictional boundary between the Tucker Act and the Administrative Procedure Act” is not always clear, when a plaintiff tries to “frame [a] suit as one for declaratory or injunctive relief, this kind of litigation should be understood for what it is. At bottom it is a suit for money for which the Court of Federal Claims can provide an adequate remedy, and it therefore belongs in that court.” *Suburban Mortg. Assocs., Inc. v. U.S. Dep’t of Hous. & Urb. Dev.*, 480 F.3d 1116, 1117-18 (Fed. Cir. 2007). “By clarifying that [5 U.S.C.] § 702’s waiver of sovereign immunity applied only to actions seeking relief other than money damages and where there is no other adequate remedy in a court, Congress sought to pull together the patchwork of various statutory waivers of federal sovereign immunity into one coherent scheme.” *Massachusetts v. Nat’l Insts. of Health*, No. 25-CV-10338, 2025 WL 702163, *5 (D. Mass. Mar. 5, 2025), *appeal docketed*, No. 25-1343 (1st Cir. Apr. 9, 2025) (internal quotations and citations omitted). Thus, the APA and Tucker Act waivers work in concert where a plaintiff seeks a monetary remedy for alleged harm by a federal agency action in violation of the APA.

Harvard, to be sure, alleges constitutional and statutory violations as the reason why their contract terminations were allegedly unlawful. But that is of no moment. Courts must look to the claims’ “substance, not merely [their] form.” *Kidwell v. Dep’t of Army*, 56 F.3d 279, 284 (D.C.

Cir. 1995). Thus, regardless of how a claim is styled, a district court lacks jurisdiction if a case “is in ‘its essence’ contractual.” *Perry Capital LLC v. Mnuchin*, 864 F.3d 591, 619 (D.C. Cir. 2017) (quoting *Megapulse, Inc. v. Lewis*, 672 F.2d 959, 967 (D.C. Cir. 1982)); see also *Albrecht v. Comm. on Emp. Benefits of the Fed. Rsrv. Emp. Benefits Sys.*, 357 F.3d 62, 68 (D.C. Cir. 2004). Harvard cannot escape the Tucker Act’s jurisdictional bar by formulating its contract claims as APA claims. See *California*, 145 S. Ct. at 968 (“[T]he APA’s limited waiver of immunity does not extend to orders to enforce a contractual obligation to pay money Instead, the Tucker Act grants the Court of Federal Claims jurisdiction over suits based on ‘any express or implied contract with the United States.’ 28 U.S.C. § 1491(a)(1).”); see also *Burgos v. Milton*, 709 F.2d 1, 3 (1st Cir. 1983) (holding that the Tucker Act, and not the APA, applies where a plaintiff argues that “the government violated its bargain with him.”). This prohibition extends to claims founded on grants, like those at issue here, that are implemented through “contracts to set the terms of and receive commitments from recipients.” *Boaz Hous. Auth. v. United States*, 994 F.3d 1359, 1368 (Fed. Cir. 2021). The proper recourse for asserted violations of these grant agreements is a “suit in the Claims Court for damages relating to [the] alleged breach.” *Id.*

B. Harvard cannot circumvent the Tucker Act by supplementing contract claims with constitutional or statutory claims.

Harvard’s claims, and the relief requested, are of the type over which the Tucker Act has granted the Court of Federal Claims exclusive jurisdiction. See 28 U.S.C. § 1491(a).

“[T]he party invoking a federal court’s jurisdiction has the burden of proving it. Federal courts start from the presumption that they lack such jurisdiction.” *United States Conference of Catholic Bishops v. U.S. Dep’t of State*, 1:25-cv-00465, ---F. Supp. 3d ---, 2025 WL 763738, at *3 (D.D.C. 2025) (citation omitted). The Supreme Court has “said on many occasions that a waiver of sovereign immunity must be ‘unequivocally expressed’ in statutory text Any ambiguities in

the statutory language are to be construed in favor of immunity, so that the Government’s consent to be sued is never enlarged beyond what a fair reading of the text requires.” *FAA v. Cooper*, 566 U.S. 284, 290 (2012) (citation omitted). Thus, if there is ambiguity over whether the Government consented to suit only in the Court of Federal Claims and not elsewhere, the statutory text must be construed narrowly to only waive sovereign immunity in the court Congress specified.

Courts apply a straightforward test, followed in this Circuit, for determining whether a claim falls within the exclusive Tucker Act jurisdiction of the Court of Federal Claims. “The classification of a particular action as one which is or is not ‘at its essence’ a contract action depends both on [1] the source of the rights upon which the Harvard bases its claims, and upon [2] the type of relief sought (or appropriate).” *Megapulse*, 672 F.2d at 968; *see also California v. U.S. Dep’t of Educ.*, 132 F.4th 92, 96-97 (1st Cir. 2025) (following and applying the Tucker Act analysis in *Megapulse*). Here, both factors support a finding that the Court lacks jurisdiction over what are essentially claims that lie in contract: (1) the source of Harvard’s right to funds previously awarded are grant and contract agreements, and (2) the relief sought in this case amounts to the remaining, undisbursed value of those agreements.

1. Harvard bases its claims on rights that are contractual in nature.

The source of Harvard’s right to each grant that Harvard claims was unlawfully frozen or terminated is found in each original grant and contract³ agreement between Harvard and the federal agency from which it was awarded.

³ With respect to contracts for procurement and services, there is no question that such contracts are contractual in nature. *See* Federal Acquisition Regulation, Part 2.101 (governing “acquisitions,” which are defined as “the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated.”).

First, the source of the rights Harvard asserts are the grant agreements themselves. Specifically, Harvard challenges the termination of grants under a variety of legal theories, but all ultimately stem from contracts without which no claims would exist. Harvard acknowledges in its Amended Complaint that what it is alleging the agencies have done is terminate funding “agreements,” attendant to each of which is a series of terms and conditions with which Harvard must comply. *See* Pl. Am. Compl., ¶ 15, ECF No. 59 (“By accepting federal funds, Harvard agreed to abide by the provisions in Title VI and the relevant agencies’ corresponding regulations.”); ¶ 122 (“Defendants subjected Harvard to adverse action by freezing \$2.2 billion in multi-year grants and \$60 million in multi-year contracts previously awarded to Harvard.”); ¶ 137 (“Defendants’ actions . . . terminating funding agreements”).

Indeed, the grant agreements that Harvard seeks to enforce are contractual agreements replete with the unmistakable hallmarks of bilateral exchanges. For example:

- “This award is based on the application submitted to, and as approved by, NIH on the above-titled project and is subject to the terms and conditions incorporated either directly or by reference...” HSHHarv_00000511.
- “Acceptance of this award, including the ‘Terms and Conditions,’ is acknowledged by the recipient when funds are drawn down or otherwise requested from the grant payment system.” *See, e.g.,* HSHHarv_00000509-10;
- “A recipient indicates acceptance of this award and its associated terms and conditions by drawing or requesting funds from the designated NASA payment system or office.” *See, e.g.,* NASA-AR00857, NASA-AR00860.
- “By signing this application...[Applicant] provide[s] the required assurances * and agree[s] to comply with any resulting terms if [Applicant] accept[s] an award.” EDHarvAR_0001235.

Underlying each grant termination that Harvard challenges is (1) an application, *i.e.*, offer, to conduct research, perform a particular study, develop a particular technology, or conduct some other activity and (2) an acceptance by the Government, once it has determined that the activity

proposed in the application serves the Government's interest. The payment of a grant award comes with it a series of terms and conditions that allow the Government to exercise some degree of oversight over the awardee and ensure stewardship of taxpayer dollars.⁴ Absent the Defendant agencies' decisions to award grants to Harvard, Harvard would have no rights to the terminated federal awards they challenge here.

Because the Defendants' obligation is in the first instance dependent on the contract, these claims are "contractually-based," and therefore this Court "lacks jurisdiction under the Tucker Act." *Tucson Airport Auth. v. Gen. Dynamics Corp.*, 136 F.3d 641, 647 (9th Cir. 1998) (concluding that district court lacked jurisdiction under the Tucker Act over constitutional claims where the right is based upon the contractual agreement). In other words, "it is likely that no cause of action would exist at all," in the absence of the contracts. *Up State Fed. Credit Union v. Walker*, 198 F.3d 372, 377 (2d Cir. 1999) (citation omitted). That Harvard's claims could not "exist[] prior to and apart from rights created under the [agreements]" weighs sharply against district court jurisdiction. *Spectrum Leasing Corp. v. United States*, 764 F.2d 891, 894 (D.C. Cir. 1985); *see also Consol. Edison Co. of N.Y. v. U.S., Dep't of Energy*, 247 F.3d 1378, 1385-86 (Fed. Cir. 2001) (directing court to transfer case asserting constitutional, including due process, claims to the Court of Federal Claims in a case sounding in contract). This is especially so in light of courts' mandate to read waivers of sovereign immunity narrowly. *See Cooper*, 566 U.S. at 290.

⁴ The maintenance of an extensive suite of federally-funded research programs at Harvard is part of the bargained-for benefit that Harvard, as an institution, receives in return for its delivery of goods or services pursuant to grant agreements because "[f]ederal research grants support Harvard's ability to recruit and retain faculty, maintain labs, and support graduate students and other researchers." Decl. of John Shaw ¶ 4, ECF No. 72.

The conclusion that Harvard is seeking to enforce contractual agreements, regardless of the framing of their claim, accords with recent Supreme Court instruction. The Court recently granted a stay of an order to make payments based on certain grant agreements, concluding that the government was likely to succeed in showing that the district court “lacked jurisdiction to order the payment of money under the APA.” *California*, 145 S. Ct. at 968. That reasoning, which applies with full force here, required a finding that grant terminations were essentially contract actions. In *California*, a number of states challenged the Department of Education’s termination of various education-related grants for “discriminatory practices—including in the form of DEI” as violative of the APA. Application to Vacate the Order Issued by U.S. Dist. Ct. for the Dist. of Mass. & Request for an Immediate Admin. Stay at *5, *California*, 145 S. Ct. 966 (No. 24A910), 2025 WL 945313 (Mar. 2025) (quotation omitted). The district court temporarily enjoined the grant terminations, and the district court and the First Circuit denied motions to stay that injunction. See *California*, 132 F.4th at 101. The Supreme Court, however, concluded that the lower court likely lacked jurisdiction because the remedy sought was ultimately an order to “enforce [the Government’s] contractual obligation to pay money.” *Id.* at 968. (quoting *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 212 (2002)). The contracts at issue in *California* were government grants awards. *Id.* The Court identified the contractual grant award, considered the remedy sought, and concluded jurisdiction was likely precluded. Moreover, the Court saw no difference between jurisdiction over plaintiffs’ pre-termination claims and post-termination claims. A request to enjoin any future termination still seeks contractual money. *Id.* In fact, plaintiffs in *California* also sought “an injunction against further unlawful terminations” along with their request for reinstatement of already terminated grants. Opp’n to Application at 25, *Dep’t*

of *Educ. v. California*, No. 24A910 (U.S. Mar. 28, 2025). Tellingly, the Supreme Court stayed the injunction in full.

After *California*, the Fourth Circuit recently stayed a district court injunction effectively identical to the one sought here. *Sustainability Inst. v. Trump*, No. 25-1575, 2025 WL 1587100, at *2 (4th Cir. June 5, 2025). Plaintiffs there brought APA and *ultra vires* constitutional claims against Federal defendants and, by virtue of those purported legal infirmities, sought to reverse or prevent grant terminations. *Id.* Looking to *California*, and the law it applied, the Fourth Circuit concluded that those defendants were likely to succeed in showing that the district court lacked jurisdiction. “While the appropriation statutes authorize the agencies to award grants, it is the operative grant agreements which entitle any particular Plaintiff to receive federal funds.” *Id.* The same is true here. Moreover, the Circuit concluded that the *ultra vires* claims that alleged constitutional violations did not change this calculus, as they were still subsumed by the contracts and foreclosed by Congress’s statutory scheme. *See id.*

Similarly, here jurisdiction is committed to the Court of Federal Claims notwithstanding the fact that Harvard argues that the terminations of its agreements was done for unconstitutional reasons or in excess of statutory authority. *See Van Drasek v. Lehman*, 762 F.2d 1065, 1071 (D.C. Cir. 1985) (“The proper inquiry, then, is whether the statute or statutes relied upon by the Harvard manifest a congressional intent to consent to suits for money claims against the United States in the district courts notwithstanding the limitations found in the Tucker Act.”). But that is not dispositive. Rather, it is the grant agreements, issued pursuant to statutes, that authorize the disbursement of federal funds, that are money-mandating. *See Boaz Hous. Auth.*, 994 F.3d at 1364 (“For claims founded upon the Constitution, a statute, or a regulation, a court must inquire whether the source of substantive law can fairly be interpreted as mandating compensation by the federal

government for the damages sustained. But for claims founded upon a contract, there is a presumption in the civil context that a damages remedy will be available upon the breach of an agreement. This presumption normally satisfies the money-mandating requirement for Tucker Act jurisdiction, with no further inquiry being necessary.” (citations omitted)). To be sure, Harvard asserts that their agreements were terminated in violation of their constitutional and statutory rights—but the Court of Federal Claims can consider those constitutional and statutory issues in the context of determining whether Harvard is entitled to relief, *e.g.*, whether the agreements were improperly terminated. *Cf. Bowen v. Michigan Acad. of Fam. Physicians*, 476 U.S. 667, 680 (1986) (“we will not indulge the . . . assumption that Congress contemplated review . . . of ‘trivial’ monetary claims but intended no review at all of substantial statutory and constitutional challenges”).

The Federal Circuit’s decision in *Holley v. United States*, 124 F.3d 1462 (Fed. Cir. 1997) is informative. There, the plaintiff claimed an entitlement to funds under 37 U.S.C. § 204, which confers upon military officers a right to pay until properly discharged, and which is a money-mandating provision (just like a contract). *See id.* at 1465. The plaintiff claimed his discharge was unconstitutional, and thus he was not properly discharged and was still entitled to federal funds. *Id.* The Federal Circuit noted that “[t]he presence of a constitutional issue does not erase the jurisdiction of the Court of Federal Claims based on a properly brought claim under the Tucker Act, or bar the court from considering the constitutional issue in the course of determining whether the discharge was wrongful. The determination of Mr. Holley’s entitlement to remedy under 37 U.S.C. § 204 may include consideration of whether his removal violated constitutional rights.” *Id.*; *see also Volk v. United States*, 111 Fed. Cl. 313 (2013) (holding that the Court of Federal Claims had proper jurisdiction over claims based upon the money-mandating Military Pay Act but

not the non-money-mandating constitutional claims). So too here, Harvard nominally brings First Amendment and excess of Title VI statutory authority claims, but the substance of its claims is that the terminations of its agreements violate the Constitution; such claims are properly within the scope of the Tucker Act. *See Crowley Gov't Servs.* 38 F.4th at 1107; *Consol. Edison Co.*, 247 F.3d at 1385. Harvard cannot evade the Federal Court of Claim's mandatory jurisdiction over its money claim through tactical briefing, and this Court should "not tolerate a litigant's attempt to artfully recast its complaint to circumvent the jurisdiction of the Court of Federal Claims." *Consol. Edison Co. of New York*, 247 F.3d at 1385.

2. The relief Harvard seeks is monetary.

Harvard also satisfies the second factor of the *Megapulse* analysis because the relief it seeks is essentially a monetary remedy. This inquiry "boils down to whether the plaintiff effectively seeks to attain monetary damages in this suit." *Crowley*, 38 F.4th at 1107. Here, Harvard purports to seek injunctive relief—but the effect of that injunctive relief is to order specific performance of grant agreements, i.e., for the government to pay money.

At bottom, in seeking an injunction to maintain payments pursuant to the schedule in a contract with the United States, Harvard "wants the Government to keep paying up." *U.S. Conf. of Cath. Bishops v. U.S. Dep't of State*, --- F. Supp. 3d ---, 2025 WL 763738, at *5-6 (D.D.C. Mar. 11, 2025), *injunction pending appeal denied*, No. 25-5066 (D.C. Cir. Mar. 28, 2025) (per curiam). Because the claims here are "founded upon a contract" they "must be heard in Claims Court." *Id.* at *7 (citing *Sharp v. Weinberger*, 798 F.2d 1521, 1524 (D.C. Cir. 1986) (Scalia, J.) ("We know of no case in which a court has asserted jurisdiction . . . to issue an injunction compelling the United States to fulfill its contractual obligations.")). That is true regardless of whether Defendants are ordered to reinstate the agreements cited by Harvard or are prevented from exercising contractual discretion for other grants. Either way, granting Harvard's request would amount to

an order to “enforce [the Government’s] contractual obligation to pay money.” *California*, 145 S. Ct. at 968 (citation omitted), and cannot move forward in this Court.

II. Harvard has not sufficiently pleaded an *ultra vires* claim.

Harvard briefly asserts that it can enforce its contractual rights via a freestanding nonstatutory *ultra vires* claim with respect to both its constitutional and statutory claims outside the scope of the APA. Pl. MSJ Memo at 46. This it cannot do.

Turning first to their purported claims that the government violated Title VI, *i.e.*, “ignored the mandatory statutory requirements,” *id.*, Harvard makes no attempt to satisfy the demanding standard for statutory *ultra vires* review. Such review is not APA review outside the context of the APA—rather, it is a “demanding standard” where “[t]he agency overstep must be ‘plain on the record and on the face of the [statute].’” *Fed. Exp. Corp.*, 39 F.4th at 765 (quoting *Oestereich*, 393 U.S. at 238 n.7). “An *ultra vires* challenge, in other words, is ‘essentially a Hail Mary pass.’” *Id.* (quoting *Nyunt v. Broad. Bd. of Governors*, 589 F.3d 445, 449 (D.C. Cir. 2009)). Harvard fails to address this standard, much less establish how it satisfies it—it merely cites back to the APA section of its brief, which operates under different standards—and thus this argument is effectively waived. *See United States v. Mayendia-Blanco*, 905 F.3d 26, 32 (1st Cir. 2018) (“[I]t is a well-settled principle that arguments not raised by a party in its opening brief are waived.”).

Harvard cannot bring a statutory *ultra vires* claim because the plain language of Title VI limits judicial review of the challenged agency actions here to the Court of Federal Claims. Title VI provides: “Any department or agency action taken pursuant to section 2000d–1 of this title shall be subject to such judicial review *as may otherwise be provided by law for similar action taken by such department or agency on other grounds.*” 42 U.S.C. § 2000d-2 (emphasis added). While the agencies did not act pursuant to Title VI, *see infra* Section V, even if they had, the plain language of the statute directs that the cause of action “shall be” the Tucker Act because it is “provided by

law for similar action [*i.e.*, contract terminations] taken by such department or agency on other grounds.” Only if the challenged agency action is “not otherwise subject to judicial review” can an entity “obtain judicial review of such action in accordance with chapter 7 of title 5 [the APA].” Under the Title VI scheme, the APA is only a backup if another statute does not already provide for judicial review, but in this case, the Tucker Act’s judicial review provisions govern.

Nor can Harvard bring an *ultra vires* claim to challenge alleged constitutional violations in the context of their grant terminations, as such a claim is precluded by the Tucker Act. Harvard’s reliance on *Armstrong v. Exceptional Child Center, Inc.* is misplaced. 575 U.S. 320, 327 (2015). That decision provides that the “ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of *courts of equity*.” *Id.* (emphasis added). Congress’s grant of equity jurisdiction to the federal courts is confined to the relief that “was traditionally accorded by *courts of equity*,” *Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 318-19, 329 (1999) (emphasis added). Actions to enforce contractual rights are actions at law. *See Devillier v. Texas*, 601 U.S. 285, 292 (2024) (“the mere fact that the Takings Clause provided the substantive rule of decision for the equitable claims in those cases does not establish that it creates a cause of action for damages, a remedy that is legal, not equitable, in nature.”). Regardless, “[t]he power of federal courts in equity to enjoin unlawful executive action is subject to express and implied statutory limitations.” *Armstrong*, 575 U.S. at 328.

Here, Harvard requests the nullification of agency actions terminating awards—relief that would reimpose the agencies’ obligations to pay money to Harvard. As discussed above, claims for money owed for work undertaken in the past under the agency funding instruments are contract-based claims for money damages that belong in the Claims Court. *California*, 145 S. Ct. 966 (2025) (citing *Knudson*, 534 U.S. at 210-12).

Faced with the *California* Court’s adherence to *Knudson*, Harvard cannot show that the executive actions violating contract provisions could be remedied by relief “traditionally” granted in equity, because “an injunction to compel the payment of money past due under a contract, or specific performance of a past due monetary obligation, was not typically available in equity.” *Knudson*, 534 U.S. at 210-11. Hence, a traditional court of equity would not have enforced the provisions of the grant or contract agreements, and the equitable relief described in *Armstrong* is not available here. The Tucker Act thus “displace[d] the equitable relief” that may have otherwise been available. *Armstrong*, 575 U.S. at 329. And, in any event, the Tucker Act remains available to Harvard; this is not a situation where there is no court that could provide a remedy or a forum. Under these circumstances—where Congress has provided another vehicle for Harvard to effectuate its rights—there is no basis to provide freestanding, equitable remedies absent (and contrary to) congressional direction.

III. Harvard’s challenges to the Government’s Offer Letter and the Secretary McMahon Letter do not challenge final agency actions under the APA.

Harvard purports to challenge the government’s “Freeze Orders and Termination Letters.” To the extent that an APA challenge can be properly brought in this Court, only final agency action is reviewable under the APA, and the only final items are letters terminating specific contracts. Harvard cannot challenge the Government’s Offer Letter or Secretary McMahon’s Letter because neither constitutes reviewable final agency action.

The APA directs courts to review only “[a]gency action made reviewable by statute and final agency action.” 5 U.S.C. § 704. “Agency action” is a defined term of art under the APA and most often manifests in the form of a rule or order. *Id.* § 551(13) (defining “agency action” as including “the whole or part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act”). Agency action that is cognizable and judicially reviewable under

the APA does not include any and all actions that an agency takes. Rather, judicial review under the APA is limited to “circumscribed, discrete” and concrete actions. *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 62 (2004).

Unless agency action is made reviewable by statute, a plaintiff who fails to challenge “final agency action” lacks a cause of action under the APA. See *R.I. Dep’t of Env’t Mgmt. v. United States*, 304 F.3d 31, 40 (1st Cir. 2002). Final agency actions are those that “mark the consummation of the agency’s decisionmaking process” and “by which rights or obligations have been determined, or from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 177-178 (1997) (cleaned up).

A. The Government’s Offer Letter is not final agency action.

Harvard’s challenge to the Government’s Offer Letter is not cognizable under the APA. The Government’s Offer Letter was merely the starting bid in a negotiation that Harvard has rejected, which is not agency action under the APA, let alone final agency action. The opening offer of a negotiation does not determine rights or obligations, nor does it have its own legal consequences.

Harvard—which carries the burden to show agency action—fails to demonstrate how the Government’s Offer Letter meets the criteria for agency action. The act of a grantor sending a contract or grant proposal to a grantee is not an “agency action” as defined by the APA. It does not itself have legal effect; it is not akin to a binding rule or government order. See 5 U.S.C. § 551. Treating it as final agency action would massively expand the types of actions that would be potentially reviewable under the APA and transform any contract negotiation or proposal between the Government and another party into a series of potential APA challenges and lawsuits. Such a result would be paralyzing for agency operations.

Fundamental principles of contract law further demonstrate that the letters sent to Harvard attempting to either negotiate a resolution of a contract dispute or resolve a broader dispute between the Government and Harvard, depending on how it is characterized, did not have any binding legal effect such that either parties’ “rights or obligations [were] determined.” *Bennett*, 520 U.S. at 178. The Government’s attempt to negotiate is governed by the familiar requirements in contract formation of offer and acceptance. “An unaccepted settlement offer—like any unaccepted contract offer—is a legal nullity, with no operative effect. As every first-year law student learns, the recipient’s rejection of an offer ‘leaves the matter as if no offer had ever been made.’” *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66 (2013) (Kagan, J., dissenting) (quoting *Minneapolis & St. Louis R. Co. v. Columbus Rolling Mill*, 119 U.S. 149, 151 (1886)). Sending proposed terms to a counterparty does not create a binding contract. Rather, that proposal must be *accepted* by the other party for it to have legal effect. *See, e.g.*, Restatement (Second) of Contracts §§ 17, 50 (1981); *REO Acquisition Grp. v. Fed Nat’l Mortgage Ass’n*, 104 F. Supp. 3d 22, 28 (D.D.C. 2015) (“an enforceable contract requires both the intention of the parties to be bound and also agreement as to all material terms”) (internal citations, emphasis, and alteration omitted).

Here, the Government offered terms that Harvard rejected, extinguishing any legal effect the offer may have had. *See* Gov.’s Offer Letter (“If acceptable to Harvard, this document will constitute an agreement in principle, which the parties will work in good faith to translate into a more thorough, binding settlement agreement.”); Harvard’s Rejection Letter (“Harvard will not accept the government’s terms as an agreement in principle.”). Accordingly, the proposed terms are just that, a proposal. As the offered terms do not have legal effect as a contract, they cannot have legal effect as final agency action. Harvard’s theory, by contrast, would hold that a contract proposal *does* have legal effect—notwithstanding centuries of the common law to the contrary.

This Court should reject such a construction and thus Harvard cannot enjoin the Government's Offer Letter under the APA.

B. The Secretary McMahon Letter is not final agency action.

The Secretary McMahon Letter is similarly not final agency action. The letter informed Harvard that it should “no longer seek GRANTS from the federal government, since none will be provided.” EDHarvAR_0000009. The letter describes future grants to which Harvard has no present entitlement, as the Government's decisions about what to do with unobligated and unappropriated federal funding are, with respect to the former, committed to agency discretion by law, and with respect to the latter, up to future sessions of Congress. *See Woonasquatucket River Watershed Council v. U.S. Dep't of Agric.*, --- F. Supp. 3d ---, No. 1:25-CV-00097-MSM-PAS, 2025 WL 1116157, at *16 (D.R.I. Apr. 15, 2025) (“Decisions about appropriated but not-yet-awarded funds likely fall into that bucket” of “committed to agency discretion by law”); (quoting 5 U.S.C. § 701(a)(2)); *Lincoln v. Vigil*, 508 U.S. 182, 192 (1993) (“The allocation of funds from a lump-sum appropriation is another administrative decision traditionally regarded as committed to agency discretion.”); U.S. Const. art. 1, § 9, cl. 7. (“No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law”).⁵ Without any legal right to future funding, *see* Pl. MSJ Memo at 45 (“[n]o university is entitled to funding”), it is impossible for the letter to have determined Harvard's “rights or obligations” from which “legal consequences will flow.” *Bennett*, 520 U.S. at 177-178.

Additionally, although the letter purports to speak on behalf of the entire federal government, the Secretary of Education is not positioned to bind the entire federal government; it

⁵ This discussion presumes that Title VI is not the vehicle for which APA review is obtained, since Title VI provides that review of actions taken pursuant to it “shall not be deemed committed to unreviewable agency discretion[.]” 42 U.S.C. § 2000d-2.

is therefore clear that she was expressing a rhetorical point echoing the Government’s Offer Letter, and that the letter was not an exercise of any of the actual authority Congress has delegated to the Secretary. In other words, even if the letter had any effect with respect to the Department of Education—though it does not definitively purport to exercise prospective legal effect—it has no effect with respect to any other entity of the United States Government. For both these reasons, the Secretary McMahon letter also does not constitute final agency action. Because the Government’s Offer Letter and Secretary McMahon Letter were not final agency actions, Harvard fails to state a claim for relief from the letters under the APA.

IV. Harvard’s First Amendment claims fail.

Harvard raises two First Amendment claims. Harvard first argues that the contract terminations were unconstitutional retaliation because Harvard rejected the Government’s Offer Letter and filed the present suit, and it further argues that the attempted imposition of the Offer Letter constituted an unconstitutional condition. Even assuming there is final agency action with respect to these claims, they fail on the merits.

A. Agencies would have terminated Harvard’s contracts regardless of the viewpoints Harvard reflected in the Rejection Letter and this lawsuit; and thus, such termination does not constitute unconstitutional retaliation.

The First Amendment rights of government contractors—including non-personal services contractors, such as Harvard—are circumscribed to the same extent as those of government employees. *See Bd. of Cnty. Comm’rs, Wabaunsee Cnty. v. Umbehr*, 518 U.S. 668, 675 (1996). Claims alleging retaliation against a contractor for protected speech are governed by the balancing test announced in *Pickering v. Board*, which weighs the “interests of the [contractor], as a citizen, in commenting upon matters of public concern and the interest of the State, as [a contracting entity], in promoting the efficiency of the public services it performs through its [contractors].” *Pickering v. Bd. of Ed. of Twp. High Sch. Dist. 205, Will Cnty.*, 391 U.S. 563, 568 (1968).

But “absent contractual, statutory, or constitutional restriction, the government is entitled to terminate [a contractor] for no reason at all.” *Umbehr*, 518 U.S. at 674.⁶ Thus, a contractor is similarly situated to an at-will employee. *See id.* As with at-will employees, even if a contractor’s “protected conduct played a ‘substantial part’ in the actual decision” to terminate them, it “would [not] necessarily amount to a constitutional violation justifying remedial action.” *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 285 (1977). Accordingly, “the government can escape liability by showing that it would have taken the same action even in the absence of the protected conduct.” *Umbehr*, 518 U.S. at 675; *see also Peguero-Moronta v. Santiago*, 464 F.3d 29, 46 (1st Cir. 2006) (a “defendant [that] has produced enough evidence to establish that the plaintiff’s dismissal would have occurred in any event for nondiscriminatory reasons [will prevail].” (quoting *Cepero-Rivera v. Fagundo*, 414 F.3d 124, 132 n.1 (1st Cir. 2005))).

At the threshold, it is a questionable premise for a retaliation claim that the breakdown of a settlement negotiation and the consequences that flow from it can be considered retaliatory. It is as akin to claiming that a criminal defendant has a retaliation claim in a criminal trial because the prosecutor decided to move forward with the charges or asked for a higher sentence than contemplated in a plea agreement after he rejected the plea bargain. After settlement broke down here, the agencies terminated the grants. That is profoundly unremarkable.

⁶ *See also* 48 C.F.R. § 2.101 (defining “termination for convenience” as “the exercise of the Government’s right to completely or partially terminate performance of work under a contract when it is in the Government’s interest”); 48 C.F.R. §§ 49.101, 49.501-05, 52.249-1-5 (requiring agencies to include clauses in contracts regarding termination for convenience); *G.L. Christian & Assocs. v. United States*, 312 F.2d 418, 426-27 (Ct. Cl. 1963) (reading termination clause into contract as a matter of law); Congressional Research Service, “Terminating Contracts for the Government’s Convenience: Answers to Frequently Asked Questions” (Dec. 18, 2015), at 1-6, *available at* https://www.everycrsreport.com/files/20151218_R43055_4eb3d254b321283211d130864b6a688c33852dc8.pdf (indicating that “[t]erminations in almost any . . . circumstance[] could . . . be found to be in the government’s interest”).

In any event, Harvard fails to establish that its rejection letter or this lawsuit played a substantial role in the agencies' termination decision. The administrative record makes clear that the agencies were contemplating termination because of Harvard's actions related to antisemitism before Harvard engaged in either rejecting the offer letter or filing this suit and that they did not do so in retaliation for those actions. GSAHarv_00000001 (beginning review of Harvard funding on March 31, 2025). That is dispositive of Harvard's First Amendment retaliation claim.

Moreover, the agencies' terminations are explained by a nonretaliatory purpose: opposing antisemitism. Unlawful discrimination finds no safe haven under the First Amendment, even though it may involve speaking or other expressive activity; accordingly, the Government's policy against entities that do not take adequate action against discriminatory acts of antisemitism was a constitutionally valid basis for the agencies' termination decision. *See Kestenbaum v. President & Fellows of Harvard Coll.*, 743 F. Supp. 3d 297, 309 (D. Mass. 2024) ("The court consequently is dubious that Harvard can hide behind the First Amendment" to cover for its "indecisive, vacillating, and at times internally contradictory [response to antisemitism]."). Indeed, "preventing discrimination in the workplace—and in the schools—is not only a legitimate, but a compelling, government interest." *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 209 (3d Cir. 2001); *see also Gartenberg v. Cooper Union for the Advancement of Sci. & Art.*, 765 F. Supp. 3d 245, 263 (S.D.N.Y. 2025) ("there is no question that the elimination of discriminatory harassment in employment and in programs receiving federal funding is a compelling government interest."), *reconsideration denied*, No. 24 CIV. 2669 (JPC), 2025 WL 602945 (S.D.N.Y. Feb. 25, 2025).

The viewpoints expressed in Harvard's Rejection Letter, and the filing of this lawsuit, did not play a substantial role in the agencies' decision to terminate Harvard's grants. Rather, it is the fact that Harvard refused to take adequate actions to respond to antisemitism on its own campus

that justified the agency action. *See* Harvard Report; HSHarv_00000474; EDHarvAR_0000011; NSF_Harvard000039; USDA-HARV-AR-00008; ENERGY AR3929; NASA-AR03748-50.

Moreover, rejection of an offer is not protected expression; it is a legal act extinguishing the original offer. *See supra* at 30; *Lowe v. SEC*, 472 U.S. 181, 232 (1985) (White, J., concurring in the result) (“[O]ffer and acceptance are communications incidental to the regulable transaction called a contract . . .”). The consequences that followed flowed directly from the “noncommunicative impact” of this legal act of rejection. *United States v. O’Brien*, 391 U.S. 367, 382 (1968).

The Supreme Court has “rejected the view that ‘conduct can be labeled “speech” whenever the person engaging in the conduct intends thereby to express an idea.’” *Rumsfeld v. F. for Acad. & Institutional Rts., Inc.* (“FAIR”), 547 U.S. 47, 65-66 (2006) (quoting *O’Brien*, 391 U.S. at 376). The Court instead “has limited First Amendment protections to what it has called ‘inherently expressive’ conduct.” *Falcone v. Dickstein*, 92 F.4th 193, 206 (3d Cir. 2024) (quoting *FAIR*, 547 U.S. at 66), *cert denied sub nom. Murray-Nolan v. Rubin*, 144 S. Ct. 2560 (2024). “It is possible to find some kernel of expression in almost every activity a person undertakes—for example, walking down the street or meeting one’s friends at a shopping mall—but such a kernel is not sufficient to bring the activity within the protection of the First Amendment.” *City of Dallas v. Stanglin*, 490 U.S. 19, 25 (1989). Any incidental effect that the terminations following Harvard’s rejection had on speech were “imposed ‘for reasons unrelated to the communication of ideas.’” *Nicopure Labs, LLC v. FDA*, 944 F.3d 267, 291 (D.C. Cir. 2019) (quoting *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 569 (2001)).

To the extent Harvard argues that it is the viewpoints expressed in Harvard’s Rejection Letter, not the act of rejection, that the Government is retaliating against, Harvard has put forth

insufficient evidence to demonstrate such a causal connection, let alone establish that it was “substantial.” Grasping for a causal link between the terminations and the viewpoints expressed in Harvard’s Rejection Letter, Harvard cites to three agency termination letters, HHSHarv_00000472-75 (“the University has refused to take *appropriate* action”); USDA-HARV-AR-00008-9 (same); ENERGY AR3932-3933 (“Harvard has refused to take immediate, definitive and *appropriate* remedial action” (emphasis added by Harvard)). Pl. MSJ Memo at 26. But these excerpts explicitly focus on the “action” of Harvard’s “refus[al],” and not the views expressed in Harvard’s Rejection Letter.

Harvard’s allegation that the terminations were retaliation for the filing of this lawsuit is similarly unpersuasive. First and foremost, the agencies’ terminations had already begun by the time Harvard filed this lawsuit on April 21—and these actions were the apparent basis for filing the lawsuit in the first place. See Pl. MSJ Memo at 15-16 (“On April 16 . . . DHS terminated two grants ‘totaling over \$2.7 million to Harvard University, declaring it unfit to be entrusted with taxpayer dollars.’”); Pl. Compl. ¶ 6, ECF No. 1 (“Just yesterday [April 20], it was reported that the Government is ‘planning to pull an additional \$1 billion of [Harvard]’s funding for health research.”). Indeed, Harvard acknowledges that the Government began contemplating terminating its agreements long before this suit; it states, “The March 31 Letter linked the review of funding to Defendants’ allegations about antisemitism on Harvard’s campus.” Pl. MSJ Memo at 12. Second, the public comments by federal officials discussing how Harvard’s unwillingness to negotiate are harming it, *see id.* at 19, are not the smoking gun Harvard thinks they are. These observations merely express the view that Harvard would be better off financially if it negotiated with the Government rather than sue it. They are not statements that funding cuts are *because of* this lawsuit. The agencies were already set to exercise their termination rights prior to its attempts

to negotiate with the school and needed no further justification to do so. Thus, Harvard fails to show that either Harvard's views in its letter or the filing of this suit played a substantial role in agencies' termination decisions.

Even if the Court is persuaded that the protected activities played a substantial role in the terminations, it must still find that the agencies would not have "taken the same action even in the absence of the protected conduct" before deciding that it engaged in unconstitutional retaliation. *Umbehr*, 518 U.S. at 675. As the administrative record demonstrates, plans to terminate Harvard's funding for failing to align with the Government's priorities opposing antisemitism were being discussed as early as March 31. GSAHarv_00000001. The Government's Offer Letter was clear that if an agreement was not reached, it would exercise its termination rights. Accordingly, it is only possible to conclude that the terminations would have gone forward even in absence of the viewpoints expressed in Harvard's Rejection Letter and the bringing of the present suit.

Critically, Harvard's argument that it has been uniquely targeted for retaliation based on its protected speech is fatally undermined by the fact that agencies had also been reviewing grants at many other universities that have similarly failed to address antisemitism on campus or protect the civil rights of students and employees. This undermines any causal link that Harvard purports to read into the timeline⁷ of the agencies' actions.

B. The Government's proposed conditions for waiving its termination rights do not violate the unconstitutional conditions doctrine.

For the same reasons the Government's Offer Letter is not final agency action, it does not

⁷ Harvard suggests that the timing of many of the terminations following "swift[ly]" after it filed suit indicates they were retaliatory, Pl. MSJ Mot. at 24. But one of the primary bases on which the agencies relied to terminate funding—Harvard's Report—was released 8 days after the lawsuit commenced. *See, e.g.*, GSAHarv_00000136-445

violate the unconstitutional conditions doctrine. The offer, having been rejected, is a nullity. *See supra* at 30. The Court should decline Harvard’s invitation to analyze it as though the proposed terms were finalized conditions of binding contract agreement. Harvard’s argument that the Government’s *proposed* conditions in a settlement agreement that was *never adopted* nevertheless violate the unconstitutional conditions doctrine calls upon the Judiciary to thrust itself into the Executive’s preliminary negotiations and further underscores how Harvard is challenging unreviewable, non-final agency action. *See supra* Section III.

Indeed, it is an open question whether the unconstitutional conditions doctrine can even be properly applied to settlement negotiations at all; “[T]he unconstitutional conditions doctrine could never apply as an absolute rule [with respect to settlements] because all settlements between the government and citizen litigants involve a waiver of constitutional rights, such as the right to pursue further litigation in court.” *Stephens v. Cnty. of Albemarle*, No. 3:04CV00081, 2005 WL 3533428, at *5-7 (W.D. Va. Dec. 22, 2005). The Supreme Court, moreover, has drawn a distinction between unconstitutional conditions that have been “consummated” and those where “the condition is never imposed.” *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 608 (2013). Drawing such a distinction makes eminent sense because, like with treating mere offers as final agency action, *see supra* at 30-31, treating unconsummated conditions the same as consummated ones would similarly transform any contract negotiation or proposal between the Government and another party into a series of potential APA challenges and lawsuits.

Even if the unconstitutional conditions doctrine were to apply,

it is well-established that [t]he Government can, without violating the Constitution, selectively fund a program to encourage certain activities it believes to be in the public interest, without at the same time funding an alternative program which seeks to deal with the problem in another way. In so doing, the Government has not discriminated on the basis of viewpoint; it has merely chosen to fund one activity to the exclusion of the other.

Rust v. Sullivan, 500 U.S. 173, 193 (1991). The Government is entitled to discern between programs of higher education and to fund only those that effectively deal with the problem of antisemitic discrimination. This is not conditioning funding on *viewpoints* articulated by a contracting party, but on actions taken by that party—just like how agencies have long imposed a number of substantive requirements on government contractors via those contractual agreements. 2 C.F.R. §§ 200.211(c)(1)(ii), 200.300 (requiring agencies to include terms advancing policies and priorities outlined in statutes and executive orders). Furthermore, Harvard’s Report identified that its curriculum and discriminatory harassment by faculty and students fueled the antisemitic climate on campus, *see supra* Background Section I, thus it was only reasonable that the Joint Task Force would have wanted to see these things addressed in its opening negotiation to resolve its antisemitism concerns.

V. Title VI does not govern grant terminations based on policy.

Harvard also contests that the agencies’ termination of certain agreements pursuant to explicit contractual authority is precluded by the separate Title VI scheme. As a threshold matter, the government has broad power to contract, which includes the power to impose conditions as part of those contracts; any question Harvard seeks to raise about the extent to which this authority may be curtailed by Title VI should be answered by the Court of Federal Claims, *see supra* Section I, as it concerns the availability of a defense in “a dispute concerning termination of a contract,” 28 U.S.C. § 1491, and, as has already been discussed, Title VI itself direct judicial review to the Court of Federal Claims, *see supra* 26-27. This notwithstanding, Harvard’s argument about the preclusive effects of Title VI on the Government’s ability to contract lack merit.

Early in our republic’s history, the federal government’s authority to enter into contract was questioned. Justice Story delivered the opinion of the Supreme Court:

The United States have in their political capacity a right to enter into a contract . . . It is an incident to the general right of sovereignty; and the United States being a body politic, may, within the sphere of the constitutional powers confided to it, and through the instrumentality of the proper department to which those powers are confided, enter into contracts not prohibited by law, and appropriate to the just exercise of those powers.

United States v. Tingey, 30 U.S. (5 Pet.) 115, 125 (1831). The Government’s authority to bargain for the clause appearing in all of Harvard’s contracts allowing for termination for convenience and its authority to include alignment with policy priorities as a term and condition in its grant awards,⁸ then, is also “an incident to the general right of sovereignty.” *Id.* This sovereign power is only limited by any “prohibit[ions] by law.” *Id.* As has already been discussed, *see supra* 36-37, the agencies properly determined that the clause was triggered and exercised its termination authority. The only question remaining is whether the sovereign power to contract into this clause was limited by any “prohibit[ions] by law.” *Tingey*, 30 U.S. at 125. It was not.

Harvard suggests Title VI of the Civil Rights Act, which provides procedures for grant terminations taken *pursuant to that Act*, limits the Government’s sovereign authority. 42 U.S.C. § 2000d-1 (discussing a contractor’s “failure to comply with a requirement imposed pursuant to *this section*”) (emphasis added). It is wrong. The contract terminations at issue were not taken pursuant to Title VI; they were taken pursuant to the agencies’ authority to terminate for nonalignment with priorities under a bargained-for contract clause. *See, e.g.*, EDHarvAR_0000012; HHS Harv 00000473; NSF_Harvard000039; USDA-HARV-AR-00008; ENERGY AR3929; HUDHarvAR_00000067; DoDHarv_00000003; NASA-AR03748.

Harvard’s claim that if the agencies identify inadequate institutional concern for antisemitism as a reason for grant termination, then Title VI’s procedures are the only mechanism by which the termination can be effectuated lacks merit. *See* Pl. MSJ Memo at 37 (characterizing

⁸ *See supra* at 10.

Title VI as mandating “overriding procedures”). Title VI’s separate procedures do not preclude or abrogate the agencies’ separate contract authorities. There is no basis in Title VI to suggest that facts that are relevant to a finding of a violation of that Act cannot also be relevant to the Government’s determination that certain uses of funding no longer align with its priorities. *See Am. Ass’n. Univ. Professors v. U.S. Dep’t of Justice*, 1:25-cv-02429-MKV, ECF No. 148 at 29 (June 16, 2025) (unable to find “authority for [any] particular limitation” holding that “the Executive Branch may not count repudiating antisemitism among “agency priorities” within the meaning of 2 C.F.R. § 200.340(a)(4).”). Indeed, it is “unlikely that Title VI is the sole and exclusive ‘legal tool[]’ available to a President who instructs executive agencies to prioritize ‘combat[ting] anti-Semitism . . . on university and college campuses.’” *Id.* at 30.

Title VI and contract terminations for policy are based on different legal authorities and entail different procedures. Title VI of the Civil Rights Act enacted a general requirement for recipients of federal funding that applies to all funding agreements, regardless of whether it is included as a provision of the agreement. 42 U.S.C. § 2000d. It leaves no discretion to agencies to waive its requirements, as it uses mandatory language stating that each agency is “directed to effectuate the provisions of section 2000d of this title.” *Id.* § 2000d-1. Agencies are instructed to do so through the implementation of “rules, regulations, or orders of general applicability.” *Id.* Notably, 2 C.F.R. § 200.340 is not a rule that was promulgated under the Title VI authority. *See Guidance for Federal Financial Assistance*, 89 Fed. Reg. 30046, 30047-48 (Apr. 22, 2024) (citing statutory authorities). Finally, the remedies under Title VI are much broader than just funding

terminations and include the prospect of an enforcement action brought by the Attorney General.⁹ Thus, it is clear that the remedies under Title VI are floor and not a ceiling.

Contractual requirements, in contrast to Title VI, are based on the provisions authorized by the instruments themselves. It is a discretionary choice by the agency to include the terms of 2 C.F.R. § 200.340 as a provision of the contracts it executes. While the regulations under 2 C.F.R. Subpart B may make the inclusion of the terms mandatory, those regulations themselves are a product of the agencies' discretionary choice to promulgate them. *Id.* § 1.105(c) (“Federal agency regulations in subtitle B may give regulatory effect to the OMB guidance”). The contract provisions at issue here state that “The Federal award may be terminated . . . if an award no longer effectuates the program goals or agency priorities.” *Id.* § 200.340(a)(4). And, as with most contractual terms, the party to whose benefit those terms inure can choose to enforce or waive them as appropriate. *Cf.* Uniform Commercial Code § 3-601 (“The obligation of a party . . . is discharged . . . by an act or agreement with the party which would discharge an obligation to pay money under a simple contract.”). The agency priority of not funding entities that fail to address antisemitism does not depend on the finding of a Title VI violation, therefore there is no reason that Title VI procedures would govern these terminations or “overrid[e],” Pl. MSJ Memo at 37, the termination framework spelled out by 2 C. F.R. § 200.340. To conclude otherwise would imply that prior to Title VI, agencies had no ability to terminate funding for discrimination. The

⁹ If informal resolution is not possible, agencies may refer matters to the Department of Justice (“DOJ”) to bring “appropriate proceedings” (including lawsuits) against Title VI violators. 45 C.F.R. §§ 80.7(d), 80.8(a); 28 C.F.R. §§ 42.107(d), 42.108(a). Similarly, DOJ’s Guidelines for Enforcement of Title VI cite “appropriate court action” against noncompliant recipients of federal financial assistance as among the available “alternative courses of action” that agencies should consider before terminating federal funding. 31 Fed. Reg. 5292 (Apr. 2, 1966) (28 C.F.R. § 50.3(c)(I)(A)-(B)); *see also* 28 C.F.R. §§ 42.411(a), 42.412(b) (DOJ regulations coordinating Title VI enforcement).

better reading is that Title VI made it mandatory for agencies to terminate funding for discriminating entities in certain circumstances. Harvard's alternative reading of Title VI would require concluding that Congress intended discriminators to have *more* protections than those whose contract are terminated for different policy reasons under 2 C.F.R. § 200.340, which would conflict with Congress's intent of achieving maximal civil rights protections.

Harvard's myopic view of the Government's contracting authority appears nowhere in the text of Title VI. While "Congress intended Title VI to be a typical 'contractual' spending-power provision," *Guardians Ass'n v. Civil Serv. Comm'n of the City of N.Y.*, 463 U.S. 582, 599 (1983), there is nothing to suggest Title VI was meant to be exclusive of any contractual provisions that may also be used to address discrimination. Harvard's narrow view that Title VI provides the exclusive mechanism to address ongoing or rampant civil rights violations is at odds with congressional intent, which was to provide an independent basis to enforce its provisions, even where individual contracts failed to include such language, in an effort to maximally protect civil rights. Moreover, it is in tension with the Supreme Court's *Department of Education v. California* decision, which held that ED's termination of grants ED understood to unlawfully discriminate on the basis of race, color, religion, sex, national origin, or another protected characteristic were governed by 2 C.F.R. § 200.340 and belonged in the Court of Federal Claims. Given that the terminations here were not taken pursuant to Title VI, there was no obligation for the Government follow any of the procedures prescribed by that Act.

Harvard claims that the legal authority invoked by the agency at the time of the terminations was a "post-hoc" rationalization. Pl. MSJ Memo at 37. But the agencies were clear in their terminations they were not relying on Title VI, but on Part 200 of Title 2 of the C.F.R. as well as their termination for convenience authority. *See supra* at 13-14. Harvard's argument that

these contemporaneous explanations were somehow “post hoc” thus requires a serious misreading of *Department of Homeland Security v. Regents of the University of California*, which discusses “post hoc justifications [that] are raised in court by those appearing on behalf of the agency or by agency officials themselves,” not situations in which there are “contemporaneous explanations.” 591 U.S. 1, 23 (2020). The contemporaneous explanations by the agencies justifying terminations were based on contractual language, not Title VI. As Title VI does not govern terminations based on contract provisions entered into under 2 C.F.R. § 200.340, and the agencies’ reliance upon that that authority was stated contemporaneously with the challenged actions, Harvard’s argument that the Government violated Title VI must fail.

Finally, in a footnote, Pl. MSJ Memo at 37 n.67, Harvard contends that even if the Title VI procedures do not apply, the Government also failed to follow the procedures required by 2 C.F.R. § 200.340. The First Circuit has “repeatedly held that arguments raised only in a footnote are ‘waived.’” *Woonasquatucket River Watershed Council*, 2025 WL 1116157, at *8 (quoting *Nat’l Foreign Trade Council v. Natsios*, 181 F.3d 38, 61 n. 17 (1st Cir. 1999), *aff’d sub nom. Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363 (2000)); *see also Modeski v. Summit Retail Sols., Inc.*, 470 F. Supp. 3d 93, 110 (D. Mass. 2020) (same), *aff’d*, 27 F.4th 53 (1st Cir. 2022). Even if Harvard had not waived the argument, however, its contentions are wrong. First, Harvard says that the Government failed to comply with 2 C.F.R. § 200.341, which requires agencies to provide written notice of the termination including the reasons for it. But each of the agencies that terminated funds sent such termination notices. *See, e.g.*, EDHarvAR_0000011; HHS Harv 000004 73; NASA-AR03748-50. Indeed, it is these notices that triggered Harvard’s lawsuit and from which Harvard seeks relief. *See* Pl.’s Proposed Order, ECF No. 69-1 at 1 (requesting an injunction that “declares unlawful, vacates, and sets aside the Freeze Orders and Termination Letters.”). Second,

Harvard claims that the Government did not follow 2 C.F.R. § 200.342, which requires an opportunity for the grantee to be heard. But Harvard has had opportunity both before and after the termination letters were sent to object and provide information on its behalf. *See, e.g.*, HHSHarv_00005230-35 (meeting to discuss Task Force’s concerns); EDHarvAR_0000012 (notice referencing appeal rights) NASA-AR03748-50 (notice referencing appeal rights); NASA-AR03512 (describing appeals process).

The Government followed the procedures required by 2 C.F.R. § 200.342, the authority that governs this case, not Title VI.

VI. The freeze orders and terminations do not violate the APA because they were reasonable exercises of the agencies’ authority to terminate for nonalignment with the Government’s antidiscrimination priorities.

A. The terminations were not arbitrary and capricious.

Even if the Court concludes that it has jurisdiction to review the challenged actions under the APA, the challenged grant and contract terminations are not unlawful. Under the arbitrary and capricious standard, the agency’s decision is presumed valid, and a court reviews only whether that decision “was based on a consideration of the relevant factors and whether there has been a clear error of judgment.” *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99, 105 (1977). Review under the arbitrary and capricious standard is “deferential,” *Dep’t of Com. v. New York*, 588 U.S. 752, 773 (2019), and simply examines whether the agency’s decision “was the product of reasoned decisionmaking.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 52 (1983). Moreover, “[t]he 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.” *Id.* at 43. Because the Defendant agencies’ grant and contract terminations were both reasonable and reasonably

explained, *FCC v. Prometheus Radio Project*, 592 U.S. 414, 417 (2021), they satisfy the deferential “arbitrary and capricious” standard.

As discussed above, Defendant agencies’ individual termination decisions are the only challengeable final agency actions, and they meet the APA’s limited standard. The administrative record demonstrates that the termination decisions followed a “comprehensive review of Federal contracts with certain institutions of higher education that are being investigated for potential infractions and dereliction of duties to curb or combat anti-Semitic harassment, including Harvard University” pursuant to the February 3, 2025, Executive Order on combatting antisemitism. GSAHarv_00000003-4. In the context of discretionary grants, each agency enjoys wide latitude to determine how best to implement their respective program and the decision-making process for each termination. *Cf. Kreis v. Sec’y of the Air Force*, 866 F.2d 1508, 1514 (D.C. Cir. 1989) (“the question whether a particular action is arbitrary or capricious must turn on the extent to which the relevant statute, or other source of law, constrains agency action”).

Harvard contends that Defendants’ freezing and termination of funding was arbitrary and capricious because the agencies failed to explain how the Government’s concerns about antisemitism relate to these actions and failed to consider remedial actions Harvard had taken to address antisemitism on Harvard’s campus.¹⁰ Pl. MSJ Memo at 38-42. But a court must “uphold a decision of less than ideal clarity if the agency’s path may reasonably be discerned,” *Bowman Transp., Inc. v. Ark.-Best Freight Sys., Inc.*, 419 U.S. 281, 286 (1974), and here it is clear that each agency terminated its grants and contracts with Harvard pursuant to a broader government policy concerning antisemitism at institutions of higher education and the insufficiency of Harvard’s

¹⁰ Harvard also contends that the freezing and termination of grants to Harvard was arbitrary and capricious because it was done in response to Harvard’s refusal to accept the Government’s Offer Letter. This is wrong for the reasons stated above. *See supra* Section IV.A.

compliance with that policy. Agencies articulated that basis for grant termination in their termination letters. *See, e.g.*, HSHHarv_00000473-4; EDHarvAR_0000011-12; ENERGY AR3929-30 (stating that each agency is “aware of recent events at Harvard University involving antisemitic action that suggest the institution has a disturbing lack of concern for the safety and wellbeing of Jewish students. Harvard’s ongoing inaction in the face of repeated and severe harassment and targeting of Jewish students has ground day-to-day campus operations to a halt, deprived Jewish students of learning and research opportunities to which they are entitled, and brought shame upon the University and our nation as a whole. Indeed, as the Harvard Presidential Task Force on Combating Antisemitism and Anti-Israeli Bias concluded, actions at Harvard during the 2023-2024 academic year resulted in widespread abuse of Jewish and Israeli students by an institution ‘that mainstreamed and normalized what many Jewish and Israeli students experience as antisemitism and anti-Israeli bias.’”). As Harvard observes in its motion, all but one of the termination letters cited “‘Harvard’s ongoing inaction in the face of repeated and severe harassment and targeting of Jewish students,’ coupled with Harvard’s ‘refus[al] to take appropriate action . . . or implement necessary reforms.’” Pl. MSJ Memo at 18 (citation omitted). And the connection between the Administration’s antisemitism prevention policy goals and specific Harvard grants was also explained: government agencies do not, as a matter of policy, want to fund entities that do not take adequate actions to prevent antisemitism. GSAHarv_00000001-03; GSAHarv_00000015. Moreover, government agencies further concluded that Harvard’s actions to date were inadequate, thus refuting Harvard’s argument that its efforts were not considered. *See id.*; HSHHarv_00000474; ENERGY AR3929-30. Harvard may disagree with this conclusion, but it is both documented in and supported by the administrative record, which is all that the APA requires.

The record, therefore, demonstrates that “the agenc[ies] . . . articulate[d] a ‘rational connection between the facts found and the choice made.’” *Bowman Transp.*, 419 U.S. at 285 (citation omitted). Under this permissive standard, the Court must uphold the agencies’ grant terminations.

B. The agencies did not fail to consider important aspects of the problem or reliance interests before terminating funding.

Harvard also raises two related APA challenges: that Defendants did not consider “important aspects of the problem,” namely, (1) the benefits provided by the Harvard grants and (2) the reliance interests of the grantees. *See* Pl. MSJ Memo at 42-43, 45 (citing *Regents of the Univ. of Cal.*, 591 U.S. 1). But the record demonstrates that the agencies adequately considered these interests.

First, the Administrative Record reflects that Defendants considered the benefits that federally funded research at Harvard University provides to the Government and the public. *See* Government’s Offer Letter, HSHHarv_00000098 (“The United States has invested in Harvard University’s operations because of the value to the country of scholarly discovery and academic excellence.”). In making its decision, however, the agencies concluded that the inadequacy of Harvard’s efforts to address antisemitism on campus—an important government interest—outweighed the Government’s interests in maintaining certain existing federal grants and contracts. *See* “April 14 Press Release”, GSAHarv_00000012-13. This weighing of interests is vested in the agencies, even if the plaintiff (or the court) would have weighed those interests differently. *See State Farm*, 463 U.S. at 43 (“[The court] may not supply a reasoned basis for the agency’s action that that agency itself has not given ... [and should] ... uphold a decision of less than ideal clarity if the agency’s path may reasonably be discerned.” (internal citations omitted)).

Second, as to Harvard's reliance interests, Harvard does not persuasively explain how it reasonably developed reliance interests in grant programs that may be terminated at any time at the agency's policy discretion or for the grant recipient's performance. Each grant incorporates, as part of its terms and conditions, the termination provisions of 2 C.F.R. § 200.340. Most significantly, this regulation states that an award could be terminated at any time "if an award no longer effectuates the program goals or agency priorities." 2 C.F.R. § 200.340(a)(4). The federal agency making the award may also terminate the award for specific terms and conditions that it incorporates into the grant agreement. *Id.* § 200.340(a)(1). In fact, Harvard admits in their motion that they have no entitlement to the terminated grants. Pl. MSJ Memo at 45 ("[N]o university is entitled to Government funding.").

This case is not like *Regents*, upon which Harvard principally relies. Pl. MSJ Memo at 45-46. That case featured a challenge to the rescission of the Deferred Access to Childhood Arrivals (DACA) program. The Supreme Court noted that DACA recipients had made significant economic, personal, and financial commitment "in reliance on the DACA program." *See Regents of Univ. Of Cal.*, 591 U.S. at 31. But even there, the Supreme Court emphasized that while "[t]hese are certainly noteworthy concerns, . . . they are not necessarily dispositive." *Id.* Rather, the agency may determine that other interests and policy concerns outweigh any reliance interests, or it may accord them no or diminished weight. *Id.* at 32. Harvard's reliance interests in existing and continued federal funding must be judged in light of the legal framework under which they are given and taken away. Because federal grants and the terms and conditions to which they are subject provide the agencies substantial discretion in their termination and because there is no right to future grants, the agencies did not clearly err in judging that any reliance interest in continued federal funding would be unjustified.

VII. Under the APA, the appropriate remedy is limited to the agency action giving rise to the suit rather than a forward-looking injunction.

It is a bedrock principle of equity that “injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiff.” *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). The remedy for a successful APA challenge is limited to relief from the challenged the agency action. The APA does not provide district courts “jurisdiction to order specific relief,” including the award of or performance of a contract. *Palisades Gen. Hosp. Inc. v. Leavitt*, 426 F.3d 400, 403 (D.C. Cir. 2005). “Thus, ‘under settled principles of administrative law, when a court reviewing agency action determines that an agency made an error of law, the court’s inquiry is at an end: the case must be remanded to the agency for further action consistent with the correct legal standards.’” *Id.* (quoting *City of L.A. v. Shalala*, 192 F.3d 1045, 1011 (D.C. Cir. 1999)). Accordingly, any relief should be limited to remedying improper agency action and must leave intact the Executive Branch’s discretion to engage in further consideration of the topic at hand and consider other future agency actions consistent with law.

A permanent injunction would constitute an extraordinary remedy in this case and the relief that Harvard seeks—that this Court “permanently enjoin any similar action”—is far too vague. Pl. MSJ Memo at 48. As the D.C. Circuit has observed, a “decision by the court to vacate an agency’s adjudication . . . would usually result in a remand for further administrative proceedings, and we have explained that it is sometimes appropriate to let an agency correct an error before judicial determination of the merits.” *Utah ex rel. Cox v. Env’t Prot. Agency*, No. 23-1157, 2025 WL 1354371, at *4 (D.C. Cir. May 2, 2025); *see also Util. Solid Waste Activities Grp. v. Env’t Prot. Agency*, 901 F.3d 414, 436 (D.C. Cir. 2018) (“Remand has the benefit of allowing agencies to cure their own mistakes rather than wasting the courts’ and the parties’ resources reviewing a record that both sides acknowledge to be incorrect or incomplete.” (quoting *Ethyl Corp. v. Browner*, 989

F.2d 522, 524 (D.C. Cir. 1993))), *judgment entered*, 2018 WL 4158384 (D.C. Cir. Aug. 21, 2018). These same principles apply for grant terminations were this Court to find that such terminations constituted final agency action and violated the APA. If any relief is warranted, it should be targeted to the challenged grant terminations and permit the agency to revisit their decisions, with any corrections as necessary. Vacatur of the challenged actions achieves the aims of judicial efficiency and appropriately circumscribes the relief to the challenged agency actions.

On the other hand, a permanent injunction barring Defendants from taking “any similar action” is a vague and unreasonable request for relief. *See Peregrine Myanmar Ltd. v. Segal*, 89 F.3d 41, 52 (2d Cir. 1996) (vacating an injunction as vague and requiring that injunctions “be specific in terms” and “describe in reasonable detail . . . the acts or acts sought to be restrained.”). It would also potentially prevent the Defendants from curing any potential violation in the future, *i.e.*, with additional explanation or after additional or different process. *See, e.g., New York v. Trump*, --- F. Supp. 3d ---, No. 25-cv-39, 2025 WL 715621, at *16 (D.R.I. Mar. 6, 2025) (“The Court’s order does not prevent the Defendants from making funding decisions in situations under the Executive’s actual authority in the applicable statutory, regulatory, or grant terms[.]”) (citation omitted)), *appeal filed*, No. 25-1413 (1st Cir. Apr. 28, 2025)); *see also New York v. Trump*, 133 F.4th 51, 71 n. 16 (1st Cir. Mar. 26, 2025) (emphasizing that “the preliminary injunction clearly refers to a ‘categorical pause or freeze of funding,’ which, by its terms, could not apply to a pause or freeze based on an individualized determination under an agency’s actual authority to pause such funds”).

Here, there already active Title VI investigations into Harvard being conducted by multiple federal agencies, and the requested permanent injunction would prevent the agencies from carrying out their statutory responsibilities of ensuring a grantee does not discriminate. 42 U.S.C. § 2000d-

1. The requested permanent injunction would effectively give Harvard a free pass to discriminate with no recourse for the United States to address it. The Court should not enjoin the Defendant agencies from exercising the authorities granted to them under applicable statutes, regulations, and agreements to confront civil rights abuses.

To the extent that this Court does enter injunctive relief pursuant to Rule 65, however, it should order Harvard to post a bond adequate to compensate the government in the event that the injunction is overturned on appeal or otherwise. *See* Fed. R. Civ. P. 65(c).

Finally, to the extent that the Court determines that the challenged grant terminations require vacatur under the APA—and it should not—the Court need not, and therefore should not, reach any constitutional claims under principles of constitutional avoidance. *See Harmon v. Brucker*, 355 U.S. 579, 581 (1958); *see also Ashwander v. Tennessee Valley Auth.*, 297 U.S. 288, 347 (1936) (J. Brandeis, concurring) (“The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of.”).

VIII. There is no ripe dispute as to Defendants Bondi and U.S. Department of Justice.

As stated herein, grants administered by the grantmaking components of the Department of Justice, and the Attorney General as the principal officer of the Department, have not been frozen or terminated. *See supra* at 14. “Determining whether administrative action is ripe for judicial review requires [the evaluation of] the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.” *Nat’l Park Hosp. Ass’n v. Dep’t of Interior*, 538 U.S. 803, 808 (2003). Here, there is no agency action taken by the Department of Justice or the Attorney General that this court could review under the relevant standard or for which Harvard has been harmed. Therefore, Harvard’s claims as to the Department of Justice and the Attorney General are not ripe.

CONCLUSION

The Government respectfully requests the Court deny Harvard's Motion for Summary Judgment and grant the Government's Cross-Motion for Summary Judgment.

Dated: June 16, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

Counsel for Defendants certify that they have submitted the foregoing document with the clerk of court for the District of Massachusetts, using the electronic case filing system of the Court. Counsel for Plaintiff hereby certify that they have served all parties electronically or by another manner authorized by Fed. R. Civ. P. 5(b)(2).

/s/ Eitan R. Sirkovich

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES, et al.,

Defendants.

Case No. 1:25-cv-11048-ADB

**DEFENDANT’S RULE 56.1 RESPONSE TO PLAINTIFF’S STATEMENT OF
UNDISPUTED MATERIAL FACTS IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT AND DEFENDANT’S RULE 56.1
STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF ITS MOTION
FOR SUMMARY JUDGMENT**

Pursuant to Rule 56.1 of the Local Rules of Civil Procedure, Defendants submit the following responses to Plaintiff’s (“Harvard’s”) statement of facts of which there is no genuine issue to be tried:

A. Harvard’s Federally Funded Research

1. Harvard University is a non-profit institution and is the oldest institution of higher learning in the United States and one of the world’s leading research universities. Declaration of John Shaw dated June 2, 2025 (“Shaw Decl.”) ¶ 3.

Response: Defendants admit or have no basis to dispute.

2. Harvard’s researchers have pioneered life-altering advancements in improving cancer prevention and treatment, understanding neurodegenerative disorders, creating a new class of antibiotics to treat infections, and studying how spaceflight affects blood cell formation in astronauts. Shaw Decl. ¶¶ 7, 11.

Response: Defendants admit or have no basis to dispute.

3. Harvard’s research programs—funded in part by the Government—serve as training grounds for the next generation of scientific, technological, medical, and public health leaders, with grants supporting the work of more than a thousand graduate students and postdoctoral fellows. Shaw Decl. ¶¶ 8-9, 24, 27.

Response: Defendants admit or have no basis to dispute.

4. As of April 14, 2025, Harvard was a recipient of active grants from the following agencies: the National Endowment of the Arts (“NEA”); the National Institutes of Health (“NIH”); other subagencies of the Department of Health and Human Services (“HHS”); the National Science Foundation (“NSF”); the Office of Personnel Management (“OPM”); the Department of Justice (“DOJ”); the Department of Agriculture (“USDA”); the Department of Education (“Department of Education”); the Department of Energy (“Energy”); the Department of Defense (“DoD”); the National Aeronautics and Space Administration (“NASA”); and the Department of Housing and Urban Development (“HUD”). Shaw Decl. ¶ 6.

Response: Defendants admit or have no basis to dispute.

B. Harvard’s Response to Antisemitism on Its Campus

5. Harvard has made policy and other changes aimed at ensuring its campus is safe, fair, and welcoming to Jewish and Israeli students, including that it has:

- a. Disciplined students and faculty who violate applicable policies, Declaration of Peggy Newell dated June 2, 2025 (“Newell Decl.”) ¶ 18;

Response: Defendants admit or have no basis to dispute.

- b. Enhanced programs and policies designed to address bias and promote ideological diversity and civil discourse, Newell Decl. ¶¶ 11, 13-15, 26-27;

Response: Defendants admit or have no basis to dispute.

- c. Adopted new accountability procedures and clarified policies, including specifying that protests are not permitted in classrooms, libraries, dormitories, dining halls, Harvard offices, and other places where they would interfere with normal activities, and they expressly prohibit unauthorized encampments, exhibits, and displays on campus, Newell Decl. ¶¶ 3, 5, 10-11, 13, 16;

Response: Defendants admit or have no basis to dispute.

- d. Supplemented existing safety and security measures, Newell Decl. ¶ 17; and

Response: Defendants admit or have no basis to dispute.

- e. Refined its procedures and protections for reporting misconduct, Newell Decl. ¶ 16.

Response: Defendants admit or have no basis to dispute.

- 6. All of these changes were publicly announced and widely reported. Newell Decl. ¶¶ 4, 6, 8, 12, 19, 21, 25.

Response: Defendants admit or have no basis to dispute.

- 7. Harvard has also made several leadership and personnel changes.¹

Response: Defendants admit or have no basis to dispute.

¹ See, e.g., Alan Blinder, *Alan Garber Will Stay On as Harvard's President*, N.Y. Times (Aug. 2, 2024), <https://perma.cc/6HTP-55RL>; John Manning Named Next Provost, Harvard Gazette (Aug. 15, 2024), <https://perma.cc/UAP8-34CP>; Max J. Krupnick, *David Deming Announced as Harvard College Dean*, Harvard Magazine (May 15, 2025), <https://perma.cc/EP98-23MK>; *New Member of Harvard Corporation*, Harvard Univ.: Off. of the President (May 29, 2025), <https://perma.cc/22HB-YZWS>.

8. Concurrently with these changes, President Garber charged a Presidential Task Force on Combating Antisemitism and Anti-Israeli Bias (“Harvard Task Force”) in January 2024 with “identifying the root causes of and contributing factors to bias-based behaviors on campus” and “recommending approaches to combat bias and to mitigate its impact on campus.” Newell Decl. ¶ 26.

Response: Defendants admit or have no basis to dispute.

9. On April 29, 2025, the Harvard Task Force released a final 311-page report that, while noting “numerous examples of students, staff, and faculty dedicated to renewing and strengthening the Harvard community,” acknowledged the “alienating and hostile atmosphere” experienced by many Jewish and Israeli students at Harvard, as well as “instances where administrators and faculty at certain Harvard Schools seemingly fell short in their responsibility to uphold principles of open inquiry, civility, and respectful disagreement within specific courses, programs, and events.” Newell Decl. ¶ 26.²

Response: Defendants admit or have no basis to dispute.

10. To address its troubling findings, the Harvard Task Force recommended comprehensive changes to “campus culture and student experience” and “governance” at Harvard. The report called for changes in nine specific areas related to “campus culture and student experience”: (1) admissions, (2) early student experiences, (3) academics, (4) academic offerings, (5) “co-curricular activities and residential life,” (6) “building a pluralistic community,”

² See also Presidential Task Force on Combating Antisemitism and Anti-Israeli Bias, Harvard Univ., *Final Report* 26-28, 191 (Apr. 29, 2025), <https://perma.cc/2QS7-4YE6> [hereinafter *Final Report*].

(7) religious life, (8) administrative infrastructure, and (9) “protests, complaints, and discipline.”

Newell Decl. ¶ 27.³

Response: Defendants admit or have no basis to dispute.

11. The report recommended that Harvard:

- a. Create a dedicated leadership position “specifically tasked with addressing antisemitism and anti-Israel bias”;⁴
- b. Provide students with “substantially more opportunities to learn about antisemitism, Jewish history and culture, the history and politics of Israel, Zionism, and the Israeli-Palestinian conflict,” and encourage classes to be co-taught where possible to help students ground their views “in established facts, rigorous scholarship, and adequately considered perspectives”;⁵
- c. Develop a channel for informal grievances and anonymous complaints;⁶
- d. Ensure “greater consistency in disciplinary procedures” across Harvard’s Schools;⁷ and
- e. Provide more oversight by tenured faculty over “educational programs and instructor training.”⁸

Response: Defendants admit or have no basis to dispute.

³ See also *Final Report* 173-90, *supra* n.2.

⁴ *Final Report* 184, *supra* n.2.

⁵ *Id.* at 178-79.

⁶ *Id.* at 188.

⁷ *Id.*

⁸ *Id.* at 29.

12. The Harvard Task Force made clear that “the resolutions and the reforms” must come from Harvard. If “external parties . . . seek to compel adoption of some of [the] proposed reforms,” the report observed, it “will make it more difficult for Harvard to fix itself.” Newell Decl. ¶ 28.⁹

Response: Defendants admit or have no basis to dispute.

13. After the report’s release, President Garber responded on behalf of the University that “Harvard cannot—and will not—abide bigotry” and is committed to “address[ing] with determination at every level of the University” the challenges identified in the report and to “act[ing] decisively” to do so. Newell Decl. ¶ 26 (citation omitted).

Response: Defendants admit or have no basis to dispute.

14. To that end, Harvard already has taken steps to centralize and strengthen its disciplinary procedures, including by empowering the President to call on a faculty panel of the University Committee on Rights and Responsibilities (UCRR) to investigate, find facts, and impose discipline in cases involving students from multiple Schools and alleged violations of University policies. Newell Decl. ¶ 16.

Response: Defendants admit or have no basis to dispute.

15. Harvard’s Academic Council (the president, provost, deans, and other senior leaders) is “further developing and implementing new recommendations” in order to “nurtur[e] a widespread sense of belonging and promot[e] respectful dialogue; revis[e] and implement[] policies, procedures, and training; and strengthen[] academic and residential life.” Newell Decl. ¶ 29 (citation omitted).

Response: Defendants admit or have no basis to dispute.

⁹ See also *Final Report 4*, *supra* n.2.

16. Harvard’s deans are reviewing recommendations concerning admissions, appointments, curriculum, and orientation and training programs, and they have been directed to submit “action plans” by June 2025 for each of Harvard’s schools. Newell Decl. ¶ 29 (citation omitted).

Response: Defendants admit or have no basis to dispute.

17. The Office of the President and Provost “will oversee the implementation of recommendations,” including “the establishment of a University-wide initiative to promote and support viewpoint diversity.” Newell Decl. ¶ 29 (citation omitted).

Response: Defendants admit or have no basis to dispute.

18. The administrative record does not include Harvard’s statements and announcements regarding measures it has taken and will take to combat antisemitism, and contains no evidence predating the Government’s actions to cut off funding in which the defendant agencies provided Harvard with detailed allegations of antisemitism at Harvard, identified what actions or inactions by Harvard amounted to Title VI violations by Harvard, or identified which programs at Harvard were affected by such violations. *See generally* Administrative Record.

Response: Defendants dispute that the administrative record does not include Harvard’s statements and announcements (see, e.g., HSHarv_00000474, ENERGY AR3944, EDHarvAR_0000011).

C. Defendants’ Threats to Harvard’s Federal Research Funding

19. On February 3, 2025, the DOJ announced the formation of a multi-agency Task Force to Combat Antisemitism (“Federal Task Force”) including representatives from the Department of

Education, HHS, and other agencies, led by Senior Counsel to the Assistant Attorney General for Civil Rights, Leo Terrell.¹⁰

Response: Defendants admit or have no basis to dispute.

20. Prior to Terrell's appointment as Senior Counsel to the Assistant Attorney General for Civil Rights and head of the Federal Task Force, on October 20, 2024, Terrell stated that "Harvard will lose much more effective January 2025."¹¹

Response: Defendants admit or have no basis to dispute.

21. On March 31, 2025, Harvard received a letter from the GSA (the "March 31 Letter") notifying Harvard of a "review" of more than \$8.7 billion in federal funding to Harvard. GSAHarv_00000003-04.

Response: Defendants admit or have no basis to dispute.

22. The March 31 Letter linked the review of funding to Defendants' allegations about antisemitism on Harvard's campus. GSAHarv_00000003-4; *see* Declaration of Steven P. Lehotsky dated June 2, 2025 ("Lehotsky Decl."), Ex. 1.

Response: Not disputed. However, the facts stated herein are not material to Plaintiff's claims as they are a characterization of the March 31 Letter, which is itself a part of the Administrative Record for this case.

23. The Federal Task Force followed up on April 3, 2025, with an "official notice" of certain "pre-conditions" with which Harvard was required to comply to continue receiving federal funding (the "April 3 Letter"). HHSHarv_000000061-63.

¹⁰ Press Release, U.S. Dep't of Just., *Justice Department Announces Formation of Task Force to Combat Anti-Semitism* (Feb. 3, 2025), <https://perma.cc/9JBC-UZ2D>.

¹¹ @TheLeoTerrell, X.com (Oct. 20, 2024, 3:33 PM ET), <https://perma.cc/C9EZ-9Q2J>.

Response: Not disputed. However, the facts stated herein are not material to Plaintiff's claims as they are a characterization of the April 3 Letter, which is itself a part of the Administrative Record for this case.

24. The April 3 Letter described “several broad, non-exhaustive areas of reform that the government views as necessary for Harvard to implement to remain a responsible recipient of federal taxpayer dollars,” including governance reforms “to foster clear lines of authority”; oversight for “biased programs that fuel antisemitism” and to “improve viewpoint diversity”; and efforts “to shutter” diversity, equity, and inclusion (“DEI”) programs that “teach” certain things. HHSHarv_00000062-63.

Response: Defendants admit or have no basis to dispute.

25. The April 3 Letter further stated that Harvard had “failed to protect American students and faculty from antisemitic violence and harassment in addition to other alleged violations of Title VI and Title VII of the Civil Rights Act of 1964” and called for “immediate cooperation in implementing these critical reforms” as a prerequisite for “Harvard University’s continued financial relationship with the United States government.” HHSHarv_00000062-63.

Response: Not disputed. However, the facts stated herein are not material to Plaintiff's claims as they are a characterization of the April 3 Letter, which is itself a part of the Administrative Record for this case.

26. Nowhere in the April 3 Letter did the Government acknowledge the reforms and commitments Harvard had already made, including commissioning the Harvard Task Force, which issued its report and recommendations shortly thereafter. HHSHarv_00000062-63.

Response: Not disputed. However, the facts stated herein are not material to Plaintiff's claims as they are a characterization of the April 3 Letter, which is itself a part of the Administrative Record for this case.

27. Nowhere in the April 3 Letter did the Government identify any specific instances of antisemitism on Harvard's campus. HHSHarv_00000062-63.

Response: Not disputed. However, the facts stated herein are not material to Plaintiff's claims as they are a characterization of the April 3 Letter, which is itself a part of the Administrative Record for this case.

28. Nowhere in the April 3 Letter did the Government specify how Harvard failed to respond to any such acts of antisemitism in a way that violated Title VI. HHSHarv_00000062-63.

Response: Not disputed. However, the facts stated herein are not material to Plaintiff's claims as they are a characterization of the April 3 Letter, which is itself a part of the Administrative Record for this case.

29. On the same day, the Government sent Harvard's counsel an email to schedule a meeting, along with an attached document that contained a "[m]enu" of further demands. HHSHarv_00005230-35.

Response: Defendants admit or have no basis to dispute.

30. Many of those demands mirrored those contained in the April 3 Letter, such as a "choice" between "install[ing] new leadership in problematic depts" and "receivership." HHSHarv_00005234.

Response: Not disputed. However, the facts stated herein are not material to Plaintiff's claims as they are a characterization of the April 3 Letter, which is itself a part of the Administrative Record for this case.

31. The document also stated that the Government sought a “[s]enior secured 1st Lien on all Harvard assets which will serve as collateral to pay back government from Harvard in event of non-compliance in the future.” HSHHarv_00005235.

Response: Defendants admit or have no basis to dispute.

32. On April 11, 2025, HHS, GSA, and the Department of Education sent another letter to President Garber (the “April 11 Letter”). HSHHarv_00000098-102.

Response: Defendants admit or have no basis to dispute.

33. The April 11 Letter, which stated that it “incorporates and supersedes” the April 3 Letter, asserted that Harvard “failed to live up to . . . [the] civil rights conditions that justify federal investment” and laid out a list of conditions Harvard must satisfy to “maintain Harvard’s financial relationship with the federal government.” HSHHarv_00000098.

Response: Defendants admit or have no basis to dispute.

34. Specifically, among other demands, the Government’s conditions included: “commission[ing] an external party . . . to audit the student body, faculty, staff, and leadership for viewpoint diversity, such that each department, field, or teaching unit must be individually viewpoint diverse”; “abolish[ing] all criteria, preferences, and practices, whether mandatory or optional, throughout its admissions and hiring practices, that function as ideological litmus tests”; for departments, fields, and teaching units found to “lack viewpoint diversity,” “hiring a critical mass of new faculty” and “admitting a critical mass of students” to provide the Government’s preferred balance of viewpoint diversity; “reform[ing] and restructuring” governance; “reducing the power held by students and untenured faculty,” as well as “the power held by faculty . . . more committed to activism than scholarship”; and “shutter[ing]” all DEI programs “through structural and personnel changes.” HSHHarv_00000098-102.

Response: Defendants admit or have no basis to dispute.

35. The final arbiter of compliance with these conditions would be the federal government, which would retain the right to audit Harvard (or review final audit reports by third parties) until at least the end of 2028. HSHHarv_00000098-102.

Response: Defendants admit or have no basis to dispute.

36. Like the April 3 Letter, the April 11 Letter stated that the Government expected “immediate cooperation in implementing these critical reforms” if the University wanted to “maintain Harvard’s financial relationship with the federal government.” HSHHarv_00000098-102.

Response: Not disputed. However, the facts stated herein are not material to Plaintiff’s claims as they are a characterization of the April 11 Letter, which is itself a part of the Administrative Record for this case.

37. Nowhere in the April 11 Letter did the Government acknowledge the reforms and commitments Harvard had already made, including commissioning the Harvard Task Force, which already had issued its preliminary recommendations. HSHHarv_00000098-102.

Response: Not disputed. However, the facts stated herein are not material to Plaintiff’s claims as they are a characterization of the April 11 Letter, which is itself a part of the Administrative Record for this case.

38. Nowhere in the April 11 Letter did the Government identify any specific instances of antisemitism on Harvard’s campus. HSHHarv_00000098-102.

Response: Not disputed. However, the facts stated herein are not material to Plaintiff’s claims as they are a characterization of the April 11 Letter, which is itself a part of the Administrative Record for this case.

39. Nowhere in the April 11 Letter did the Government specify how Harvard failed to respond to any such acts of antisemitism in a way that violated Title VI. HSHHarv_00000098-102.

Response: Not disputed. However, the facts stated herein are not material to Plaintiff's claims as they are a characterization of the April 11 Letter, which is itself a part of the Administrative Record for this case.

40. Also on April 11, the DOJ's Civil Rights Division sent Harvard a letter announcing that it was "commencing a compliance review investigation of Harvard University [specifically Harvard Medical School] pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*," and noting that "[i]f we conclude that Harvard University is violating Title VI, we will inform you and work with you to secure compliance by informal voluntary means. 28 C.F.R. §§ 42.107 & 42.108." Lehotsky Decl., Ex. 2.

Response: Defendants dispute as irrelevant to the current proceeding.

41. On April 14, 2025, Harvard sent a letter responding to the April 3 and April 11 Letters, stating that, because the April 11 Letter "presents demands that, in contravention of the First Amendment, invade university freedoms long recognized by the Supreme Court," "Harvard is not prepared to agree to demands that go beyond the lawful authority of this or any administration" and "will not accept the government's terms" because "[n]either Harvard nor any other private university can allow itself to be taken over by the federal government." HSHHarv_00000104-05.

Response: Defendants admit or have no basis to dispute.

42. On April 14, 2025, President Garber explained in a public message to the Harvard community that "[a]lthough some of the demands outlined by the government are aimed at combating antisemitism, the majority represent direct governmental regulation of the 'intellectual

conditions’ at Harvard.” He explained that Harvard “do[es] not take lightly [its] moral duty to fight antisemitism,” noting the steps Harvard had already taken and would continue to take, and stated that “[n]o government—regardless of which party is in power—should dictate what private universities can teach, whom they can admit and hire, and which areas of study and inquiry they can pursue.”¹²

Response: Defendants admit or have no basis to dispute.

D. Defendants’ Freeze Orders and Other Retaliation Against Harvard

43. Later on April 14, 2025, the Federal Task Force “announc[ed] a freeze on \$2.2 billion in multi-year grants and \$60M in multi-year contract value to Harvard University” (the “April 14 Freeze Order”). GSAHarv_00000012-13.

Response: Defendants admit or have no basis to dispute.

44. The April 14 Freeze Order cited “[t]he harassment of Jewish students” and “the troubling entitlement mindset that is endemic in our nation’s most prestigious universities and colleges—that federal investment does not come with the responsibility to uphold civil rights laws.” GSAHarv_00000012-13.

Response: Defendants admit or have no basis to dispute.

45. Nowhere in the April 14 Freeze Order did the Government acknowledge Harvard’s communications from earlier that day, outlining the measures Harvard had taken and had committed to take. GSAHarv_00000012-13.

Response: Defendants admit or have no basis to dispute.

¹² Alan M. Garber, *The Promise of American Higher Education*, Harvard Univ.: Off. of the President (Apr. 14, 2025), <https://perma.cc/L4G7-J8UB>.

46. Nowhere in the April 14 Freeze Order did the Government identify any specific instances of antisemitism on Harvard's campus. GSAHarv_00000012-13.

Response: Defendants admit or have no basis to dispute.

47. Nowhere in the April 14 Freeze Order did the Government specify how Harvard failed to respond to any such acts of antisemitism in a way that violated Title VI. GSAHarv_00000012-13.

Response: Defendants dispute the characterization that the April 14 Freeze Order fails to “specify how Harvard failed to respond to any such acts of antisemitism” and maintain that “disruption of learning” and “harassment of Jewish students” constituted such failures. See GSAHarv_00000013.

48. The Government issued the April 14 Freeze Order without holding any hearing or submitting any report to Congress. *See generally* Administrative Record.

Response: Defendants admit or have no basis to dispute.

49. On April 15, 2025, the President opined on social media that “Perhaps Harvard should lose its Tax Exempt Status and be Taxed as a Political Entity if it keeps pushing political, ideological, and terrorist inspired/supporting ‘Sickness?’ Remember, Tax Exempt Status is totally contingent on acting in the PUBLIC INTEREST!”¹³

Response: Defendants admit or have no basis to dispute.

¹³ @realDonaldTrump, Truth Social (Apr. 15, 2025, 10:09 AM ET), <https://tinyurl.com/4u7dmjdc>.

50. On April 16, 2025, the President further criticized Harvard on social media for “hiring almost all woke, Radical Left, idiots,” and said Harvard “should no longer receive Federal Funds.”¹⁴

Response: Defendants admit or have no basis to dispute.

51. On April 16, 2025, the Department of Homeland Security (“DHS”) threatened Harvard’s eligibility to enroll international students.¹⁵

Response: Defendants dispute as irrelevant to the current proceeding.

52. On April 17, 2025, the Department of Education sent a records request to Harvard.¹⁶

Response: Defendants dispute as irrelevant to the current proceeding.

53. On April 18, 2025, reports surfaced that the Director of NIH’s Office of Policy for Extramural Research Administration had informed other officials at NIH that the agency had “received confirmation from HHS/IOS to hold off on making awards to schools where the funds have been frozen, i.e., Columbia, Brown, Northwestern, Cornell, Weill-Cornell, Harvard,”¹⁷ and that “HHS/IOS has stated that we should not provide any communications to these schools about whether or why the funds are frozen.”¹⁸

¹⁴ @realDonaldTrump, Truth Social (Apr. 16, 2025, 7:05 AM ET), <https://tinyurl.com/yww6nfw7>.

¹⁵ Samuel A. Church & Cam N. Srivastava, *DHS Threatens to Revoke Harvard’s Eligibility to Host International Students Unless It Turns Over Disciplinary Records*, Harvard Crimson (Apr. 17, 2025), <https://perma.cc/775F-QA32>.

¹⁶ Press Release, U.S. Dep’t of Educ., *U.S. Department of Education Initiates Records Request from Harvard University After Discovering Inaccurate Foreign Financial Disclosures* (Apr. 18, 2025), <https://perma.cc/94K2-BQS7>.

¹⁷ @maxdkozlov, X.com (Apr. 18, 2025, 4:24 PM ET), <https://perma.cc/A6L3-M43C>.

¹⁸ *Id.*

Response: Defendants admit to the extent that the reports exist but neither admit nor deny the existence of the reported communications.

54. On April 19, 2025, HHS sent a records request to Harvard.¹⁹

Response: Defendants admit or have no basis to dispute.

55. On April 24, 2025, the President again denounced the University as “a Liberal mess,” while referencing this lawsuit.²⁰

Response: Defendants admit or have no basis to dispute.

56. On May 2, 2025, President Trump posted on social media: “We are going to be taking away Harvard’s Tax Exempt Status. It’s what they deserve!”²¹

Response: Defendants admit or have no basis to dispute.

57. On May 5, 2025, the Secretary of Education sent Harvard another letter (the “May 5 Freeze Order”), claiming that “[i]n every way, Harvard has failed to abide by its legal obligations,” and stating that “Harvard should no longer seek GRANTS from the federal government, since none will be provided,” that “Harvard will cease to be a publicly funded institution,” and that “today’s letter marks the end of new grants for the University.” EDHarvAR_0000008-10.

Response: Defendants admit or have no basis to dispute.

58. The May 5 Freeze Order expressed the Government’s objection to what it characterized as an imbalance of viewpoints in Harvard’s governance and reiterated its earlier demands from the April letters and stated that “[t]he Administration’s priorities have not changed.” EDHarvAR_0000008-10.

¹⁹ Apr. 19, 2025 Letter from HHS’s Office for Civil Rights, <https://perma.cc/2TXK-WG6K>.

²⁰ @realDonaldTrump, Truth Social (Apr. 24, 2025, 9:33 AM ET), <https://tinyurl.com/y84mntt2>.

²¹ @realDonaldTrump, Truth Social (May 2, 2025, 7:25 AM ET), <https://tinyurl.com/35wu7kpk>.

Response: Not disputed. However, the facts stated herein are not material to Plaintiff's claims as they are a characterization of the May Freeze Order, which is itself a part of the Administrative Record for this case.

59. Nowhere in the May 5 Freeze Order did the Government acknowledge the reforms and commitments Harvard had already made, including commissioning the Harvard Task Force. EDHarvAR_0000008-10.

Response: Defendants admit or have no basis to dispute.

60. Nowhere in the May 5 Freeze Order did the Government identify any specific instances of antisemitism on Harvard's campus. EDHarvAR_0000008-10.

Response: Defendants admit or have no basis to dispute.

61. Nowhere in the May 5 Freeze Order did the Government specify how Harvard failed to respond to any such acts of antisemitism in a way that violated Title VI. EDHarvAR_0000008-10.

Response: Defendants admit or have no basis to dispute.

62. The Government issued the May 5 Freeze Order without holding any hearing or submitting any report to Congress. *See generally* Administrative Record.

Response: Defendants admit or have no basis to dispute.

63. On May 12, 2025, President Garber sent a letter to Linda McMahon, the Secretary of Education, in response to the May 5 Freeze Order, explaining that Harvard had implemented "meaningful reform and recommendations designed to eliminate antisemitism and other forms of hate from our campus." Lehotsky Decl., Ex. 3.

Response: Defendants admit or have no basis to dispute.

64. On May 13, 2025, the Federal Task Force issued a press release stating that “Harvard University has repeatedly failed to confront the pervasive race discrimination and anti-Semitic harassment plaguing its campus,” and stating that “[t]he Task Force fully supports the Trump Administration’s multi-agency move to cut funding to Harvard, demonstrating the entire Administration’s commitment to eradicating discrimination on Harvard’s campus.” The Government did not engage with or acknowledge the many reforms and commitments Harvard had already made and committed to make, nor did it claim to be adhering to Title VI’s detailed procedural requirements. GSAHarv_00000014-15.

Response: Defendants admit or have no basis to dispute.

65. On May 19, 2025, DOJ announced that it had opened a False Claims Act investigation into Harvard.²²

Response: Defendants dispute as irrelevant to the current proceeding.

66. On May 22, 2025, DHS revoked Harvard’s Student and Exchange Visitor Program certification. Lehotsky Decl., Ex. 4.

Response: Defendants dispute as irrelevant to the current proceeding.

E. The Federal Government’s Purported Terminations of Grants

67. After issuing the April 14 Freeze Order, the Government immediately began issuing stop work orders on certain grants, which require the cessation of all activities related to the projects. Shaw Declaration ¶ 10; *e.g.*, HSHHarv_00005225-29.

Response: Defendants admit or have no basis to dispute.

²² Press Release, U.S. Dep’t of Just., *Justice Department Establishes Civil Rights Fraud Initiative* (May 19, 2025), <https://perma.cc/J4B7-UVQ4>; Michael C. Bender & Michael S. Schmidt, *Trump Administration Escalates Harvard Feud with New Justice Dept. Investigation*, N.Y. Times (May 15, 2025), <https://perma.cc/M326-4APV>.

68. On April 16, 2025, DHS terminated two grants “totaling over \$2.7 million to Harvard University, declaring it unfit to be entrusted with taxpayer dollars.”²³

Response: Defendants admit or have no basis to dispute.

69. Even before the May 5 Freeze Order, the Federal Task Force collected from agencies the total universe of available grants. *See, e.g.*, NASA-AR03541; NASA-AR03547; NASA-AR03558-36.

Response: Defendants admit or have no basis to dispute.

70. White House officials also engaged in a multi-agency effort to identify grants with Harvard that were eligible for termination. GSAHarv_00000035-37; GSAHarv_00000039; NASA-AR03692-703; GSAHarv_00000124-34.

Response: Defendants admit or have no basis to dispute.

71. The White House controlled how agencies would explain the terminations, including by using a common “template” letter. *See, e.g.*, NASA-AR03637-45; USDA-HARV-AR-000084; *see also* ENERGY AR3940-41; HSHarv_00000474-77.

Response: Defendants dispute the characterization that the White House controlled all the Defendant agencies’ terminations and that every Defendant agency terminated funding.

72. The White House gave the agencies a deadline for sending the termination letters and directed them to terminate grants to Harvard after the “final greenlight from the White House.” USDA-HARV-AR-00001; *see also* NASA-AR03679; DODHarv_00000001.

²³ Press Release, U.S. Dep’t of Homeland Sec., *Secretary Noem Terminates \$2.7 Million in DHS Grants; Orders Harvard to Prove Compliance with Foreign Student Requirements*, <https://perma.cc/R6SV-9ECQ>.

Response: Defendants dispute that the White House controlled all the Defendant agencies' terminations and that every Defendant agency terminated funding.

73. Harvard received termination letters from NIH, HHSHarv_00000473-77; USDA, USDA-HARV-AR-00008-09; the Department of Energy, ENERGY AR3932-33; DoD, DoDHarv_00000039-40; NSF, NSF_Harvard000002; HUD, HUDHarvAR_00000063-64; the Department of Education, *e.g.*, EDHarvAR_0000011-12; the Department of Commerce, Lehotsky Decl., Ex. 5; and the Centers for Disease Control and Prevention, Lehotsky Decl., Ex. 6 (collectively, the “Termination Letters”).

Response: Defendants admit or have no basis to dispute.

74. The terminated grants related to all manner of medical, scientific, technological, and other projects—ranging from breast cancer detection and prevention, to biological threats, to overcoming antibiotic resistance, Shaw Decl. ¶¶ 11-13, to improving the neurologic outcomes for pediatric cancer survivors to developing drugs to treat long-term radiation exposure and chemotherapy,²⁴ to studying the effects of particulate matter exposure on military veterans, HHS_HARV_00004700,²⁵ to creating “technologies that provide energy-relevant minerals for economic and national security.”²⁶

Response: Defendants admit or have no basis to dispute.

²⁴ Liz Mineo, *Freezing Funding Halts Medical, Engineering, and Scientific Research*, Harvard Gazette (Apr. 21, 2025), perma.cc/4MQ6-DRXA.

²⁵ See also Avani B. Rai & Saketh Sundar, *Harvard's Researchers Take Center Stage in Funding Showdown with Trump*, Harvard Crimson (Apr. 15, 2025), perma.cc/KH7R-4GBY.

²⁶ *Harvard University: Developing Advanced NMR Techniques to Predict and Monitor CO2 Storage and Mineralization for Enhanced Mining Exploration and Operation*, ARPA-E, <https://perma.cc/9WG9-XT6L>.

75. The termination decisions were made outside the agencies that are charged with administering the programs and that had made the decision to provide federal funding to Harvard in the first place. HSHHarv_00000061.

Response: Defendants dispute the characterization of the cited record as a “termination decision” and disputes the characterization that all termination decisions were “made outside the agencies that are charged with administering the programs that had made the decision to provide funding[.]”

76. No termination letter presented any program-specific rationale for the terminations, and no termination letter reflected that any program-specific consideration had occurred. HSHHarv_00000473-77; USDA-HARV-AR-00008-09; ENERGY AR3932-33; DoDHarv_00000039-40; NSF_Harvard000002; HUDHarvAR_00000063-64; EDHarvAR_0000011-12; Lehotsky Decl., Exs. 5-6.

Response: Defendants admit or have no basis to dispute.

77. Almost all of the Termination Letters relied on a purported change in program goals or agency priorities, invoking 2 C.F.R. § 200.340(a)(4), which provides that a federal agency may terminate an award “pursuant to the terms and conditions of the . . . award, including, to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities.” HSHHarv_00000473; ENERGY AR3932; DoDHarv_00000039; NSF_Harvard0000039; HUDHarvAR_00000063-64; Lehotsky Decl., Ex. 5 at 1.

Response: Defendants admit or have no basis to dispute.

78. All but one of the agencies’ Termination Letters stated in some manner that Harvard’s grant “awards no longer effectuate agency priorities” because of “recent events at Harvard University involving antisemitic action” and “Harvard’s ongoing inaction in the face of

repeated and severe harassment and targeting of Jewish students,” coupled with Harvard’s “refus[al] to take appropriate action . . . or implement necessary reforms.” *E.g.*, HHSHarv_00000473-74; *see* ENERGY AR3932; DoDHarv_00000039; NSF_Harvard000039; Lehotsky Decl., Ex. 6 at 1; USDA-HARV-AR-00008-09; EDHarvAR_0000011; Lehotsky Decl., Ex. 5 at 1-2.

Response: Defendants admit or have no basis to dispute.

79. The Termination Letters that did not cite such concerns contained no explanation at all as to which agency priorities supposedly had changed or why Harvard’s grant awards purportedly no longer aligned with agency priorities. HUDHarvAR_00000063-64.

Response: Defendants admit or have no basis to dispute.

80. Most of the Termination Letters asserted that “no modification of the projects could align the projects with agency priorities” because Harvard had rejected the Government’s demands. *E.g.*, USDA-HARV-AR-00008; *see* HHSHarv_00000474; ENERGY AR3932.

Response: Defendants dispute that “most of the Termination Letters” included this language and disputes that grants were terminated “because Harvard had rejected the Government’s demands.”

81. None of the Termination Letters identified any specific instances of antisemitism on Harvard’s campus, specified how Harvard failed to respond to any such acts of antisemitism in a way that violated Title VI, or purported to follow Title VI’s procedural requirements that govern termination of federal funding. HHSHarv_00000473-75; USDA-HARV-AR-00008-09; ENERGY AR3932-33; DoDHarv_00000039-40; NSF_Harvard000002; HUDHarvAR_00000063-64; EDHarvAR_0000011-12; Lehotsky Decl., Exs. 5-6.

Response: Defendants admit or have no basis to dispute.

82. Since Defendants began sending the Freeze Orders and Termination Letters, Harvard has received notices of termination for over 950 already-awarded federal research projects. Shaw Declaration ¶ 15.

Response: Defendants admit or have no basis to dispute.

83. Harvard has continued to receive those notices, including after the filing of the Amended Complaint. Lehotsky Decl., Ex. 6.

Response: Defendants admit or have no basis to dispute.

84. One of the grants terminated by DoD was a grant that supported the Assured Microbial Preservation in Harsh or Remote Areas (“AMPHORA”) Program, which worked to increase awareness of emerging biological threats. DoDHarv_00000039-40; DoDHarv_00000047.

Response: Defendants admit or have no basis to dispute.

85. A day after sending a termination letter to Harvard on May 12, 2025, DoD leadership informed officials at the agency that the Secretary of Defense had directed the cancellation of the grants and asked them to issue notices and stop work orders to individual grant recipients. DoDHarv_00000039-40; DoDHarv_00000033.

Response: Defendants admit or have no basis to dispute.

86. The director of contracting at the Defense Advanced Research Projects Agency (“DARPA”) asked to save the grant relating to the AMPHORA program, explaining that:

Harvard is currently the top performing team on the AMPHORA program. Inadequate knowledge of the biological threat landscape poses grave and immediate harm to national security. Development of critical technologies that enables bio surveillance and biocollection in austere, field forward locations bolsters national security and warfighter safety and lethality by enabling medical countermeasure development to new and emerging threats and provides biological threat intelligence to the deployed warfighter. This technology is significantly outpacing the state-of-the art and provides a

novel leap-ahead capability to the force. Harvard's effort is at a pivotal juncture in Phase 1 as they are just starting the microfluidic experiments that will give first indications of whether the program goal is achievable. They are also a critical integrator of multiple technologies that enable this effort and could not be readily reproduced.

DoDHarv_00000047.

Response: Defendants admit or have no basis to dispute.

87. Nothing in the Government's administrative record indicates that the Secretary of Defense yielded to the DARPA director of contracting's request. *See generally* Administrative Record.

Response: Defendants admit or have no basis to dispute.

88. In addition to canceling military research pivotal to national security, the Government ordered immunologists overseeing a multi-school tuberculosis consortium to immediately stop research. HSHARV_00005181.²⁷

Response: Defendants dispute the characterization that the canceled military research was "pivotal to national security."

89. The Government also told a Harvard researcher at the Wyss Institute to halt his development of an advanced chip designed to measure NASA astronauts' radiation exposure during the upcoming Artemis II mission to the Moon. HHS_HARV_00004937.²⁸

Response: Defendants admit or have no basis to dispute.

²⁷ See also Nina Pasquini, *Research on Hold: Funding Freeze Halts Harvard Projects Overnight*, Harvard Mag. (Apr. 18, 2025), <https://perma.cc/5K2W-D4TN>.

²⁸ *Id.*

90. The Government directed another Wyss Institute scientist, a recipient of the nation’s highest honor for technological achievement, to cease his research into Lou Gehrig’s disease.²⁹ HHS_HARV_00005228.

Response: Defendants admit or have no basis to dispute.

91. Officials at the Department of Veterans Affairs have begun the process of cutting funding for research into, among other life-saving measures, “a predictive model to help V.A. emergency room physicians decide whether suicidal veterans should be hospitalized.”³⁰ See HHSHarv_00002326.

Response: Defendants admit or have no basis to dispute.

F. The Government Continues to Threaten Harvard’s Federal Funding

92. On May 20, 2025, HHS announced it was cutting an additional \$60 million in multi-year grants to Harvard.³¹

Response: Defendants admit or have no basis to dispute.

93. On May 26, 2025, the President stated that he was considering taking away “Three Billion Dollars” from “a very antisemitic Harvard,” which he would then give to “TRADE SCHOOLS.”³²

Response: Defendants admit or have no basis to dispute.

²⁹ *Id.*; Benjamin Boettner, *David Walt Named as Laureate for National Medal of Technology and Innovation*, Wyss Inst. (Jan. 7, 2025), perma.cc/W8ZG-SMZ8.

³⁰ Nicholas Nehamas, *Trump’s Push to Defund Harvard Prompts Clash Over Veteran Suicide Research*, N.Y. Times (May 16, 2025), <https://perma.cc/U7W8-K6KM>.

³¹ Dhruv T. Patel & Grace E. Yoon, *HHS Freezes \$60 Million in Federal Grants to Harvard in Third Round of Trump Cuts*, Harvard Crimson (May 20, 2025), <https://perma.cc/3592-75P6>.

³² @realDonaldTrump, Truth Social (May 26, 2025, 8:27 AM ET), <https://tinyurl.com/4jfk7k2k>.

94. And on May 27, 2025, GSA targeted approximately \$100 million in contracts, instructing agencies to “consider [their] contracts with Harvard University and determine whether Harvard and its services efficiently promote the priorities of the agency.” Lehotsky Decl., Ex. 7.³³

Response: Defendants admit or have no basis to dispute.

95. On May 28, 2025, during an interview in the Oval Office, President Trump remarked that Harvard is “hurting [itself]” by “fighting,” and noted that “Columbia has been, really, and they were very, very bad But they’re working with us on finding a solution.” He further stated that Harvard “wants to fight. They want to show how smart they are, and they’re getting their ass kicked”; “every time [Harvard] fight[s], they lose another \$250 million”; and “[a]ll they’re doing is getting in deeper and deeper and deeper.”³⁴

Response: Defendants admit or have no basis to dispute.

G. The Federal Government’s Failure to Comply with Title VI Procedures

96. No Government agency ever acknowledged or engaged with the numerous steps Harvard has taken and committed to take to address antisemitism prior to freezing and terminating Harvard’s federal financial assistance, nor has it given Harvard an opportunity to explain additional steps taken since the initial freezing of funding. *See generally* Administrative Record.

Response: Defendants admit or have no basis to dispute.

³³ *See also Read the Trump Administration Letter About Harvard Contracts*, N.Y. Times (May 27, 2025), <https://perma.cc/V4DC-VS4Y>.

³⁴ President Donald Trump Taking Questions in the Oval Office (Newsmax, aired May 28, 2025, 12:42 PM ET), <https://perma.cc/ZUC6-3SP6>.

97. No Government agency has identified or provided Harvard notice of any specific instances of conduct or inaction by Harvard that would constitute a Title VI violation. *See generally* Administrative Record.

Response: Defendants dispute that Harvard was not notified or provided “any specific instances of conduct or inaction by Harvard that would constitute a Title VI violation” and maintains that the April 3, 2025, and April 11, 2025, letters from the Government to Harvard identify both deficiencies and recommended responsive actions to address antisemitism.

98. No Government agency has afforded Harvard an opportunity for a hearing prior to freezing and terminating Harvard’s federal financial assistance. *See generally* Administrative Record.

Response: Defendants admit or have no basis to dispute.

99. No Government agency has made any express findings on the record about any Title VI allegations against Harvard. *See generally* Administrative Record.

Response: Defendants admit or have no basis to dispute.

100. No Government agency has submitted a written report to Congress, let alone a full report from each relevant agency head to any relevant committee of the House or Senate. *See generally* Administrative Record.

Response: Defendants admit or have no basis to dispute.

101. No Government agency allowed for thirty days to elapse before the Freeze Orders and Termination Letters became effective. Instead, the Freeze Orders and Termination Letters took effect immediately. *See generally* Administrative Record.

Response: Defendants admit or have no basis to dispute.

H. The Irreparable Harm to Harvard

102. The Government’s purported termination of Harvard’s federal financial assistance is having and will continue to have significant consequences on Harvard’s research programs. Shaw Decl. ¶ 16.

Response: Defendants neither admit or deny.

103. The Government’s purported termination of Harvard’s federal financial assistance is contributing and will contribute to the extensive disruption of Harvard’s research operations in a manner that devastates the integrity and continuity of ongoing research studies and jeopardizes their future viability. Shaw Decl. ¶¶ 16-24, 27.

Response: Defendants neither admit or deny.

104. Without funding, physical materials would degrade; graduate students would lose their funding and need to find different positions; and professors would move to other schools. Shaw Decl. ¶¶ 19-21.

Response: Defendants neither admit or deny.

105. The Government’s unconstitutional and unlawful funding cuts will cause staffing reductions, “damage the national research pipeline,” and “slow[] down or halt[] research” to the point of allowing “competitor nations to surpass the United States.” Shaw Decl. ¶¶ 21-22, 25.

Response: Defendants deny the characterization that any funding cuts are “unconstitutional” or “unlawful”.

106. Moreover, “[t]he disruption in ongoing research would harm public health” by upending “federally funded projects directly addressing critical public health challenges, including cancer treatments and prevention, infectious diseases, and Parkinson’s.” Shaw Decl. ¶ 27.

Response: Defendants neither admit or deny.

107. “In light of the terminations, those projects are in jeopardy, and potentially life-changing and life-saving scientific and medical discoveries will be delayed or blocked altogether.” Shaw Decl. ¶ 27.

Response: Defendants neither admit or deny.

108. Harvard cannot absorb the cost of the suspended or cancelled federal funds. Shaw Decl. ¶¶ 29-31.

Response: Defendants neither admit or deny.

Additionally, Defendants submit the following statement of facts of which there is no genuine issue to be tried:

A. The Government’s Initiation of a Review of Harvard’s Federal Funding

1. The Government’s comprehensive review of federal contacts and grants to Harvard was officially announced and began on March 31, 2025. GSAHarv_00000001.

2. The Government’s review of federal grants and contracts was conducted pursuant to Executive Order 14188, signed on January 29, 2025, directing federal agencies to “us[e] all available and appropriate legal tools, to prosecute, remove, or otherwise hold to account the perpetrators of unlawful anti-Semitic harassment and violence.” *Id.*; *see also* Exec. Order. No. 14,188 (Jan. 29, 2025).

Dated: June 16, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

Counsel for Plaintiff certify that they have submitted the foregoing document with the clerk of court for the District of Massachusetts, using the electronic case filing system of the Court. Counsel for Plaintiff hereby certify that they have served all parties electronically or by another manner authorized by Fed. R. Civ. P. 5(b)(2).

/s/ Eitan R. Sirkovich
Eitan R. Sirkovich