Nos. 25-1611, 25-1612

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

AMERICAN PUBLIC HEALTH ASSOCIATION, *et al.*,

Plaintiffs-Appellees,

v.

NATIONAL INSTITUTES OF HEALTH, *et al.*,

Defendants-Appellants.

COMMONWEALTH OF MASSACHUSETTS, *et al.*,

Plaintiffs-Appellees,

v.

ROBERT F. KENNEDY, JR., in his official capacity as Secretary of Health and Human Services, *et al.*,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Massachusetts

TIME SENSITIVE MOTION FOR STAY PENDING APPEAL AND IMMEDIATE ADMINISTRATIVE STAY

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INTRODUCTION

Defendants-Appellants respectfully request this Court stay pending appeal the district court's partial final judgment that orders the National Institutes of Health (NIH) to pay money to plaintiffs (or their members) based upon the government's alleged contractual obligation under certain research grants. This judgment was in error, most basically because this case should have been consigned to the Court of Federal Claims under the Tucker Act. As the Supreme Court explained, "the Government is likely to succeed in showing the District Court lacked jurisdiction to order the payment of money under the [Administrative Procedure Act (APA)]." *Department of Educ. v. California*, 145 S. Ct. 966, 968 (2025) (per curiam). Rather than heed that decision, the court chose to adopt the "views of the dissenters" in that case, along with the decision by this Court that case effectively reversed. App. 279. That was error justifying a stay.

Compounding its error, the district court concluded that NIH's discretionary decision of how to allocate lump-sum appropriations to best achieve its goals was subject to APA review, even though the APA makes clear that "agency action . . . committed to agency discretion by law"—like the grant terminations here—is nonjusticiable, 5 U.S.C. § 701(a)(2). App. 286. The court further erred in its application of APA review by relying again on the dissent in *California*, faulting the "abruptness in the robotic rollout" of the grant terminations, App. 502, even though

the terminations were the product of the individualized consideration and were explained.

The balance of the equities also justifies a stay. As the Supreme Court explained in *California*, the government would suffer irreparable harm because "it is unlikely to recover the grant funds once they are disbursed," while plaintiffs "can recover any wrongfully withheld funds through suit in an appropriate forum." 145 S. Ct. at 969.

In light of these exigencies, the government requests an immediate administrative stay or, absent that, a prompt decision on the stay motion.

STATEMENT OF THE CASE

A. Background

1. This case arises from the termination of grants issued by NIH and its constituent institutes and centers (ICs). App. 177. NIH and its ICs—each with a specific research agenda, often focusing on a particular disease or body system, *e.g.*, National Cancer Institute—have broad statutory authority to conduct research and award grants in furtherance of their respective missions. NIH is authorized to "make grants-in-aid to universities, hospitals, laboratories and other public or private institutions, and to individuals," 42 U.S.C. § 241(a)(3), in order to "promote the coordination of, research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and

mental diseases and impairments of man," *id.* § 241(a). *See also id.* § 284(b)(2) (granting that authority to the directors of NIH and its ICs).

The funds to award grants come from lump sum appropriations to each IC to advance their respective missions. *See generally* 42 U.S.C. § 282a. The most recent appropriation, for fiscal year 2024, is typical. Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, div. D, tit. II, 138 Stat. 460, 461. For example, Congress appropriated $7,224,159,000 to the National Cancer Institute to carry out the Public Health Services Act (PHSA) "with respect to cancer" and $3,982,345,000 to the National Heart, Lung, and Blood Institute to carry out the PHSA "with respect to cardiovascular, lung, and blood diseases, and blood and blood products." *Id.* The operative appropriation, which is a continuing resolution, carried forward these lump-sum appropriations. Full-Year Continuing Appropriations and Extensions Act, 2025, Pub L. No. 119-4, 139 Stat. 9.

2. NIH and its ICs award grants through a competitive process, which begins with a public notice of funding opportunity that outlines the program goals and the conditions for applying. App. 186-187. Interested entities submit a proposal, which undergoes three layers of review. First, a "study section," which is a group of non-federal scientists with expertise in the relevant field, review the proposal and eliminate some grant applications from further consideration and assign a score to the rest. App. 189. The second level of review is conducted by the relevant IC's advisory council, which renders one of three decisions: recommended for funding, not

recommended for funding, or deferred for re-review by the study section. App. 189. A recommendation for funding is a prerequisite for any grant more than $50,000 but does not guarantee that the grant will be funded. 42 U.S.C. § 284(b)(2). The final level of review is conducted by the director of the relevant IC, who exercises his or her discretion to decide which grants, among those receiving a recommendation for funding, to fund. App. 191. Only a small percentage of all applications are selected to receive an award. App. 109.

To make a grant award, NIH (or an IC) enters into an agreement with the grantee called a Notice of Award ("NOA"). The NOA identifies the institutional grantee and one or more principal investigators, and specifies the amount of the award, its duration, and all other terms and conditions with which the grantee must comply. App. 109. The NOA permits the grantee to draw funds but does not "commi[t] or obligat[e] the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application." 42 CFR § 52.6(c)(3).

The NOA explains the grant "is subject to the terms and conditions incorporated either directly or by reference in the" agreement. App. 366. A term incorporated by reference is Section 8.5.2 of NIH's Grant Policy Statement, which provides "NIH may also terminate the grant in whole or in part as outlined in 2 CFR Part 200.340." App. 415. Part 200.340(a)(4) provides that the agency may terminate

an award in whole or in part "if an award no longer effectuates the program goals or agency priorities."

3. On February 10, 2025, the Acting Secretary of Health and Human Services directed agency personnel to "ensure that taxpayer dollars are used to advance the best interest of the government. This includes avoiding the expenditure of federal funds on programs . . . that promote or take part in diversity, equity, and inclusion (DEI) initiatives or any other initiatives that discriminate on the basis of race, color, religion, sex, national origin, or another perceived characteristic." App. 398. Consistent with that directive, the NIH Chief Grants Management Officer circulated a series of memoranda that provided guidance to ICs on how to exercise their discretion relating to grants to advance administration priorities. *See* App. 441 (Feb. 13, 2025, Supplemental Guidance); App. 446-447 (Feb. 21, 2025, Directive on NIH Priorities); App. 406-413 (Mar. 4, 2025, Award Assessment for Alignment with Agency Priorities); App. 375-386 (Mar. 13, 2025, Award Revision Guidance); App. 391-405 (Mar. 25, 2025, NIH Grants Management Staff Guidance). These memoranda, which the district court collectively referred to as the "Challenged Directives," described a set of subjects that are not agency priorities including, as relevant here: research based on "amorphous equity objectives," *i.e.*, DEI; research on gender identity; and research on why individuals are hesitant to be vaccinated. App. 401.

At around this time, NIH and its ICs reviewed their grant portfolios to identify and cancel specific grants that no longer serve agency priorities. Each grant termination was accompanied by a written explanation of the basis for the termination. *See, e.g.*, App. 414. NIH and its ICs also exercised their discretion to decline to renew grants that did not advance agency priorities. Each non-renewal was also accompanied by written explanation. *See, e.g.*, App. 368. Grantees had the right to appeal any termination or non-renewal and many did, with some appeals still pending. *See, e.g.*, App. 387.

B. Procedural History

1. The conduct of NIH and its ICs relating to grants described above was challenged in two lawsuits filed in the District of Massachusetts that both allege defendants violated the Administrative Procedure Act (APA), 5 U.S.C. §§ 551–559, and the Constitution. The first was filed by several organizations and individuals[1] and captioned *American Public Health Association v. National Institutes of Health,* No. 25-cv-10787 (D. Mass.) (hereinafter the APHA case). App. 153-166. The other was filed

[1] The full list of plaintiffs is the American Public Health Association, Ibis Reproductive Health, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Dr. Brittany Charlton, Dr. Kate Edwards, Dr. Peter Lune, and Dr. Nicole Maphis.

two days later by several states[2] and captioned *Massachusetts v. Kennedy*, No. 25-cv-10814 (D. Mass.) (hereinafter the States case). App. 64. Plaintiffs in both cases moved for a preliminary injunction.

2. The government challenged the district court's jurisdiction, and the court addressed that issue first in the States case. The district court rejected the government's argument that the Tucker Act, which provides for judicial review of "any express or implied contract with the United States" in the Court of Federal Claims, 28 U.S.C. § 1491(a)(1), precluded APA review. According to the court, the "essence" of this case was an action to stop the agency from "violating the statutory grant-making architecture created by Congress . . . and exercising authority arbitrarily and capriciously, in violation of federal law and the Constitution." App. 282. In conducting its analysis, the court considered as "not binding" the Supreme Court's recent decision that "the Government [was] likely to succeed in showing the District Court lacked jurisdiction" under the APA to adjudicate a challenge to the termination of grants in *Department of Education v. California*, 145 S. Ct. 966, 968 (2025) (per curiam). App. 276. Instead, the court adopted the reasoning of the dissent in that case, along with the decision by this Court that the Supreme Court effectively reversed in *California*, as the basis for its conclusions. App. 268.

[2] Massachusetts, California, Maryland, Washington, Arizona, Colorado, Delaware, Hawaii, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, and Wisconsin.

The court also concluded that the grant terminations were not "committed to agency discretion by law," and were reviewable under the APA, 5 U.S.C. § 701(a)(2), because it believed "there is arguably review where [there is] a conflict with authorizing statutes and applicable regulations." App. 286.

3. The district court consolidated plaintiffs' motion for preliminary injunction in the States case with a trial on the merits and then bifurcated the proceedings. The first phase focused on the challenged grant terminations. The court directed the defendants to file the administrative record and scheduled a merits hearing.

4. In the APHA case, the district court likewise collapsed the motion for preliminary injunction into a trial on the merits. App. 289. The court construed the opposition to the preliminary injunction as a motion to dismiss, which it granted in part. App. 289. First, the court held it had jurisdiction to review plaintiffs' claims for the reasons it articulated in its ruling in the States case. App. 301. The court next ruled that the plaintiff organizations had standing to sue on behalf of their members. App. 308. Turning toward the merits, the court dismissed plaintiffs' freestanding constitutional claims, but held plaintiffs had plausibly pled a violation of the APA and let those claims proceed. App. 330-31.

5. The district court informally consolidated the two cases by holding a combined merits hearing. App. 418. At the hearing's conclusion, the court made oral findings and rulings, App. 334, promising that a "full written opinion" would follow, App. 333. Following the hearing, the district court issued partial final judgments

under Fed. R. Civ. P. 54(b) in both cases that: (1) the "Challenged Directives as a whole are arbitrary and capricious . . . and are hereby vacated and set aside," and (2) the grant terminations are "arbitrary and capricious . . . and are hereby vacated and set aside." App. 348 (states case); App. 351 (APHA case). The orders also contained a list of the grant terminations that were being reversed.

Nine days later, the district court issued its written opinion. Citing again the dissent in *California*, the court found there was "no reasoned decision-making at all with respect to the NIH's 'abruptness' in the 'robotic rollout' of this grant termination." App. 502. Largely discussing the guidance related to DEI initiatives, the court found there was "no definition of DEI." App. 503. Therefore, the court concluded, reliance on DEI as a reason to terminate grants was arbitrary and capricious because it would allow the agency to "arrive at whatever conclusion it wishes without adequately explaining the standard on which its decision is based." App. 504. The court found the other terms in the Challenged Directives, *e.g.*, gender identity and vaccine hesitancy, likewise lacked a definition and any decision relying upon those reasons was likewise arbitrary and capricious. App. 509-510.

6. Immediately following the entry of partial final judgment—and even before the issuance of the written decision—the government filed a notice of appeal. App. 353 (APHA case); App. 356 (states case). The government also moved for a stay pending appeal, which the court denied. App. 359. In denying a stay, the court stated that the questions about its jurisdiction were "fully addressed" in its prior opinion.

App. 361. The court also held the balance of the equities weighed against a stay because a "denial means only that the executive defendants must comply with the Act of Congress rather than sequestering funds (probably forever) during the course of the appeal." App. 364.

ARGUMENT

A stay pending appeal is warranted. The Supreme Court issued a stay of a materially indistinguishable order, and the district court responded by adopting the reasoning of the Supreme Court dissent. Thus, the government is likely to succeed on the merits of its appeal. The government will also face irreparable injury absent a stay, and the balance of equities and public interest support a stay. *See Nken v. Holder*, 556 U.S. 418, 426 (2009).

I. The Government is Likely to Succeed On the Merits

"[T]he Government is likely to succeed in showing the District Court lacked jurisdiction" because "the APA's limited waiver of immunity does not extend to orders to enforce a contractual obligation to pay money along the lines of what the District Court ordered here." *California*, 145 S. Ct. at 968. Even were this not so, plaintiffs' claims are nonjusticiable because the decision to discontinue funding programs to reallocate those funds to more productive uses is committed to agency discretion by law and not reviewable under the APA. 5 U.S.C. § 701(a)(2). In any event, the government is likely to show the grant terminations at issue were reasonable and reasonably explained.

A. The District Court Lacked Jurisdiction to Enforce a Contractual Obligation to Pay Money

1. The federal government is "immune from suit in federal court absent a clear and unequivocal waiver of sovereign immunity." *Crowley Gov't Servs., Inc. v. General Servs. Admin.*, 38 F.4th 1099, 1105 (D.C. Cir. 2022). The Tucker Act provides a waiver for "any claim against the United States founded . . . upon any express or implied contract with the United States." 28 U.S.C. § 1491(a). Such claims seek monetary relief and must be brought in the United States Court of Federal Claims. *Id.* In contrast, the APA provides "a limited waiver of sovereign immunity for claims against the United States" seeking non-monetary relief, *Crowley*, 38 F.4th at 1105, that 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 Pottawatomi Indians v. Patchak*, 567 U.S. 209, 215 (2012) (quoting 5 U.S.C. § 702). That carve-out "prevents plaintiffs from exploiting the APA's waiver to evade limitations on suit contained in other statutes." *Id.* Thus, the "Tucker Act impliedly forbids" the bringing of "contract actions" against "the government in a federal district court" under the APA. *Albrecht v. Committee on Emp. Benefits of the Fed. Reserve Emp. Benefits Sys.*, 357 F.3d 62, 67-68 (D.C. Cir. 2004) (quotation omitted). This jurisdictional division ensures that contract claims against the government are channeled into the court that has "unique expertise" in that area, *Ingersoll-Rand Co. v. United States*, 780 F.2d 74, 78

(D.C. Cir. 1985), and which Congress has generally not empowered to grant injunctive relief, *see James v. Caldera*, 159 F.3d 573, 580 (Fed. Cir. 1998).

As this Court has long recognized, the APA precludes suit in district court where "the essence of the action is in contract," and plaintiffs "cannot 'by the mystique of a different form of complaint' make it otherwise." *American Sci. & Eng'g, Inc. v. Califano*, 571 F.2d 58, 63 (1st Cir. 1978) (quoting *Sprague Elec. Co. v. Tax Ct. of the U.S.*, 340 F.2d 947, 948 (1st Cir. 1965)). To determine whether "a particular action" is "at its essence a contract action" subject to the Tucker Act or instead a challenge properly brought under the APA, courts have looked at both "the source of the rights upon which the plaintiff bases its claims" and "the type of relief sought (or appropriate)." *Megapulse, Inc. v. Lewis*, 672 F.2d 959, 968 (D.C. Cir. 1982) (quotation omitted).

The Supreme Court recently considered another case where a district court ordered the reversal of the government's termination of grants, and the Court concluded that the government was likely "to succeed in showing the District Court lacked jurisdiction." *California*, 145 S. Ct. at 968. In that case, several states challenged the Department of Education's termination of various education related grants for "discriminatory practices—including in the form of DEI." *California v. U.S. Dep't of Educ.*, 132 F.4th 92, 96 (1st Cir. 2025). The district court temporarily enjoined the challenged grant terminations.

The district court and this Court declined to stay that injunction, but the Supreme Court did not. In granting the government's request for emergency relief, the Supreme Court explained that while "a district court's jurisdiction is not barred by the possibility that an order setting aside an agency's action may result in the disbursement of funds," the essential point is "the APA's limited waiver of immunity does not extend to orders to enforce a contractual obligation to pay money along the lines of what the District Court ordered here." *California*, 145 S. Ct. at 968 (quotation omitted). That explanation applies equally here.

The source of plaintiffs' purported rights to payment are the grant agreements, which are effectively contracts. *See Bennett v. New Jersey*, 470 U.S. 632, 638 (1985) (noting that "many . . . federal grant programs" are "much in the nature of a contract") (quotation omitted); *see also Columbus Reg'l Hosp v. United States*, 990 F.3d 1330, 1338 (Fed. Cir. 2021) ("[F]ederal grant agreements [are treated] as contracts when the standard conditions for a contract are satisfied, including that the federal entity agrees to be bound."). The grant agreements are written agreements, agreed to by both the government and grantee, and specify the amount the government agreed to pay, the work the grantee was to perform in exchange for the payment, the performance period for the work, and all applicable policies and procedures, including the conditions under which the grant could be terminated. *See, e.g.*, App. 366.

The type of relief plaintiffs seek is also contractual as the harm they invoke arises solely from the government's failure to pay. App. 217 (describing the "delays and other funding disruptions"); *see also* App. 173, 217-240; App. 132 (describing the harm as the "blast radius [] from these terminations"); *see also* App. 93-94, 132-153. The district court understood this, recognizing the essential effect of its order was the "forthwith [] disbursement of funds both appropriated by the Congress of the United States and allocated heretofore by the defendant agencies," App. 339-340, and denying a stay pending appeal over concerns about the "sequestering [of] funds (probably forever) during the course of the appeal," App. 364. The payment of money, far from being merely incidental to or "hint[ed] at" by plaintiffs' request for relief, is the entire object of plaintiffs' suit. *Crowley*, 38 F.4th at 1112 (quotation omitted). This suit is thus not a challenge to some regulatory action with monetary implications, but rather a suit for "past due sums" from the government. *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 212 (2002). Where, as here, "the alpha and omega of this dispute" is a contract claim for moneys allegedly owed, the district court lacks jurisdiction under the APA. *United States v. J & E Salvage Co.*, 55 F.3d 985, 989 (4th Cir. 1995).

2. The district court did not even attempt to harmonize its ruling with the Supreme Court's decision in *California*, viewing it as "not binding on this Court." App. 276. Instead, the court chose to adopt the "views of the dissenters" in *California* and the decision by this Court that *California* effectively reversed. App. 279. Applying

those views, the court concluded that these cases were "not an action for monetary damages," but rather an action to stop the government from "violating the statutory grant-making architecture created by Congress . . . and exercising authority arbitrarily and capriciously . . . ." App. 282. It was error for the court to ignore the clear signals from the Supreme Court that numerous other courts have heeded. *See*, *e.g.*, *Sustainability Inst. v. Trump,* No. 25-1575, 2025 WL 1587100, at *2 (4th Cir. June 5, 2025) (staying injunction based on *California* where the grants "were awarded by federal executive agencies to specific grantees from a generalized fund").

But even on its own terms, the district court's analysis was flawed. The court ignored the fact that none of the statutes, regulations, or constitutional provisions invoked by the plaintiffs required the government to make payments to plaintiffs. "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." *Sustainability Inst.*, 2025 WL 1587100, at *2. And it is an express grant term that gives the right to terminate grants that no longer advance "program goals or agency priorities." *See* App. 366, 415. This case is therefore about contracts, and whether those contracts were breached by their termination. This fact isn't changed by the court's focus on the Challenged Directives which, as the court itself explains, were only the "paper trail" left by the grant terminations. App. 493. Underscoring the point, compliance with contractual agreements, not compliance with the relevant

statutes and regulations, was the essence of what the court ordered. App. 348, 351 (ordering the grant terminations "hereby vacated and set aside").

Nor is the contractual nature of the case changed by the fact the district court ordered the "equitable" remedy of reversing the grant terminations. As a threshold matter, this was beyond the court's authority; federal courts "do not have the power to order specific performance by the United States of its alleged contractual obligations," because the United States has never waived its sovereign immunity as to that remedy. *See Coggeshall Dev. Corp. v. Diamond*, 884 F.2d 1, 3-4 (1st Cir. 1989). Equally important, any breach-of-contract claim for failure to pay could be recast as seeking future compliance. Were this enough to give the district court jurisdiction, the Tucker Act's jurisdictional divide would be meaningless. *See U.S. Conference of Catholic Bishops v. U.S. Dep't of State*, No. 1:25-cv-00465 (TNM), 2025 WL 763738, at *5 (D.D.C. Mar. 11, 2025) (When claims like plaintiffs' are "[s]tripped of [their] equitable flair, the requested relief seeks one thing: . . . the Court to order the Government to stop withholding the money due" under the grants. Such a claim for "the classic contractual remedy of specific performance" "must be resolved by the Claims Court." (quotation omitted)).

B. The Grant Terminations Were Committed to Agency Discretion by Law

1. The district court also erred in rejecting the government's argument that the grant terminations were committed to agency discretion by law. App. 286. The

Supreme Court made clear in *Lincoln v. Vigil*, 508 U.S. 182 (1993), that agency decisions to discontinue a program funded by a lump sum appropriation to reallocate those resources toward more productive uses are "committed to agency discretion by law and therefore not subject to judicial review under the Administrative Procedure Act," *id.* at 184 (quoting 5 U.S.C. § 701(a)(2)). The "allocation of funds from a lump-sum appropriation is" an "administrative decision traditionally regarded as committed to agency discretion" because the "very point of a lump-sum appropriation is to give an agency the capacity to adapt to changing circumstances and meet its statutory responsibilities in what it sees as the most effective or desirable way." *Id.* at 192. Of course, this discretion is not unbounded. "[A]n agency is not free simply to disregard statutory responsibilities: Congress may always circumscribe agency discretion to allocate resources by putting restrictions in the operative statutes." *Id.* at 193. But as long as the agency abides by the relevant statutes (and whatever self-imposed obligations may arise from regulations or grant instruments), the APA "gives the courts no leave to intrude." *Id.*

Lump sum appropriations are at issue here, with the appropriations statute only directing NIH and its IC use the funds to carry out their purpose. Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, div. D, tit. II, 138 Stat. 460, 461 (appropriating, for example, $7,224,159,000 to the National Cancer Institute to carry out NIH's mission "with respect to cancer"); Full-Year Continuing Appropriations and Extensions Act, 2025, Pub L. No. 119-4, 139 Stat. 9 (carrying

forward the lump sum appropriations). These appropriations are functionally identical to those at issue in *Lincoln*, which authorized the agency to "expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians, for the relief of distress and conservation of health." 508 U.S. at 185.

2. The district court's conclusion to the contrary rests entirely upon the premise that "there is arguably review where [there is] a conflict with authorizing statutes and applicable regulations." App. 286. But the only statutes that could qualify are those defining research priorities, and the court expressly declined to "dive into the contours" of that issue. App. 516. If it had, the court would have seen that those authorities neither require any particular grant be funded nor purport to limit the agency's discretion to determine which grants best serve those priorities. Indeed, the court expressly found no conflict with the operative Strategic Plan, App. 101-102, which contains research priorities that plaintiffs claim are incompatible with the Challenged Directives, App. 182.

C. The Grant Terminations Were Reasonable and Reasonably Explained

The grant terminations would, in any event, be upheld under the arbitrary-and-capricious standard, which "requires that agency action be reasonable and reasonably explained." *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021). "Judicial review

under that standard is deferential, and a court may not substitute its own policy judgment for that of the agency." *Id.*

As explained, the challenged grant terminations came after an individualized review to identify those grants that no longer serve agency priorities. Each terminated grant recipient received a written notice detailing the reasons for termination. *See*, *e.g.*, App. 365 (Explaining that the terminated grant focuses "on artificial and non-scientific categories, including amorphous equity objectives, are antithetical to the scientific inquiry, do nothing to expand our knowledge of living systems, provide low returns on investment, and ultimately do not enhance health, lengthen life, or reduce illness."). This was "a satisfactory explanation" for each termination. *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

The district court's conclusion otherwise again invoked the dissent in *California*, faulting the "abruptness in the robotic rollout" of the grant terminations. App. 502. What the court found most objectionable was the lack of definition for terms like DEI in the Challenged Directives. App. 503. But the Challenged Directives were only meant to provide guidance, not conclusively delineate every grant that should be terminated. Grants were not indiscriminately terminated by topic. For example, several dozen grants researching minority health related topics were not terminated. Thus, the lack of a comprehensive definition reflects individual review, not arbitrary and capricious action. *See* App.442 n.8 (citing testimony that ICs use their "scientific background" and knowledge of their programs to identify grants that should be

terminated for funding DEI activities). The court also complained that reliance interests were not taken into account, App. 510, yet ignored the fact the grant terminations provided for additional funds, where necessary, to support patient safety and animal welfare to support an orderly phaseout of the project, App. 367. And, as noted above, an individual explanation was provided for each grant that was terminated. Each termination was therefore reasonable and reasonably explained.

The district court and the plaintiffs clearly disagree with the agency's judgment on this score. But that does not give the court license to disregard the agency's reasonable rationale, which would "represent[t] a substantial intrusion into the working of another branch of Government" that the Supreme Court has cautioned should normally be avoided. *Dep't of Com. v. New York*, 588 U.S. 752, 781 (2019) (citation omitted). Plaintiffs' arbitrary-and-capricious claim therefore lacks merit.

II. The Equitable Factors Favor a Stay Pending Appeal

A stay is warranted here because the defendants "will be irreparably injured absent a stay," that "issuance of the stay will [not] substantially injure the other parties interested in the proceeding," and that the stay would be in "the public interest." *Nken*, 556 U.S. at 434. In particular, the district court's order will cause significant and irreparable harm to the President's ability to execute core Executive Branch policies and to the public fisc. The order requires the government to reinstate plaintiffs' access to grant funds, which will result in the immediate outflow of significant amounts of money with limited prospects for recovery if it is ultimately

determined that the grant terminations were lawful—especially because the district court declined to order a bond. In contrast, the gravamen of plaintiffs' claim is monetary and plaintiffs' members will receive any funds they are owed if they ultimately prevail in an appropriate forum.

The Supreme Court assessed these factors in *California* and found that the balance weighed in the government's favor. As the Court explained, the government suffers irreparable harm because it is "unlikely to recover the grant funds once they are disbursed." 145 S. Ct. at 969. Conversely, nothing about a stay would prevent plaintiffs from "recover[ing] any wrongfully withheld funds through suit in an appropriate forum." *Id.*

Finally, a stay is in the public interest because the district court exceeded its authority by ordering specific performance by the United States of its alleged contractual obligations. *See Coggeshall*, 884 F.2d at 3-4. At most, the court could have ordered defendants to do what they are already doing, which is to "make available for obligation the full amount of funds" that would otherwise have been disbursed under the terminated grant awards. *AIDS Vaccine Advoc. Coal. v. U.S. Dep't of State*, No. 25-cv-402, 2025 WL 752378, at *23 (D.D.C. Mar. 10, 2025).

CONCLUSION

For the foregoing reasons, the judgment of the district court should be stayed pending appeal.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 5175 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Word for Microsoft 365 in Garamond 14-point font, a proportionally spaced typeface.

s/
Benjamin C. Wei

CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2025, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system. Service will be accomplished by the appellate CM/ECF system.

s/
Benjamin C. Wei