No. 25-1529

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, AMERICAN FEDERATION OF TEACHERS,

Plaintiffs - Appellants,

v.

UNITED STATES DEPARTMENT OF JUSTICE,
(For Continuation of Caption, See Inside Cover)

Defendants - Appellees.

On Appeal from the United States District Court for the
Southern District of New York
Case No. 1:25-cv-02429-MKV (Hon. Mary Kay Vyskocil)

SPECIAL APPENDIX (SA1 – SA39)
VOLUME 1 OF 1

Orion Danjuma
Rachel Goodman
Protect Democracy Project
82 Nassau Street, #601
New York, NY 10038
Tel: (202) 579-4582
Fax: (202) 769-3176
orion.danjuma@protectdemocracy.org
rachel.goodman@protectdemocracy.org

(For Additional Counsel, See Inside Cover)

Eve H. Cervantez
Matthew J. Murray
Connie K. Chan
ALTSHULER BERZON LLP
177 Post St., Suite 300
San Francisco, CA 94108
Tel: (415) 421-7151
Fax (415) 362-8064
ecervantez@altber.com
mmurray@altber.com
cchan@altber.com

(Caption Continued) PAMELA BONDI, in her official capacity as the U.S. Attorney General, LEO TERRELL, in his official capacity as Senior Counsel to the Assistant Attorney General for Civil Rights and head of the DOJ Task Force to Combat Anti−Semitism, UNITED STATES DEPARTMENT OF EDUCATION, LINDA MCMAHON, in her official capacity as the U.S. Secretary of Education, THOMAS E. WHEELER, in his official capacity as Acting General Counsel of the U.S. Department of Education, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, ROBERT F. KENNEDY, JR., in his official capacity as the U.S. Secretary of Health and Human Services, SEAN R. KEVENEY, in his official capacity as Acting General Counsel of the U.S. Department of Health and Human Services, NATIONAL INSTITUTES OF HEALTH, MATTHEW J. MEMOLI, in his official capacity as the Acting Director of the National Institutes of Health, UNITED STATES GENERAL SERVICES ADMINISTRATION, STEPHEN EHIKIAN, in his official capacity as Acting Administrator of the U.S. General Services Administration, JOSH GRUENBAUM, in his official capacity as Commissioner of the Federal Acquisition Service,

Defendants - Appellees.

Additional counsel for Plaintiffs-Appellants:

Katie Schwartzmann
Protect Democracy Project
201 St. Charles Avenue, Ste. 114
New Orleans, LA 70170
Tel: (202) 579-4582
Fax: (202) 769-3176
katie.schwartzmann@protectdemocracy.org

Richard Primus
The University of Michigan Law School
(institutional affiliation provided for
identification
purposes only; not representing the
University)
625 S. State Street
Ann Arbor, MI 48109
Tel: (734) 647-5543
Fax: (734) 764-8309
PrimusLaw1859@gmail.com

Juhyung Harold Lee
Jonathan Rosenthal
ALTSHULER BERZON LLP
177 Post St., Suite 300
San Francisco, CA 94108
Tel: (415) 421-7151
Fax (415) 362-8064
hlee@altber.com
jrosenthal@altber.com

SPECIAL APPENDIX

TABLE OF CONTENTS

Tab No.		Page No.
	District Court Order Appealed	
1	June 16, 2025 Opinion & Order Denying Motion for Preliminary Injunction and Dismissing for Lack of Standing	SA1
	Applicable Laws	
2	First Amendment to the United States Constitution	SA31
3	42 U.S.C. § 2000d	SA32
4	42 U.S.C. § 2000d-1	SA35
5	42 U.S.C. § 2000d-2	SA38

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS and AMERICAN FEDERATION OF TEACHERS,

Plaintiffs,

-against-

UNITED STATES DEPARTMENT OF JUSTICE, PAMELA BONDI, LEO TERRELL, UNITED STATES DEPARTMENT OF EDUCATION, LINDA MCMAHON, THOMAS E. WHEELER, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, ROBERT F. KENNEDY, JR., SEAN R. KEVENEY, NATIONAL INSTITUTES OF HEALTH, MATTHEW J. MEMOLI, UNITED STATES GENERAL SERVICES ADMINISTRATION, STEPHEN EHIKIAN, and JOSH GRUENBAUM,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 6/16/2025

25-cv-2429 (MKV)

OPINION & ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION AND DISMISSING FOR LACK OF STANDING

MARY KAY VYSKOCIL, United States District Judge:

Plaintiffs, the American Association of University Professors ("AAUP") and the American Federation of Teachers ("AFT"), are labor unions for "faculty and academic professionals," among other professionals, with headquarters in Washington, D.C. [ECF No. 1 ("Cmpl.") ¶¶ 13, 15; ECF No. 27 ¶ 5; ECF No. 28 ¶ 3]. These plaintiffs seek a preliminary injunction requiring Defendants to pay out to non-party The Trustees of Columbia University in the City of New York ("Columbia") "approximately $400 million in federal grants and contracts to Columbia," funded by the American taxpayers, which several executive agencies recently terminated because, among other reasons, the grants and contracts "no longer effectuate[d] . . . agency priorities" and "for the convenience of the Government" [ECF No. 25 ("Proposed PI") ¶ 1(a); ECF Nos. 142-5, 142-7]. Plaintiffs further seek to prospectively enjoin Defendants from terminating, "pausing," "or otherwise interfering with" more than $5 billion in active taxpayer-funded grants and contracts to Columbia. Proposed PI ¶ 1(b). Conspicuously, Columbia, whose grants and contracts were terminated and whose funding is the subject of the relief Plaintiffs seek, is not a plaintiff.

With no apparent sense of irony, lawyers for an organization called "Protect Democracy" insist that a district court judge should order the Executive Branch immediately to restore the flow of taxpayer dollars to an elite university, which funding Defendants represent is inconsistent with the priorities of the duly elected President of the United States. Our democracy cannot very well function if individual judges issue extraordinary relief to every plaintiff who clamors to object to executive action. Neither the Executive Branch nor the Legislature ever awarded the grants and contracts at issue to Plaintiffs or any of their members. The funding that Plaintiffs ask this Court to commandeer was awarded to Columbia, which is conspicuously absent from this case. If any funds have been wrongfully withheld, such funds may be recovered at the end of a successful lawsuit by the appropriate plaintiff in an appropriate forum. *See Dep't of Educ. v. California*, 604 U.S. __, 145 S. Ct. 966, 969 (2025).

For the reasons set forth below, the motion for a preliminary injunction is DENIED, and this case is DISMISSED, without prejudice, for lack of standing.

I. PROCEDURAL HISTORY

Plaintiffs the American Association of University Professors ("AAUP") and the American Federation of Teachers ("AFT") initiated this case by filing a 385-paragraph complaint on March 25, 2025 [ECF No. 1 (the "Complaint" or "Cmpl.")]. The first several paragraphs of the Complaint are devoted to sensational rhetoric about the "transcendent value" of academic freedom, and "the

Trump administration's" effort to "control the thought" of "faculty and students" (though Plaintiffs do not purport to represent any students) by placing a "gun to the head" of non-party Columbia University. Cmpl. ¶¶ 1–3 (internal quotation marks and citations omitted). Specifically, according to the Complaint, "the administration (1) announced it was commencing an investigation of Columbia for its asserted . . . failure to address antisemitism on campus, (2) summarily canceled approximately $400 million" in federal funding to Columbia, and, thereafter, "(3) demanded that the University adopt a list of sweeping programmatic and structural changes . . . as 'a precondition' for the University's 'continued financial relationship with the United States government,' valued at approximately $5 billion." Cmpl. ¶ 3.

The Complaint alleges that non-party "Columbia . . . acceded to the Trump administration's demands."[1] Cmpl. ¶ 7; *see id.* ¶ 81. Plaintiffs interceded. Their Complaint asserts ten claims. First, the Complaint asserts a claim under the First Amendment for violation of "Plaintiffs' and Plaintiffs' members' right to free speech and academic freedom." Cmpl. ¶ 287; *see id.* ¶¶ 286–97 ("Count I"). Second, Plaintiffs assert a claim "[p]ursuant to the 'unconstitutional conditions' doctrine," which prohibits the government from placing "a condition on the receipt of a benefit or subsidy that infringes upon the recipient's constitutionally protected rights." Cmpl. ¶ 299 (quoting

[1] As explained below, evidence demonstrates that, on March 21, 2025, Columbia announced a list of actions that it had been planning for months before any funding was terminated, and that list of actions does not entirely match up with the reforms the defendant executive agencies demanded. *See infra* at 14–18. Both sides agree, however, that non-party Columbia has chosen to negotiate with the government, rather than litigate against it [ECF No. 26 ("Pl. Mem.") at 6; ECF No. 91 ("Opp.") at 4]. As noted above, Columbia, which is the entity whose funding was terminated and would be restored if Plaintiffs' motion were granted, is not a party to this case. Indeed, Columbia has appeared in this action only for the limited purpose of opposing the public disclosure of a communication that Columbia's Office of the General Counsel sent to members of the Columbia faculty who, in turn, forwarded the communication to the General Counsel of the AAUP [ECF No. 121]. In the course of that limited appearance, Columbia stressed that it is "actively engaged in negotiations with Defendants about the terminated awards" and is "harm[ed]" by the public disclosure of its internal communications by virtue of this lawsuit, adding that Columbia personnel have been "*drawn in*" to this litigation "*solely through the actions of others*" [ECF No. 59 at 3 (emphasis added)].

All. for Open Soc'y Int'l, Inc. v. U.S. Agency for Int'l Dev., 651 F.3d 218, 231 (2d Cir. 2011)); *see id.* ¶¶ 298–303 ("Count II").

The Complaint next asserts four claims under the Administrative Procedure Act ("APA"). *See* Cmpl. ¶¶ 304–318 ("Count III"); *id.* ¶¶ 319–333 ("Count IV"); *id.* ¶¶ 334–341 ("Count V"); *id.* ¶¶ 342–351 ("Count VI"). The premise of each of these claims is that the termination of Columbia's federal grants and contracts and the subsequent demand for numerous reforms were enforcement actions based on Columbia's alleged noncompliance with Title VI of the Civil Rights Act ("Title VI"). Plaintiffs allege that Defendants failed to follow procedural requirements for the enforcement of Title VI and that their actions were arbitrary and capricious.

In Count VII and Count VIII of the Complaint, Plaintiffs allege that the termination of Columbia's funding and subsequent demand for reforms by Columbia were *ultra vires* executive actions that violated the constitutional separation of powers. *See* Cmpl. ¶¶ 351–363 ("Count VII"); *id.* ¶¶ 364–370 ("Count VIII"). Next, the Complaint asserts a claim for violation of the Due Process Clause of the Fifth Amendment based on allegations that "Plaintiffs' members have constitutionally protected property interests in [Columbia's] grant . . . funding," and they were not given notice and an opportunity to be heard before the grants were terminated. Cmpl. ¶ 373; *see id.* ¶¶ 317–377 ("Count IX"). Finally, Plaintiffs allege that, by terminating Columbia's funding, the federal government exceeded its constitutional scope in violation of both the Tenth Amendment and the Spending Clause. *See* Cmpl. ¶¶ 378–385 ("Count X").

In their Complaint, Plaintiffs request for relief "a preliminary and permanent injunction requiring Defendants to immediately reinstate or restore all grants and contracts to Columbia," among other relief. Cmpl. at 85. However, Plaintiffs did not simultaneously file a motion for a preliminary injunction, let alone seek a temporary restraining order, when they filed the Complaint.

Rather, when Plaintiffs filed the Complaint, the plaintiffs in an earlier-filed case (Columbia students) had moved, before another judge, for a temporary restraining order that would restore Columbia's terminated grants. *See Khalil v. Trs. of Columbia Univ. in City of New York*, No. 25-cv-2079 (AS), 2025 WL 1019425, at *1 (S.D.N.Y. Apr. 4, 2025). The judge in *Khalil* held a hearing at which the student plaintiffs "all but conceded" that they had "fail[ed] to address some threshold requirements" to obtain relief, including standing. *Id.* Only thereafter did Plaintiffs file a motion for a preliminary injunction in this case [ECF No. 24].[2]

Although Plaintiffs contend that they will suffer irreparable harm without preliminary relief, they did not move for a temporary restraining order or request expedited briefing of their motion for a preliminary injunction. Rather, approximately a month after the announcement of the termination of the $400 million in federal funding to Columbia, Plaintiffs filed their motion for a preliminary injunction accompanied by a memorandum of law, a proposed preliminary injunction, and numerous declarations and exhibits [ECF Nos. 24, 25 ("Proposed PI"), 26 ("Pl. Mem."), 27 ("Wolfson Decl."), 28 ("Schmid Decl."), 29 ("Martin Decl."), 30 ("Witte Decl."), 31 ("Frye Decl."), 32 ("Hirsch Decl."), 34–43, 47–51 ("Rosenthal Decl.")].[3]

Defendants filed a memorandum of law in opposition to Plaintiffs' motion supported by declarations and exhibits [ECF No. 91 ("Opp."); ECF No. 92; ECF No. 93 ("Gruenbaum Decl."); ECF No. 94 ("Rovner Decl."]. Plaintiffs thereafter filed a reply brief in further support of their motion [ECF No. 98]. In the interim, the Court received five amicus briefs urging the Court to

---

[2] After the hearing in *Khalil* and the filing of this case, the court in *Khalil* issued an order denying the motion for a temporary restraining order in its entirety, citing lack of standing and other issues. *See Khalil*, 2025 WL 1019425, at *1 [25-cv-2079 (AS), ECF No. 54]. Thereafter, the plaintiffs in that case amended their complaint, but did not renew their request for emergency relief, and the defendants, including Columbia, moved to dismiss [25-cv-2079 (AS), ECF Nos. 62, 80, 83, 85].

[3] Plaintiffs requested leave to file a number of declarations under seal [ECF No. 33]. The Court later denied that request [ECF No. 121]. Plaintiffs ultimately filed many declarations on the public docket and withdrew others [ECF Nos. 125, 126, 128–134, 136–141].

issue a preliminary injunction [ECF Nos. 70-1 ("FIRE Br."), 74-1 ("The Center Br."), 78-1 ("Unions Br."), 82-1 ("1A Br."), 87-2 ("CCR Br.")].

In their briefing, Plaintiffs and amici contend that Defendants purported to terminate Columbia's funding to enforce Title VI but failed to comply with "the procedural requirements set forth in the statute and its implementing regulations" for terminating funding pursuant to Title VI. Pl. Mem. at 1; *see* FIRE Br. at 8; CCR Br. at 3. Defendants, however, submit that executive agencies exercised discretion, consistent with the President's Executive Orders, to terminate grants and contracts because such funding "no longer effectuate[d] . . . agency priorities" and "for convenience" based on the government's interests. Opp. at 2–3, 13–14 (quoting 2 C.F.R. § 200.340(a)(4) and 48 C.F.R. § 2.101). Put simply, the agencies informed Columbia that it was inconsistent with Executive Branch priorities and no longer convenient to give hundreds of millions of taxpayer dollars to an institution that, in the agencies' assessments, had displayed "a disturbing lack of concern for the safety and wellbeing of Jewish students" and had "*otherwise* fail[ed] to serve the best interests of the United States" in its uses of Americans' money [ECF No. 142-5 at 1; ECF No. 94-1 at 1 (emphasis added)].

Defendants also argue that Plaintiffs lack standing to assert their claims and this Court lacks jurisdiction to grant the relief they request. With respect to Plaintiffs' First Amendment claim, Defendants argue that Plaintiffs fail to establish a causal connection between any alleged injury and Defendants' challenged conduct. Specifically, Defendants argue that "Plaintiffs' allegations that their members' speech has been or will be chilled" involve "Columbia's independent actions," which, the evidence demonstrates, Columbia had been planning long before the Executive Branch demanded reforms. Opp. at 9. Defendants also cite a recent decision by the Supreme Court to stay preliminary relief, which the district court had "styled as a temporary restraining order," that "enjoin[ed] the Government from terminating various education-related grants." *Dep't of Educ. v. California*, 604 U.S. __, 145 S. Ct. 966, 968 (2025). The Supreme Court concluded that "the Government [was] likely to succeed in showing the District Court lacked jurisdiction to order the payment of money under the APA," since "the Tucker Act grants the Court of Federal Claims jurisdiction over suits based on 'any express or implied contract with the United States.'" *Id.* (quoting 28 U.S.C. § 1491(a)(1)).

After the close of briefing, Plaintiffs filed a notice of supplemental authority alerting the Court to a number of recent out-of-circuit decisions unfavorable to executive agencies [ECF No. 122]. Plaintiffs also filed what they described as newly-available evidence purporting to demonstrate that "Defendants' actions terminating and freezing federal funding and imposing demands on Columbia for continued federal funding based on alleged antisemitism are subject to Title VI" and that the Defendants violated the procedural requirements for terminating funding pursuant to Title VI [ECF No. 123 at 2; ECF No. 124].

Defendants filed an amended version of an earlier-filed declaration to correct minor factual inaccuracies [ECF Nos. 142, 142-1 ("Lorsch Decl.")].

II. FINDINGS OF FACT[4]

A. Plaintiffs Are Labor Unions.

Plaintiff the AAUP is a "labor union" for "faculty and academic professionals" at colleges

[4] As the Second Circuit recently reaffirmed, "[t]here is no hard and fast rule in this circuit that oral testimony must be taken on a motion for a preliminary injunction or that the court can in no circumstances dispose of the motion on the papers before it." *St. Joseph's Hosp. Health Ctr. v. Am. Anesthesiology of Syracuse, P.C.*, 131 F.4th 102, 108 (2d Cir. 2025) (brackets in original) (quoting *Md. Cas. Co. v. Realty Advisory Bd. on Labor Relations*, 107 F.3d 979, 984 (2d Cir. 1997)). Indeed, a "hearing is not required for a preliminary injunction 'when the relevant facts either are not in dispute or have been clearly demonstrated at prior stages of the case, or when the disputed facts are amenable to complete resolution on a paper record.'" *Id.* (quoting *Charette v. Town of Oyster Bay*, 159 F.3d 749, 755 (2d Cir. 1998)). The Court concludes that a hearing is not required to dispose of Plaintiffs' motion for a preliminary injunction. Plaintiffs submitted numerous declarations and exhibits in support of their motion, and the Court has carefully reviewed those submissions and Defendants' submissions. Plaintiffs' motion is amenable to complete resolution on the voluminous paper record before the Court.

and universities. Wolfson Decl. ¶ 4. Plaintiffs offer evidence that the AAUP is also a "membership association" with a "mission" to "advance academic freedom." *Id.* ¶¶ 4, 7.

Plaintiff the AFT is "a national labor organization" with more than "1.8 million members," including, among others, "pre-K through 12th-grade teachers" and paraprofessionals, "higher education faculty and . . . staff," and even "nurses and other healthcare professionals." Schmid Decl. ¶ 3. The AAUP is an affiliate of the AFT, and, "[a]s a result of that affiliation, all AAUP members are also AFT members." Wolfson Decl. ¶ 6.

B. <u>Some of Plaintiffs' Members Used Federal Grants to Columbia.</u>

The AAUP has, and therefore the AFT has, "members at Columbia University." Wolfson Decl. ¶ 9. Some of these members had "rel[ied] on federal grants [to Columbia] to support their research, scholarship, and teaching activities" and have "lost funding" since the "government's cancelation of $400 million in federal funding to Columbia." *Id.* ¶¶ 9, 10.

For example, Susan Witte is a professor at Columbia's School of Social Work. Witte Decl. ¶ 1. She is a member of the AAUP and, as such, the AFT. *Id.* ¶ 5. Witte is "a researcher on a team that has had multiple grants terminated as a result of the $400 million in funding cuts" to Columbia. *Id.* ¶ 6. "One of the grants was an approximately $3.5 million [National Institutes of Health ('NIH')][5] grant categorized as a P20, a 3-year center grant. Another was an over $370,000 NIH grant categorized as an R21, a research grant." *Id.* ¶ 7. These two grants, funded by American taxpayers, "support[ed] research on how extreme weather and climate change influence health, mental health, and well-being among women in East Africa." *Id.* ¶ 9.

Professor Witte attests that "[n]one of the work funded by either of these two grants were related to Israel or Palestine" or "antisemitism." *Id.* ¶ 27. The professor herself, however, does

[5] Defendant the National Institutes of Health ("NIH") is an agency within Defendant the United States Department of Health and Human Services ("HHS").

"join with other professors and students to promote Palestinian freedom," which she considers "very different from antisemitism." *Id.* ¶ 30. She attests that she "feel[s] chilled in [her] speech" and "academic freedom." *Id.* ¶¶ 29, 36. However, Professor Witte also feels a "responsibility" to "publicly speak out," *id.* ¶ 37, which, clearly, she is doing.

C. Executive Agencies Awarded Grants to Non-Party Columbia, Not Plaintiffs' Members, Based on Agency Priorities and Pursuant to Terms and Conditions.

As Plaintiffs' own evidence and Defendants' evidence make clear, the grants and contracts at issue in this case were awarded to non-party Columbia. Defendants never awarded any grants to, or entered into any contracts with, Plaintiffs or their members.

According to Plaintiffs, "$250 million of th[e] funding [Columbia lost] consists of grants from Defendant NIH." Cmpl. ¶ 92; *see* Rosenthal Decl., Ex 29. Defendants offer evidence that the "recipients of NIH grant awards are institutions," such as Columbia, which, in turn, "designate a principal investigator to lead the scientific and technical direction of research projects funded under the grant." Lorsch Decl. ¶ 8; *see id.* ¶ 12 (describing "Columbia" as the "grantee"). In other words, the NIH categorically does not award grants to individual professors or other academic staff, such as Plaintiffs' members.

Defendants further submit evidence of the terms on which the NIH awards grants to institutions. *See* Lorsch Decl. ¶¶ 5–12. The NIH exercises broad discretion to allocate funding to "biomedical and behavioral research," pursuant to authority that Congress delegated to the Secretary of Health and Human Services ("HHS") to "assess research priorities," among other authority, which the Secretary of HHS further delegated to the Director of the NIH. *Id.* 5–8; *see* 42 U.S.C. §§ 241, 282. When the NIH decides to "support [an institutional] recipient with a specified level of funding for a specific period," it issues a "Notice of Award (NOA)." *Id.* ¶ 10.

The NOA "requires recipients of NIH grant funds to comply with all Federal statutes, regulations, policies, and terms and conditions stated in the Notice of Award." *Id.*

"The NIH Grants Policy Statement (GPS) is a term and condition applicable to all NIH grant awards." *Id.* ¶ 11. The GPS, in turn, expressly "incorporate[s] . . . 2 CFR Part 200" as a term and condition of the NOA [ECF No. 142-2 at 3 (the "GPS")]. *See* Lorsch Decl. ¶ 11. "One term and condition of [each] NOA is therefore 2 CFR § 200.340, which allows the Government to terminate a grant '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.'" Lorsch Decl. ¶ 11 (citing 2 CFR § 200.340 and GPS 8.5.2 (stating "NIH may also terminate the grant in whole or in part as outlined in 2 CFR Part 200.340")).

Plaintiffs' evidence offers insight into non-party Columbia's use of NIH grants. For example, Plaintiffs submit the Declaration of Jennifer S. Hirch, a "Professor of Sociomedical Sciences at the Columbia University Mailman School of Public Health." Hirsch Decl. ¶ 1. Hirsch was "the principal investigator on a 5-year training grant" from the NIH, "currently in year 3," that was being used to fund a "predoctoral research training program currently in its 18th year." *Id.* ¶ 8. In other words, the Columbia program long predated this NIH grant.

According to Hirsh, this Columbia program "was the first in the nation" to obtain "NIH support for predoctoral level training in gender, sexuality, and health," with a "focus on gender and sexuality as they impact reproductive and sexual health and the health of gender and sexual minorities, both nationally and globally." *Id.* ¶ 8. The grant, which "provided $2.1 million in federal funding" to Columbia, "provide[d] funding for about 45 percent of the expenses (stipend, tuition and fees, travel, training-related expenses, and childcare) for each of the 4 [predoctoral] trainees . . . in the program." *Id.* ¶ 9. The grant also "funded" 6 doctoral students, although Hirsch does not explain the details of the latter use of the funds. *Id.* ¶ 10.

Reflecting the lack of direct relationship between the defendant executive agencies and Plaintiffs' members, Hirsch attests that *Columbia* informed her of the termination of the grant on which she had been designated the principal investigator. *Id.* ¶ 11. The NIH did not contact Hirsch. *Id.* Indeed, Plaintiffs' evidence reflects that all communication about the termination of grants has been either between an executive agency and Columbia, or between Columbia and its faculty [ECF No. 104 ¶ 12; ECF No. 105 ¶ 9; ECF No. 128 ¶ 10; ECF No. 136 ¶ 7].

Pertinent to the standing inquiry in this case, Hirsch attests that "Columbia has committed to providing salary coverage" for the portion of her salary that comes from leading the gender and sexuality program. *Id.* ¶ 12. Hirsch further attests that the doctoral "students are guaranteed five years of support for stipend, tuition, and fees *regardless of the source*." *Id.* (emphasis added). According to Hirsch, the 4 predoctoral trainees "are unable to submit reimbursements against the $1,310 in annual travel and training expenses that is budgeted for each trainee in the grant." *Id.* However, Plaintiffs submit other evidence that Columbia has created "a new University fund . . . to assist students who need help managing unanticipated expenses," which will be funded in part by "generous alumni" [ECF No. 99-5].

Plaintiffs do not provide a full accounting of the terminated grants. *See* Cmpl. ¶ 92. But evidence in the record, supplied by Defendants, demonstrates that Defendant the United States Department of Education ("DOE") terminated at least two grants to Columbia. *See* Rovner Decl. ¶¶ 2, 3. The exhibits concerning the termination of the DOE grants make clear that, as with the NIH grants, the defendant executive agency had awarded the grants to Columbia, not to Plaintiffs or any of Plaintiffs' members [ECF Nos. 94-1, 94-2].

Case: 25-1529, 10/24/2025, DktEntry: 86.1, Page 15 of 43

D. Defendant Executive Agencies Terminated Grants and Contracts for being Inconsistent with Agency Priorities and Convenience.

On January 29, 2025, shortly after President Trump assumed office, he issued an Executive Order directing Executive Branch agencies to use "all available appropriate legal tools" to "combat anti-Semitism," including the well-publicized "harassment" of Jewish students "on university and college campuses" [ECF No. 48-7 ("EO")]. Gruenbaum Decl. ¶ 4.

On March 3, 2025, Defendant the General Services Administration (the "GSA") sent a memorandum to the interim president of Columbia stating that the GSA was leading a 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 Columbia University" [ECF No. 93-1 ("March 3, 2025 Memo") at 1]. Notably, the memorandum warned Columbia that the GSA and other agencies would "also," separately, "be reviewing the greater than $5 billion of active [federal] grants" to Columbia "for potential compliance concerns, false claims or other infractions." March 3, 2025 Memo at 2. The memorandum further warned: "**The Federal Government reserves the right to terminate for convenience any contracts it has with your institution at any time during the period of performance**. **Additionally, the Federal Government reserves the right to take any relevant administrative action it deems necessary in response to any wrongdoing identified during the pendency of the investigations.**" *Id.* (emphasis added).

On March 7, 2025, Defendants the Department of Justice ("DOJ"), HHS, the DOE, and the GSA publicly announced the "cancellation of approximately $400 million in federal grants and contracts to Columbia University due to the school's continued inaction in the face of persistent harassment of Jewish students." Rosenthal Decl., Ex. 23.

The same day, the DOE sent two letters notifying Columbia of the termination of two grants [ECF Nos. 94-1, 94-2]. In both letters, the DOE stated that it was terminating the grant because it was "inconsistent with, and no longer effectuates, Department priorities" and specifically cited 2 C.F.R. § 200.340(a)(4) [ECF Nos. 94-1 at 2, 94-2 at 2], which regulation provides for termination where "an award no longer effectuates the program goals or agency priorities," 2 C.F.R. § 200.340(a)(4). Without going into detail, the letters stated that the grants were being used to fund "programs that promote or take part in initiatives that unlawfully discriminate on the basis of race, color, religion, sex, national origin, or another protected characteristic; that violate either the letter or purpose of Federal civil rights law; that conflict with the Department's policy of prioritizing merit, fairness, and excellence in education; that are not free from fraud, abuse, or duplication; *or that otherwise fail to serve the best interests of the United States*" [ECF Nos. 94-1 at 2 (emphasis added), 94-2 at 2 (emphasis added)]. The DOE letters described the process for an administrative appeal of the termination decision [ECF Nos. 94-1 at 3, 94-2 at 3].

HHS also sent Columbia a letter with the subject line "Notification of Termination of Multiple Task Orders" [ECF No. 142-7 (the "HHS Letter")]. The HHS Letter, which is addressed to Columbia as a "Contractor," simply states: "Pursuant to FAR Clause 52.249-5, Termination for Convenience of the Government (Educational and Other Nonprofit Institutions) (AUG 2016), the task orders listed below are hereby terminated for the convenience of the Government, effective immediately." HHS Letter at 1. The HHS Letter lists four items that appear to be clinical trials and studies related to female contraception. *See id.*

On March 10, 2025, the NIH sent Columbia a letter "providing notice" of the termination of approximately 233 grants "terminated pursuant to the National Institutes of Health ('NIH') Grants Policy Statement (GPS), and 2 C.F.R. § 200.340(a)(4)" [ECF No. 142-5 (the "NIH Letter") at 1 (footnote superscript omitted)]. *See* Lorsch Decl. ¶ 17. The NIH stated: "These awards no longer effectuate agency priorities." NIH Letter at 1. The NIH explained that it "is obligated to carefully steward grant awards to ensure taxpayer dollars are used in ways that benefit the American people and improve their quality of life" and the terminated grants were being used in ways that do "not satisfy these criteria." *Id.*

The NIH further observed that "Columbia's ongoing inaction in the face of repeated and severe harassment and targeting of Jewish students" had not only "deprived Jewish students of learning and research opportunities" but also "brought shame upon the University and our nation." *Id.* As such, the NIH had concluded, "[s]upporting research in such an environment" was "plainly inconsistent with NIH's priorities." *Id.* at 1–2. The letter also described the process for an administrative appeal. *Id.* at 2. Shortly thereafter, the NIH sent Columbia a substantially identical letter stating that it was terminating an additional 29 grants "pursuant to [the GPS] and 2 C.F.R. § 200.340(a)(4)" [ECF No. 142-6]. Lorsch Decl. ¶ 17.

E. <u>After Defendant Executive Agencies Demanded Reforms, Columbia Announced Reforms Columbia Had Been Planning for Many Months.</u>

On March 13, 2025, the GSA, HHS, and DOE jointly sent a letter to the then interim president of Columbia [ECF No. 49-6 (the "March 13 Letter")]. The March 13 Letter begins by explaining that, after the government informed Columbia that it "would be pausing or terminating federal funding," Columbia's counsel "asked to discuss 'next steps.'" March 13 Letter at 1. The March 13 Letter proceeds: "U.S. taxpayers invest enormously in U.S. colleges and universities, including Columbia University, and it is the responsibility of the federal government to ensure that all recipients are responsible stewards of federal funds." *Id.* The March 13 Letter further observes that Columbia "has fundamentally 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." *Id.*

The March 13 Letter then lists the "immediate next steps" the government "regard[s] as a precondition" for negotiations "regarding Columbia University's continued financial relationship with the United States government." *Id.* The first of the nine steps listed in the March 13 Letter is the enforcement of Columbia's "existing disciplinary policies" in response to "Hamilton Hall and encampments." *Id.* The citation to Hamilton Hall refers to the protracted "occupation" of an academic building by protestors [ECF No. 52-5 at 1]. *See* Rosenthal Decl., Ex. 53 at 2 (August 2024 report by Columbia "Task Force on Antisemitism" noting that Jews affiliated with Columbia reported experiencing "extreme" antisemitism during "the takeover of Hamilton Hall"). The term "encampments" refers to tents that protestors erected on the Columbia campus and that Columbia permitted to remain on campus undisturbed for months despite reports that Jewish passersby were being threatened with violence and otherwise harassed. Rosenthal Decl., Ex. 53 at 2; *see id.*, Ex. 51 at 2 (March 2024 Columbia Task Force on Antisemitism report acknowledging that protestors had "taken over" campus spaces, there were "reports of physical harm to students," and protestors were "berat[ing] individuals who were . . . just walking by").

As Plaintiffs' own evidence demonstrates, the encampments and occupation of Hamilton Hall in the spring of 2024 were escalations of anti-Israel and anti-Jewish demonstrations that began immediately after the October 7, 2023 terrorist attacks in Israel and that Columbia long declined to restrain. *See* Rosenthal Decl., Ex. 53 at 2. In a statement dated October 18, 2023, the president of Columbia explained that she felt "duty-bound to ensure" that protesters could continue to "gather," even though "some [were] using th[e] moment to spread antisemitism," and encouraged students who were "concerned about their safety" to use Columbia's "existing [public safety] hotline and escort service." *Id.*, Ex. 46 at 1. Shortly thereafter, in a statement dated October 27, 2023, Columbia's president expressed "shock[] to hear of several antisemitic incidents in just the last couple of days" since her prior statement. *Id.*, Ex. 47 at 1. On November 1, 2023, Columbia's president acknowledged "a series of antisemitic incidents on campus" and announced the creation of the Columbia "Task Force on Antisemitism." *Id.*, Ex. 49 at 1. Thereafter, in March 2024, the Columbia Task Force on Antisemitism issued its first report, which identified reports of violence and harassment, observed that many Jews and Israelis on campus "have heard chants at protests like 'Globalize the Intifada' and 'Death to the Zionist State' as calls for violence against them and their families," and expressed "serious concerns" that Columbia was not enforcing its own rules. *Id.*, Ex. 51 at 2, 8. In August 2024, a second report explained that while many antisemitic incidents "took place well before the establishment of the encampments and the takeover of Hamilton Hall" in the spring of 2024, "the experiences reported during that period were even more extreme." *Id.*, Ex. 53 at 2. The second report pointed out Columbia's "recurring lack of enforcement of existing University rules and policies" in the face of "even the most clear-cut violations." *Id.*

The second step listed in the March 13 Letter from executive agencies to Columbia, in response to Columbia's request to discuss next steps, is "empower[ing] the Office of the President to suspend or expel students" and "[a]bolish[ing] the University Judicial Board ('UBJ')." March 13 Letter at 1–2. The third step is implementing "time, place, and manner rules" for protests "to prevent disruption of teaching, research, and campus life." *Id.* at 2. The fourth step is banning "masks that are intended to conceal identity or intimidate others, with exceptions for religious and health reasons." *Id.* The fifth step is conducting "investigations" and "disciplinary proceedings" for any "student groups and individuals" who were "operating" on behalf of outside "groups" and "engaged in violations of University policy." *Id.*

The sixth step listed in the March 13 Letter is: "Formalize, adopt, and promulgate *a* definition of antisemitism." *Id.* (emphasis altered). The March 13 Letter states that "President Trump's Executive Order . . . uses the [International Holocaust Remembrance Alliance ('IHRA')] definition," but the executive agencies did not demand that Columbia adopt that definition. *Id.* Rather, the March 13 Letter asserts that Columbia must "address[]" the issue of supposedly "Anti-'*Zionist*' discrimination against Jews . . . unrelated to Israel." *Id*. (emphasis added).

The seventh step listed in the March 13 Letter is empowering "Columbia security" to arrest or remove "agitators who foster an unsafe or hostile work or study environment, or otherwise interfere with classroom instruction or the functioning of the university." *Id.* The eighth step is to "[b]egin the process of placing the Middle East, South Asian, and African Studies [("MESAAS")] department under academic receivership for a minimum of five years." *Id.* The ninth and final step listed in the March 13 Letter is "to reform undergraduate admissions, international recruiting, and graduate admissions practices to conform with federal law and policy." *Id.*

On March 21, 2025, non-party Columbia released a memorandum entitled "Advancing Our Work to Combat Discrimination, Harassment, and Antisemitism at Columbia." Rosenthal Decl., Ex. 27 (the "March 21 Memo"). In that memorandum, Columbia announced eighteen actions in response to "the discrimination, harassment, and antisemitic acts [its] Jewish community has faced in the wake of October 7, 2023." March 21 Memo at 1. Many of the actions Columbia announced in its March 21 Memo align with the steps listed in the government's March 13 Letter, while others do not. *Compare* March 21 Memo, *with* March 13 Letter.

Defendants submit evidence that, in the *Khalil* case mentioned above (where, unlike here, Columbia was a party), Columbia represented that "all of the 18 actions that were announced on March 21 were actions that were under review and work and development for many months" before Columbia received the March 13 Letter. Rovner Decl., Ex. C ("*Khalil* Tr.") at 65:1–8.[6] According to Columbia, the March 13 Letter "affected [the] timing" of the release of the March 21 Memo. *Khalil* Tr. at 65:5. Consistent with these representations, the March 21 Memo describes itself as the product of "hav[ing] worked hard" to develop "a comprehensive strategy" in response to antisemitism since October 7, 2023. March 21 Memo at 1. Moreover, as noted above, Columbia first announced the creation of a Task Force on Antisemitism in November 2023, and that Task Force issued reports in March 2024 and August 2024.

The substance of the March 21 Memo reflects that Columbia did not simply implement the demands in the March 13 Letter. For example, Columbia declined to "[a]bolish" the University Judicial Board. March 13 Letter at 2; *see* March 21 Memo at 1. While the March 13 Letter demanded a ban on all "masks that are intended to conceal identity or intimidate others, with exceptions [only] for religious and health reasons," March 13 Letter at 2, Columbia announced a more narrow prohibition on masks used "for the purpose of concealing one's identity in the commission of violations of University policies or state, municipal, or federal laws," March 21 Memo at 2. With respect to the demand that Columbia adopt a definition of antisemitism, *see* March 13 Letter at 2, Columbia announced that its relevant policies "will incorporate the definition of antisemitism [that was previously] recommended by Columbia's Antisemitism Taskforce in August 2024," March 21 Memo at 2.

Columbia did not place the MESAAS department under academic receivership. *See* March 21 Memo at 3. Rather, Columbia announced that it would appoint a "new Senior Vice Provost" to

[6] On a motion to dismiss, a "court may take judicial notice of a document filed in another court" but "not for the truth of the matters asserted in the other litigation." *Glob. Network Commc'ns, Inc. v. City of New York*, 458 F.3d 150, 157 (2d Cir. 2006). This is not a motion to dismiss, and it is well-established that "that hearsay evidence may be considered by a district court in determining whether to grant a preliminary injunction." *Mullins v. City of New York*, 626 F.3d 47, 52 (2d Cir. 2010).

review Columbia's "portfolio of programs in regional areas," starting with the Middle East, whose goals would include "promoting excellence" and "intellectual diversity." *Id.*

F. Columbia Informed Some of Plaintiffs' Members their Research Is Not Aligned with the New Administration's Executive Orders.

Plaintiffs submit evidence that, on March 24, 2025, Columbia emailed some number of Columbia faculty and staff who were affected by the terminations of federal grants about potential appeals [ECF Nos. 126, 126-1 ("CGC Email")]. In that email, Columbia wrote: "*Earlier this year*, the *University conducted a risk analysis of its federal portfolio* in relation to the new administration's Executive Orders concerning *DEI, gender ideology and climate/environmental justice*. Through AI and human review, your award was identified as containing some content in one or more of these areas. Since the risk assessments were completed, the government has also identified additional 'non-aligned' areas, including vaccine research, research on COVID-19, and research involving global collaborations with countries such as China and South Africa." CGC Email at 1 (emphases added). Columbia explained that it was considering how best to "protect and restore the University's federal research portfolio" and might "need [the email recipients'] help to be prepared to file [any] appeals on time." *Id.* Columbia went on to explain its view that the "success of a potential appeal" of a termination of a grant "may turn on the ability to persuade the government that your proposal can be rescoped to address any potential concern, by eliminating or revising those areas in such a way that does not affect the science being proposed." *Id.* at 2. In its email, Columbia stressed that it was "*not* asking" recipients "to address" any "notifications that cited 'unsafe antisemitic actions' or other similar statements." *Id.* at 2 (emphasis in original).

III. LEGAL STANDARDS

A. Standing

"Federal courts do not possess a roving commission to publicly opine on every legal question" that makes news. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). Further, and pertinent here, "[f]ederal courts do not exercise general legal oversight of the . . . Executive Branch[.]" *Id.* at 424. As the Supreme Court has recently reaffirmed, "the courts have no business deciding . . . a dispute [that] is not a proper case or controversy" between the parties to the action before the court. *Murthy v. Missouri*, 603 U.S. 43, 57 (2024) (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006)).

"A proper case or controversy exists only when at least one plaintiff 'establishes'" standing. *Id.* (brackets omitted) (quoting *Raines v. Byrd*, 521 U.S. 811, 818 (1997)). "That, in turn, requires a plaintiff to demonstrate that it has '(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.'" *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 199 (2023) (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016)). As the Supreme Court has explained, the "standing inquiry [must be] especially rigorous" where, as here, plaintiffs ask a court "to decide [that] an action taken by one of the other two branches of the Federal Government was unconstitutional." *Raines*, 521 U.S. at 819–20.

B. Preliminary Injunction

A preliminary injunction "is an extraordinary and drastic remedy," which a district court should not grant "unless the movant, by a clear showing, carries the burden of persuasion." *Moore v. Consol. Edison Co.*, 409 F.3d 506, 510 (2d Cir. 2005); *see Hanson Tr. PLC v. SCM Corp.*, 774

F.2d 47, 60 (2d Cir. 1985). Where, as here "the movant is seeking to modify the status quo by virtue of a *mandatory* preliminary injunction (as opposed to seeking a *prohibitory* preliminary injunction to maintain the status quo)," the movant has an even higher burden. *Yang v. Kosinski*, 960 F.3d 119, 127–28 (2d Cir. 2020) (emphasis in original) (internal quotation marks and citations omitted). To obtain a preliminary injunction, the movant must carry the heavy burden of clearly showing: (1) a likelihood of success on the merits; (2) a likelihood of irreparable injury in the absence of an injunction; (3) that the balance of equities tips in the plaintiff's favor; and (4) that the public interest would not be disserved by the issuance of an injunction. *Benihana, Inc. v. Benihana of Tokyo, LLC*, 784 F.3d 887, 895 (2d Cir. 2015); *See* Fed. R. Civ. P. 65(a). "When the government is a party to the suit, [the] inquiries into the public interest and the balance of the equities merge." *We The Patriots USA, Inc. v. Hochul*, 17 F.4th 266, 295 (2d Cir. 2021).

IV. CONCLUSIONS OF LAW

Plaintiffs lack standing to assert the claims they purport to allege in this case. They are inserting themselves into a quarrel between the Executive Branch and non-party Columbia, which, Plaintiffs' own submissions make clear, Columbia wishes to resolve cooperatively, and perhaps through administrative appeals, without resorting to litigation that might further imperil Columbia's resources and reputation. *See supra* n.1; CGC Email; Pl. Mem. at 6. Indeed, Plaintiffs' and Columbia's different assessments of the litigation risks simply underscores that non-party Columbia is the party with "the personal stake in the litigation." *Klein on behalf of Qlik Techs., Inc. v. Qlik Techs., Inc.*, 906 F.3d 215, 221 (2d Cir. 2018). This Court has no authority to opine on the legality of Executive Branch actions against an entity that is not a party to this case. *See TransUnion*, 594 U.S. at 423–424; *Murthy*, 603 U.S. at 57.

As the Supreme Court has stressed, "plaintiffs must demonstrate standing for each claim that they press against each defendant, and for each form of relief that they seek." *Murthy*, 603 U.S. at 44 (internal quotation marks and citation omitted). The principal relief Plaintiffs seek is a judicial order commanding executive agencies to pay out money to non-party Columbia pursuant to grants and contracts that were previously awarded by executive agencies to non-party Columbia. *See* Proposed PI ¶ 1(a)–(b). However, as set forth above, neither Plaintiffs nor their members were ever the recipients of those grants and contracts. *See, e.g.*, Lorsch Decl. ¶¶ 8, 12; *see also* Rovner Decl. ¶¶ 2, 3. "Absent a contractual relationship there can be no contractual remedy." *Hillside Metro Assocs., LLC v. JPMorgan Chase Bank, Nat. Ass'n*, 747 F.3d 44, 49 (2d Cir. 2014) (brackets and citation omitted) (holding that a party lacks prudential standing to enforce a contract "to which it is neither a party nor a third-party beneficiary"); *see also California*, 604 U.S. at __, 145 S. Ct. at 968 (characterizing DOE "grants" as a "contractual obligation to pay money").[7] Plaintiffs, who have the burden, fail to demonstrate that they have standing to demand payments to a non-party. *See Murthy*, 603 U.S. at 57.[8]

Furthermore, with respect to each of their numerous claims, Plaintiffs fail to show any cognizable injury to themselves and fail to show injuries to their members that are fairly traceable

[7] As discussed above and below, Plaintiffs' members may have benefited from federal funds, but "[p]roving third-party beneficiary status requires that the contract terms clearly evidence an intent to permit enforcement by the third party in question." *Hillside Metro Assocs., LLC*, 747 F.3d at 49 (internal quotation marks and citations omitted). Here, Plaintiffs offer no evidence that their members were third-party beneficiaries to any grants or contracts. Rather, the relevant evidence demonstrates that, for example, the NIH awarded grants to Columbia alone (which, in turn, designated the principal investigator on the grant from among its faculty). *See* Lorsch Decl. ¶¶ 8, 12. With respect to enforcement, Plaintiffs' own evidence suggests that *Columbia* had to conduct "appeals" of "the *University's* federal research portfolio" and was merely enlisting "help to be prepared to file such appeals" from Plaintiffs' members. CGC Email at 1 (emphasis added). This evidence suggests that non-party Columbia's grants and contracts did not contemplate enforcement by Plaintiffs' members. *See Hillside Metro Assocs., LLC*, 747 F.3d at 49.

[8] Relatedly, Plaintiffs purport to assert a claim pursuant to the "unconstitutional conditions" doctrine, but, as Plaintiffs themselves quote the Second Circuit explaining, that doctrine prohibits the government from placing "a condition on the receipt of a benefit or subsidy that infringes upon *the recipient's* constitutionally protected rights." Cmpl. ¶ 299 (quoting *All. for Open Soc'y Int'l, Inc.*, 651 F.3d at 231). Neither Plaintiffs nor their members are "the recipient" of any of the grants or contracts at issue in this case.

to any defendant. Organizations, such as Plaintiffs, may assert standing in two ways. First, an organization may assert "standing in its own right to seek judicial relief from injury to itself." *Warth v. Seldin*, 422 U.S. 490, 511 (1975); *see NY Civil Liberties Union v. NYC Transit Auth.*, 684 F.3d 286, 294 (2d Cir. 2014). Second, an organization may "assert 'standing solely as the representative of its members.'" *Students for Fair Admissions, Inc.*, 600 U.S. at 199 (quoting *Warth*, 422 U.S. at 511). The second "approach is known as representational . . . standing." *Id.* To establish representational standing, "an organization must demonstrate that '(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.'" *Id.* (quoting *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977)).

Plaintiffs unconvincingly assert that "[e]ach Plaintiff independently has" standing in its own right "because Defendants' actions have 'directly affected and interfered with [Plaintiffs'] core business activities,' not merely their 'abstract social interests.'" Pl. Mem. at 9–10 (quoting *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 394–395 (2024)). Plaintiffs' core business is to be labor unions. *See* Wolfson Decl. ¶ 4; Schmid Decl. ¶ 3. Query how many of the "1.8 million" dues-paying members of the AFT, including nurses and paraprofessionals, believe its core functions include paying a cavalry of lawyers to argue the "transcendent" importance of taxpayer funding for an elite university.[9] Schmid Decl. ¶ 3; Cmpl. ¶¶ 1–3.

To be sure, Plaintiffs submit evidence that the AAUP is not only a labor union but also a "membership association" with a "mission" to "advance academic freedom." Wolfson Decl. ¶ 7. Nevertheless, Article III standing requires "far more" than an alleged "setback" to the AAUP's

[9] According to the docket sheet, at least eleven attorneys represent Plaintiffs in this case.

interest in academic freedom. *All. for Hippocratic Med.*, 602 U.S. at 394. To establish an injury-in-fact to itself, the AAUP must show a concrete harm that has actually occurred or is "certainly impending." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 401 (2013) (internal quotation marks and citation omitted). The AAUP submits that it has suffered an injury because it has "diverted internal resources of staff time and expenses to assist Columbia members in the [Middle East, South Asian, and African Studies, *i.e.*,] MESAAS Department and other departments *prepare* to respond to the Trump Administration's demand[] that the MESAAS Department be put under academic receivership, and to respond to the internal governance steps *Columbia* has announced." Wolfson Decl. ¶ 20 (emphases added).

Fatally for Plaintiffs, the Supreme Court has held that "an organization that has not suffered a concrete injury caused by a defendant's action cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action." *All. for Hippocratic Med.*, 602 U.S. at 394. The AAUP cannot establish an injury-in-fact merely because it elected to expend resources *preparing* to respond to a potential development that has not occurred and is not "certainly impending." *Clapper*, 568 U.S. at 401. The Columbia MESAAS Department is not under academic receivership. *See* March 21 Memo at 3. As discussed further below, any resources Plaintiffs expended "respond[ing] to the internal governance steps *Columbia* has announced," Wolfson Decl. ¶ 20 (emphases added), are not injuries traceable to *Defendants*. Neither the ATF nor the AAUP has demonstrated a cognizable injury to itself.

Turning to representational standing, Plaintiffs fail to establish that any injuries their members may have suffered are fairly traceable to Defendants. As noted above, the Court does find that some of Plaintiffs members used federal grants to Columbia for their academic work. *See, e.g.*, Witte Decl. ¶ 6; Hirsch Decl. ¶¶ 8, 11. The loss of professional opportunities or income may certainly constitute an injury in some cases. *See Nat. Res. Def. Council, Inc. v. Wheeler*, 367 F. Supp. 3d 219, 232 (S.D.N.Y. 2019). However, here, Plaintiffs have not demonstrated that it makes a difference to their members whether the funding for their research and salaries comes from American taxpayers, non-party Columbia's multi-billion-dollar endowment, the largess of Columbia's donors, or the eye-popping tuition bills paid by Columbia students, including the Jewish students who apparently paid for the privilege of being threatened with violence on their way to class. *See* Rosenthal Decl., Ex. 51 at 2.

Indeed, Plaintiffs' own evidence demonstrates that "Columbia has committed to providing salary coverage during this immediate period of uncertainty for personnel whose grants have been terminated." Hirsch ¶ 12. Plaintiffs' own evidence also demonstrates that Columbia has relied on "generous alumni" to alleviate certain "unanticipated expenses" [ECF No. 99-5 at 3]. Insofar as Columbia elects not to use its various private resources to fund specific research and personnel, Plaintiffs' members' quarrel is with Columbia.

Plaintiffs likewise fail to establish representational standing based on the alleged chilling of their members' speech and academic freedom. The numerous declarations in which Plaintiffs' members (and other individuals affiliated with Columbia with whom Plaintiffs appear to have no relationship whatsoever) attest to their "subjective" feelings of being chilled are not sufficient for standing. *Laird v. Tatum*, 408 U.S. 1, 13 (1972). Plaintiffs have not demonstrated that Defendants have harmed them because of their protected First Amendment activities or threatened a specific, imminent future harm for such protected activities. *See id.*

Plaintiffs contend that their "members fear that their speech and scholarship, if not aligned with the Trump administration, could trigger additional *punitive* funding freezes" and "demands by Defendants that their academic departments, too, be placed in academic receivership." Pl.

Mem. at 9 (emphasis added). Plaintiffs also contend that Columbia's announced reforms reflect Columbia simply "acquiesc[ing] to" Defendants' "demands." *Id.* at 21. Plaintiffs' contentions about their members' fears, Defendants' possible future actions (and the purportedly punitive nature of such actions), and Columbia's actions are all purely subjective and speculative. Evidence in the record, including Plaintiffs' own evidence, contradicts Plaintiffs' account.

As discussed above, Defendants submit evidence that they have terminated funding to Columbia because such funding was used in ways that was no longer consistent with agency priorities and for the convenience of the government. *See, e.g.*, March 3, 2025 Memo; NIH Letter; HHS Letter. Plaintiffs posit that any "reasonable person would understand that Defendants' actions" were "directed squarely at suppressing speech, association, and academic freedom rights." Pl. Mem. at 22. According to Plaintiffs, Defendants acted to punish "any support for Palestinian freedom and an anti-war perspective." Cmpl. ¶ 244. However, evidence submitted by both sides supports finding that the defendant executive agencies were responding to incidents other than protected speech and activities.

Indeed, Executive Branch communications about the termination of funding to Columbia expressly cited Columbia's protracted failure to respond to the occupation of an academic building, "Hamilton Hall," and other "disruption[s] of [the] teaching, research, and campus life" that the taxpayers were supposedly funding. March 13 Letter at 1–2; *see* NIH Letter at 1–2 ("Columbia's ongoing inaction in the face of repeated and severe harassment of Jewish students has ground day-to-day campus operations to a halt" and "deprived Jewish students" and others "of learning and research opportunities"). Columbia's own reports, which Plaintiffs put into evidence, identified incidents of "physical harm to students." Rosenthal Decl., Ex. 51 at 2; *see id.*, Ex. 53 at 2–3 (reporting that Jewish students "were on the receiving end of . . . physical assaults," and there was "a recurring lack of enforcement of existing University rules and policies"). This evidence does not support the subjective feelings of Plaintiffs' members that funding has been or will be cut to punish protected speech and scholarship. *See Laird*, 408 U.S. at 13. Thus, in light of the Supreme Court's instruction to perform an "especially rigorous" standing inquiry before proceeding to the merits of a claim that "an action taken by one of the other two branches of the Federal Government was unconstitutional," the Court concludes that Plaintiffs fall short of demonstrating that their members have experienced more than a subjective feeling of chill in response to actions by any defendant. *Raines*, 521 U.S. at 819–20; *see Laird*, 408 U.S. at 13.

Relatedly, as noted above, Plaintiffs fall short with respect to traceability. *See Murthy*, 603 U.S. at 57–58. Based on Plaintiffs' own evidence, it was Columbia, not any of the defendants, that reached out to Plaintiffs' members to advise them that their scholarship was not aligned with the funding priorities of the Executive Branch based on Columbia's own "analysis," which analysis Columbia had performed "[e]arlier [in the] year," before the termination of any funding and before the March 13 Letter. CGC Email at 1. That email expressly was unrelated to any "notifications" about "antisemitic actions." *Id.* at 2.

Crucially, Columbia had been planning the reforms it announced in its March 21 Memo, which was about antisemitism on campus, for "many months" before any of the defendants made any demands. *Khalil* Tr. at 65:1–8. Moreover, Columbia did not merely implement the steps listed in the March 13 Letter from executive agencies, but rather exercised independent judgment. *See supra* at 17–18. For example, as noted above, Columbia did not comply with the demand to place the MESAAS Department under academic receivership but, instead, appointed a "new Senior Vice Provost" to review Columbia's whole "portfolio of programs in regional areas," starting with the Middle East, with goals to "promot[e] excellence" and "intellectual diversity." March 21 Memo at 3. Such "independent action of [a] third party not before the court" breaks the causal chain between Defendants and any alleged injury. *Murthy*, 603 U.S. at 57 (quoting *Simon v. E. Kentucky Welfare Rts. Org.*, 426 U.S. 26, 42 (1976)). Insofar as Plaintiffs' members feel chilled by any actual changes that have taken place at Columbia, such as the review of the MESAAS Department, Plaintiffs have not shown that Columbia's actions were merely the "predictable" response to the demands of the executive agency defendants. *Murthy*, 603 U.S. at 58; *see Dep't of Com. v. New York*, 588 U.S. 752, 768 (2019).

Furthermore, Plaintiffs stress that "[d]espite Columbia's compliance," funding has not been restored. Pl. Mem. at 6. Yet Plaintiffs apparently fail to grasp that one possible inference from this state of affairs is that funding cuts were made and maintained not to punish speech but because, for example, it is not consistent with the priorities of the NIH under the current, democratically-elected President, to continue to fund Columbia's research into the impact of climate change on the mental health of women in East Africa. *See* Witte Decl. ¶ 9. Declining to fund such research is not a First Amendment injury.

Despite submitting voluminous evidence, Plaintiffs fail to establish standing in their own right and fail to establish representational standing.[10] As such, this case must be dismissed without prejudice for lack of subject matter jurisdiction. *See Do No Harm v. Pfizer Inc.*, 126 F.4th 109, 121 (2d Cir. 2025). As such "the court *cannot* consider the merits of the preliminary injunction motion." *Id.* (emphasis in original).

The Court simply notes that the Supreme Court's recent, albeit brief, opinion in *Department of Education v. California*, 604 U.S. __, 145 S. Ct. 966 (2025), raises several additional hurdles

[10] Plaintiffs were on notice that they needed to address standing, not only because it is a constitutional prerequisite for bringing any case in federal court, but also because the judge in *Khalil* raised the issue with the plaintiffs in that case immediately before Plaintiffs here filed their motion for a preliminary injunction. *See supra* at 4–5.

for Plaintiffs. As noted above, the Supreme Court characterized DOE "grants" as contracts and ruled that, as such, the district court in that case likely lacked jurisdiction to order relief because "the APA's limited waiver of immunity does not extend to orders to enforce a contractual obligation to pay money," and "the Tucker Act grants the Court of Federal Claims [exclusive] jurisdiction over suits based on . . . contract[s] with the United States." *California*, 604 U.S. at __, 145 S. Ct. at 968. In all events, the principal relief Plaintiffs seek is money, and it is well-established that a party cannot show the irreparable harm required to obtain a preliminary injunction where "money damages" can provide redress. *Kamerling v. Massanari*, 295 F.3d 206, 214 (2d Cir. 2002); *see Petereit v. S.B. Thomas, Inc.*, 63 F.3d 1169, 1186 (2d Cir. 1995).

The Court also notes, with respect to the merits, that Plaintiffs posit, without citation to any authority, that the Executive Branch may not count repudiating antisemitism among "agency priorities" within the meaning of 2 C.F.R. § 200.340(a)(4). The Court is not aware of authority for that particular limitation on agency priorities. Rather, all of Plaintiffs' arguments that Defendants violated the APA (and the separation of powers) by failing to comply with procedural requirements for cutting funding pursuant to Title VI simply presuppose that Title VI is the exclusive vehicle by which the Executive Branch may withdraw financial support for an institution that allows religious discrimination.

The Court urges Plaintiffs, and the amici who decry Defendants' alleged failure to follow Title VI to the letter, to review the text of that statute. Title VI does not mention religion. *See* 42 U.S.C. § 2000d ("No person in the United States shall, on the ground of *race*, *color*, or *national origin*, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.") (emphases added); *see also Kajoshaj v. New York City Dep't of Educ.*, 543 F. App'x 11, 13 & n.2 (2d Cir.

2013) (noting that "Title VI does not, by its terms, proscribe religious discrimination"). As such, it strikes this Court as 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" [ECF No. 48-7 ("EO")].

Plaintiffs blithely assert that the balance of equities and the public interest "strongly favor preliminary relief" and that "[n]o public interest is served by allowing continued violations of Title VI, the APA, and the Constitution." Pl. Mem. at 28, 29. However, it is not the role of a district court judge to direct the policies of the Executive Branch first and ask questions later. Plaintiffs have not established their standing to litigate this case, let alone any violation of any law.

V. CONCLUSION

For the reasons set forth above, Plaintiffs' motion for a preliminary injunction [ECF No. 24] is DENIED, and this case is DISMISSED without prejudice.

The Clerk of Court respectfully is requested to terminate the motion pending at docket entry 24 and to close this case.

SO ORDERED.

Mary Kay Vyskocil

Date: June 16, 2025
New York, NY

MARY KAY VYSKOCIL
United States District Judge

First Amendment to the United States Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education to Secretary of Education.

§ 2000c–6. Civil actions by the Attorney General

(a) Complaint; certification; notice to school board or college authority; institution of civil action; relief requested; jurisdiction; transportation of pupils to achieve racial balance; judicial power to insure compliance with constitutional standards; impleading additional parties as defendants

Whenever the Attorney General receives a complaint in writing—

(1) signed by a parent or group of parents to the effect that his or their minor children, as members of a class of persons similarly situated, are being deprived by a school board of the equal protection of the laws, or

(2) signed by an individual, or his parent, to the effect that he has been denied admission to or not permitted to continue in attendance at a public college by reason of race, color, religion, sex or national origin,

and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly achievement of desegregation in public education, the Attorney General is authorized, after giving notice of such complaint to the appropriate school board or college authority and after certifying that he is satisfied that such board or authority has had a reasonable time to adjust the conditions alleged in such complaint, to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(b) Persons unable to initiate and maintain legal proceedings

The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

(c) "Parent" and "complaint" defined

The term ''parent'' as used in this section includes any person standing in loco parentis. A ''complaint'' as used in this section is a writing or document within the meaning of section 1001, title 18.

(Pub. L. 88–352, title IV, § 407, July 2, 1964, 78 Stat. 248; Pub. L. 92–318, title IX, § 906(a), June 23, 1972, 86 Stat. 375.)

Editorial Notes

AMENDMENTS

1972—Subsec. (a)(2). Pub. L. 92–318 inserted ''sex'' after ''religion,''.

§ 2000c–7. Liability of United States for costs

In any action or proceeding under this subchapter the United States shall be liable for costs the same as a private person.

(Pub. L. 88–352, title IV, § 408, July 2, 1964, 78 Stat. 249.)

§ 2000c–8. Personal suits for relief against discrimination in public education

Nothing in this subchapter shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education.

(Pub. L. 88–352, title IV, § 409, July 2, 1964, 78 Stat. 249.)

§ 2000c–9. Classification and assignment

Nothing in this subchapter shall prohibit classification and assignment for reasons other than race, color, religion, sex or national origin.

(Pub. L. 88–352, title IV, § 410, July 2, 1964, 78 Stat. 249; Pub. L. 92–318, title IX, § 906(a), June 23, 1972, 86 Stat. 375.)

Editorial Notes

AMENDMENTS

1972—Pub. L. 92–318 inserted ''sex'' after ''religion,''.

SUBCHAPTER V—FEDERALLY ASSISTED PROGRAMS

§ 2000d. Prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color, or national origin

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(Pub. L. 88–352, title VI, § 601, July 2, 1964, 78 Stat. 252.)

Executive Documents

COORDINATION OF IMPLEMENTATION AND ENFORCEMENT OF PROVISIONS

For provisions relating to the coordination of implementation and enforcement of the provisions of this subchapter by the Attorney General, see section 1–201 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out as a note under section 2000d–1 of this title.

EX. ORD. NO. 13160. NONDISCRIMINATION ON THE BASIS OF RACE, SEX, COLOR, NATIONAL ORIGIN, DISABILITY, RELIGION, AGE, SEXUAL ORIENTATION, AND STATUS AS A PARENT IN FEDERALLY CONDUCTED EDUCATION AND TRAINING PROGRAMS

Ex. Ord. No. 13160, June 23, 2000, 65 F.R. 39775, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 921–932 of title 20, United States Code; section 2164 of title 10, United States Code; section 2001 *et seq.*, of title 25, United States Code; section 7301 of title 5, United States Code; and section 301 of title 3, United States Code, and to achieve equal opportunity in Federally conducted education and training programs and activities, it is hereby ordered as follows:

SECTION 1. *Statement of policy on education programs and activities conducted by executive departments and agencies.*

1–101. The Federal Government must hold itself to at least the same principles of nondiscrimination in educational opportunities as it applies to the education programs and activities of State and local governments, and to private institutions receiving Federal financial assistance. Existing laws and regulations prohibit certain forms of discrimination in Federally conducted education and training programs and activities—including discrimination against people with disabilities, prohibited by the Rehabilitation Act of 1973, 29 U.S.C. 701 *et seq.*, as amended, employment discrimination on the basis of race, color, national origin, sex, or religion, prohibited by Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e–17 [42 U.S.C. 2000e et seq.], as amended, discrimination on the basis of race, color, national origin, or religion in educational programs receiving Federal assistance, under Title VI of the Civil Rights Acts of 1964, 42 U.S.C. 2000d [et seq.], and sex-based discrimination in education programs receiving Federal assistance under Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.* Through this Executive Order, discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent will be prohibited in Federally conducted education and training programs and activities.

1–102. No individual, on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in, a Federally conducted education or training program or activity.

SEC. 2. *Definitions.*

2–201. ''Federally conducted education and training programs and activities'' includes programs and activities conducted, operated, or undertaken by an executive department or agency.

2–202. ''Education and training programs and activities'' include, but are not limited to, formal schools, extracurricular activities, academic programs, occupational training, scholarships and fellowships, student internships, training for industry members, summer enrichment camps, and teacher training programs.

2–203. The Attorney General is authorized to make a final determination as to whether a program falls within the scope of education and training programs and activities covered by this order, under subsection 2–202, or is excluded from coverage, under section 3.

2–204. ''Military education or training programs'' are those education and training programs conducted by the Department of Defense or, where the Coast Guard is concerned, the Department of Transportation, for the primary purpose of educating or training members of the armed forces or meeting a statutory requirement to educate or train Federal, State, or local civilian law enforcement officials pursuant to 10 U.S.C. Chapter 18.

2–205. ''Armed Forces'' means the Armed Forces of the United States.

2–206. ''Status as a parent'' refers to the status of an individual who, with respect to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is:

(a) a biological parent;
(b) an adoptive parent;
(c) a foster parent;
(d) a stepparent;
(e) a custodian of a legal ward;
(f) in loco parentis over such an individual; or
(g) actively seeking legal custody or adoption of such an individual.

SEC. 3. *Exemption from coverage.*

3–301. This order does not apply to members of the armed forces, military education or training programs, or authorized intelligence activities. Members of the armed forces, including students at military academies, will continue to be covered by regulations that currently bar specified forms of discrimination that are now enforced by the Department of Defense and the individual service branches. The Department of Defense shall develop procedures to protect the rights of and to provide redress to civilians not otherwise protected by existing Federal law from discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent and who participate in military education or training programs or activities conducted by the Department of Defense.

3–302. This order does not apply to, affect, interfere with, or modify the operation of any otherwise lawful affirmative action plan or program.

3–303. An individual shall not be deemed subjected to discrimination by reason of his or her exclusion from the benefits of a program established consistent with federal law or limited by Federal law to individuals of a particular race, sex, color, disability, national origin, age, religion, sexual orientation, or status as a parent different from his or her own.

3–304. This order does not apply to ceremonial or similar education or training programs or activities of schools conducted by the Department of the Interior, Bureau of Indian Affairs, that are culturally relevant to the children represented in the school. ''Culturally relevant'' refers to any class, program, or activity that is fundamental to a tribe's culture, customs, traditions, heritage, or religion.

3–305. This order does not apply to (a) selections based on national origin of foreign nationals to participate in covered education or training programs, if such programs primarily concern national security or foreign policy matters; or (b) selections or other decisions regarding participation in covered education or training programs made by entities outside the executive branch. It shall be the policy of the executive branch that education or training programs or activities shall not be available to entities that select persons for participation in violation of Federal or State law.

3–306. The prohibition on discrimination on the basis of age provided in this order does not apply to age-based admissions of participants to education or training programs, if such programs have traditionally been age-specific or must be age-limited for reasons related to health or national security.

SEC. 4. *Administrative enforcement.*

4–401. Any person who believes himself or herself to be aggrieved by a violation of this order or its implementing regulations, rules, policies, or guidance may, personally or through a representative, file a written complaint with the agency that such person believes is in violation of this order or its implementing regulations, rules, policies, or guidance. Pursuant to procedures to be established by the Attorney General, each executive department or agency shall conduct an investigation of any complaint by one of its employees alleging a violation of this Executive Order.

4–402. (a) If the office within an executive department or agency that is designated to investigate complaints for violations of this order or its implementing rules, regulations, policies, or guidance concludes that an employee has not complied with this order or any of its implementing rules, regulations, policies, or guidance, such office shall complete a report and refer a copy of the report and any relevant findings or supporting evidence to an appropriate agency official. The appropriate agency official shall review such material and determine what, if any, disciplinary action is appropriate.

(b) In addition, the designated investigating office may provide appropriate agency officials with a recommendation for any corrective and/or remedial action. The appropriate officials shall consider such recommendation and implement corrective and/or remedial action by the agency, when appropriate. Nothing in this order authorizes monetary relief to the complainant as a form of remedial or corrective action by an executive department or agency.

4–403. Any action to discipline an employee who violates this order or its implementing rules, regulations, policies, or guidance, including removal from employment, where appropriate, shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act of 1978, Public Law No. 95–454, 92 Stat. 1111 [see Tables for classification].

SEC. 5. *Implementation and Agency Responsibilities.*

5–501. The Attorney General shall publish in the Federal Register such rules, regulations, policies, or guidance, as the Attorney General deems appropriate, to be followed by all executive departments and agencies. The Attorney General shall address:

a. which programs and activities fall within the scope of education and training programs and activities covered by this order, under subsection 2–202, or excluded from coverage, under section 3 of this order;

b. examples of discriminatory conduct;

c. applicable legal principles;

d. enforcement procedures with respect to complaints against employees;

e. remedies;

f. requirements for agency annual and tri-annual reports as set forth in section 6 of this order; and

g. such other matters as deemed appropriate.

5–502. Within 90 days of the publication of final rules, regulations, policies, or guidance by the Attorney General, each executive department and agency shall establish a procedure to receive and address complaints regarding its Federally conducted education and training programs and activities. Each executive department and agency shall take all necessary steps to effectuate any subsequent rules, regulations, policies, or guidance issued by the Attorney General within 90 days of issuance.

5–503. The head of each executive department and agency shall be responsible for ensuring compliance within this order.

5–504. Each executive department and agency shall cooperate with the Attorney General and provide such information and assistance as the Attorney General may require in the performance of the Attorney General's functions under this order.

5–505. Upon request and to the extent practicable, the Attorney General shall provide technical advice and assistance to executive departments and agencies to assist in full compliance with this order.

SEC. 6. *Reporting Requirements.*

6–601. Consistent with the regulations, rules, policies, or guidance issued by the Attorney General, each executive department and agency shall submit to the Attorney General a report that summarizes the number and nature of complaints filed with the agency and the disposition of such complaints. For the first 3 years after the date of this order, such reports shall be submitted annually within 90 days of the end of the preceding year's activities. Subsequent reports shall be submitted every 3 years and within 90 days of the end of each 3-year period.

SEC. 7. *General Provisions.*

7–701. Nothing in this order shall limit the authority of the Attorney General to provide for the coordinated enforcement of nondiscrimination requirements in Federal assistance programs under Executive Order 12250 [42 U.S.C. 2000d–1 note].

SEC. 8. *Judicial Review.*

8–801. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This order is not intended, however, to preclude judicial review of final decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701, *et seq.*

WILLIAM J. CLINTON.

EX. ORD. NO. 13899. COMBATING ANTI-SEMITISM

Ex. Ord. No. 13899, Dec. 11, 2019, 84 F.R. 68779, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Policy.* My Administration is committed to combating the rise of anti-Semitism and anti-Semitic incidents in the United States and around the world. Anti-Semitic incidents have increased since 2013, and students, in particular, continue to face anti-Semitic harassment in schools and on university and college campuses.

Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. 2000d *et seq.*, prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving Federal financial assistance. While Title VI does not cover discrimination based on religion, individuals who face discrimination on the basis of race, color, or national origin do not lose protection under Title VI for also being a member of a group that shares common religious practices. Discrimination against Jews may give rise to a Title VI violation when the discrimination is based on an individual's race, color, or national origin.

It shall be the policy of the executive branch to enforce Title VI against prohibited forms of discrimination rooted in anti-Semitism as vigorously as against all other forms of discrimination prohibited by Title VI.

SEC. 2. *Ensuring Robust Enforcement of Title VI.* (a) In enforcing Title VI, and identifying evidence of discrimination based on race, color, or national origin, all executive departments and agencies (agencies) charged with enforcing Title VI shall consider the following:

(i) the non-legally binding working definition of anti-Semitism adopted on May 26, 2016, by the International Holocaust Remembrance Alliance (IHRA), which states, ''Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities''; and

(ii) the ''Contemporary Examples of Anti-Semitism'' identified by the IHRA, to the extent that any examples might be useful as evidence of discriminatory intent.

(b) In considering the materials described in subsections (a)(i) and (a)(ii) of this section, agencies shall not diminish or infringe upon any right protected under Federal law or under the First Amendment. As with all other Title VI complaints, the inquiry into whether a particular act constitutes discrimination prohibited by Title VI will require a detailed analysis of the allegations.

SEC. 3. *Additional Authorities Prohibiting Anti-Semitic Discrimination.* Within 120 days of the date of this order [Dec. 11, 2019], the head of each agency charged with enforcing Title VI shall submit a report to the President, through the Assistant to the President for Domestic Policy, identifying additional nondiscrimination authorities within its enforcement authority with respect to which the IHRA definition of anti-Semitism could be considered.

SEC. 4. *Rule of Construction.* Nothing in this order shall be construed to alter the evidentiary requirements pursuant to which an agency makes a determination that conduct, including harassment, amounts to actionable discrimination, or to diminish or infringe upon the rights protected under any other provision of law.

SEC. 5. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

§ 2000d–1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided*, *however*, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

(Pub. L. 88–352, title VI, § 602, July 2, 1964, 78 Stat. 252.)

Executive Documents

DELEGATION OF FUNCTIONS

Function of the President relating to approval of rules, regulations, and orders of general applicability under this section, delegated to the Attorney General, see section 1–101 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out below.

EQUAL OPPORTUNITY IN FEDERAL EMPLOYMENT

Nondiscrimination in government employment and in employment by government contractors and subcontractors, see Ex. Ord. No. 11246, eff. Sept. 24, 1965, 30 F.R. 12319, and Ex. Ord. No. 11478, eff. Aug. 8, 1969, 34 F.R. 12985, set out as notes under section 2000e of this title.

EXECUTIVE ORDER NO. 11247

Ex. Ord. No. 11247, eff. Sept. 24, 1965, 30 F.R. 12327, which related to enforcement of coordination of nondiscrimination in federally assisted programs, was superseded by Ex. Ord. No. 11764, eff. Jan. 21, 1974, 39 F.R. 2575, formerly set out below.

EXECUTIVE ORDER NO. 11764

Ex. Ord. No. 11764, Jan. 21, 1974, 39 F.R. 2575, which related to coordination of enforcement of provisions of this subchapter, was revoked by section 1–501 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72996, set out below.

EX. ORD. NO. 12250. LEADERSHIP AND COORDINATION OF IMPLEMENTATION AND ENFORCEMENT OF NONDISCRIMINATION LAWS

Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1), Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), and Section 301 of Title 3 of the United States Code, and in order to provide, under the leadership of the Attorney General, for the consistent and effective implementation of various laws prohibiting discriminatory practices in Federal programs and programs receiving Federal financial assistance, it is hereby ordered as follows:

1–1. DELEGATION OF FUNCTION

1–101. The function vested in the President by Section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1–102. The function vested in the President by Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1–2. COORDINATION OF NONDISCRIMINATION PROVISIONS

1–201. The Attorney General shall coordinate the implementation and enforcement by Executive agencies of various nondiscrimination provisions of the following laws:

(a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(b) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

(c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

(d) Any other provision of Federal statutory law which provides, in whole or in part, that no person in the United States shall, on the ground of race, color, ments pursuant to which an agency makes a determination that conduct, including harassment, amounts to actionable discrimination, or to diminish or infringe upon the rights protected under any other provision of law.

SEC. 5. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

§ 2000d–1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however*, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

(Pub. L. 88–352, title VI, § 602, July 2, 1964, 78 Stat. 252.)

Executive Documents

DELEGATION OF FUNCTIONS

Function of the President relating to approval of rules, regulations, and orders of general applicability under this section, delegated to the Attorney General, see section 1–101 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out below.

EQUAL OPPORTUNITY IN FEDERAL EMPLOYMENT

Nondiscrimination in government employment and in employment by government contractors and subcontractors, see Ex. Ord. No. 11246, eff. Sept. 24, 1965, 30 F.R. 12319, and Ex. Ord. No. 11478, eff. Aug. 8, 1969, 34 F.R. 12985, set out as notes under section 2000e of this title.

EXECUTIVE ORDER NO. 11247

Ex. Ord. No. 11247, eff. Sept. 24, 1965, 30 F.R. 12327, which related to enforcement of coordination of nondiscrimination in federally assisted programs, was superseded by Ex. Ord. No. 11764, eff. Jan. 21, 1974, 39 F.R. 2575, formerly set out below.

EXECUTIVE ORDER NO. 11764

Ex. Ord. No. 11764, Jan. 21, 1974, 39 F.R. 2575, which related to coordination of enforcement of provisions of this subchapter, was revoked by section 1–501 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72996, set out below.

EX. ORD. NO. 12250. LEADERSHIP AND COORDINATION OF IMPLEMENTATION AND ENFORCEMENT OF NONDISCRIMINATION LAWS

Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1), Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), and Section 301 of Title 3 of the United States Code, and in order to provide, under the leadership of the Attorney General, for the consistent and effective implementation of various laws prohibiting discriminatory practices in Federal programs and programs receiving Federal financial assistance, it is hereby ordered as follows:

1–1. DELEGATION OF FUNCTION

1–101. The function vested in the President by Section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1–102. The function vested in the President by Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1–2. COORDINATION OF NONDISCRIMINATION PROVISIONS

1–201. The Attorney General shall coordinate the implementation and enforcement by Executive agencies of various nondiscrimination provisions of the following laws:

(a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(b) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

(c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

(d) Any other provision of Federal statutory law which provides, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

1–202. In furtherance of the Attorney General's responsibility for the coordination of the implementation and enforcement of the nondiscrimination provisions of laws covered by this Order, the Attorney General shall review the existing and proposed rules, regulations, and orders of general applicability of the Executive agencies in order to identify those which are inadequate, unclear or unnecessarily inconsistent.

1–203. The Attorney General shall develop standards and procedures for taking enforcement actions and for conducting investigations and compliance reviews.

1–204. The Attorney General shall issue guidelines for establishing reasonable time limits on efforts to secure voluntary compliance, on the initiation of sanctions, and for referral to the Department of Justice for enforcement where there is noncompliance.

1–205. The Attorney General shall establish and implement a schedule for the review of the agencies' regulations which implement the various nondiscrimination laws covered by this Order.

1–206. The Attorney General shall establish guidelines and standards for the development of consistent and effective recordkeeping and reporting requirements by Executive agencies; for the sharing and exchange by agencies of compliance records, findings, and supporting documentation; for the development of comprehensive employee training programs; for the development of effective information programs; and for the development of cooperative programs with State and local agencies, including sharing of information, deferring of enforcement activities, and providing technical assistance.

1–207. The Attorney General shall initiate cooperative programs between and among agencies, including the development of sample memoranda of understanding, designed to improve the coordination of the laws covered by this Order.

1–3. IMPLEMENTATION BY THE ATTORNEY GENERAL

1–301. In consultation with the affected agencies, the Attorney General shall promptly prepare a plan for the implementation of this Order. This plan shall be submitted to the Director of the Office of Management and Budget.

1–302. The Attorney General shall periodically evaluate the implementation of the nondiscrimination provisions of the laws covered by this Order, and advise the heads of the agencies concerned on the results of such evaluations as to recommendations for needed improvement in implementation or enforcement.

1–303. The Attorney General shall carry out his functions under this Order, including the issuance of such regulations as he deems necessary, in consultation with affected agencies.

1–304. The Attorney General shall annually report to the President through the Director of the Office of Management and Budget on the progress in achieving the purposes of this Order. This report shall include any recommendations for changes in the implementation or enforcement of the nondiscrimination provisions of the laws covered by this Order.

1–305. The Attorney General shall chair the Interagency Coordinating Council established by Section 507 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794c).

1–4. AGENCY IMPLEMENTATION

1–401. Each Executive agency shall cooperate with the Attorney General in the performance of the Attorney General's functions under this Order and shall, unless prohibited by law, furnish such reports and information as the Attorney General may request.

1–402. Each Executive agency responsible for implementing a nondiscrimination provision of a law covered by this Order shall issue appropriate implementing directives (whether in the nature of regulations or policy guidance). To the extent permitted by law, they shall be consistent with the requirements prescribed by the Attorney General pursuant to this Order and shall be subject to the approval of the Attorney General, who may require that some or all of them be submitted for approval before taking effect.

1–403. Within 60 days after a date set by the Attorney General, Executive agencies shall submit to the Attorney General their plans for implementing their responsibilities under this Order.

1–5. GENERAL PROVISIONS

1–501. Executive Order No. 11764 is revoked. The present regulations of the Attorney General relating to the coordination of enforcement of Title VI of the Civil Rights Act of 1964 [this subchapter] shall continue in effect until revoked or modified (28 CFR 42.401 to 42.415).

1–502. Executive Order No. 11914 is revoked. The present regulations of the Secretary of Health and Human Services relating to the coordination of the implementation of Section 504 of the Rehabilitation Act of 1973, as amended [29 U.S.C. 794], shall be deemed to have been issued by the Attorney General pursuant to this Order and shall continue in effect until revoked or modified by the Attorney General.

1–503. Nothing in this Order shall vest the Attorney General with the authority to coordinate the implementation and enforcement by Executive agencies of statutory provisions relating to equal employment.

1–504. Existing agency regulations implementing the nondiscrimination provisions of laws covered by this Order shall continue in effect until revoked or modified.

JIMMY CARTER.

EX. ORD. NO. 13166. IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY

Ex. Ord. No. 13166, Aug. 11, 2000, 65 F.R. 50121, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP), it is hereby ordered as follows:

SECTION 1. *Goals.*

The Federal Government provides and funds an array of services that can be made accessible to otherwise eligible persons who are not proficient in the English language. The Federal Government is committed to improving the accessibility of these services to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. To this end, each Federal agency shall examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency. Each Federal agency shall also work to ensure that recipients of Federal financial assistance (recipients) provide meaningful access to their LEP applicants and beneficiaries. To assist the agencies with this endeavor, the Department of Justice has today issued a general guidance document (LEP Guidance), which sets forth the compliance standards that recipients must follow to ensure that the programs and activities they normally provide in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], as amended, and its implementing regulations. As described in the LEP Guidance, recipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

SEC. 2. *Federally Conducted Programs and Activities.*

Each Federal agency shall prepare a plan to improve access to its federally conducted programs and activities by eligible LEP persons. Each plan shall be consistent with the standards set forth in the LEP Guidance, and shall include the steps the agency will take to ensure that eligible LEP persons can meaningfully access the agency's programs and activities. Agencies shall develop and begin to implement these plans within 120 days of the date of this order, and shall send copies of their plans to the Department of Justice, which shall serve as the central repository of the agencies' plans.

SEC. 3. *Federally Assisted Programs and Activities.*

Each agency providing Federal financial assistance shall draft title VI guidance specifically tailored to its recipients that is consistent with the LEP Guidance issued by the Department of Justice. This agency-specific guidance shall detail how the general standards established in the LEP Guidance will be applied to the agency's recipients. The agency-specific guidance shall take into account the types of services provided by the recipients, the individuals served by the recipients, and other factors set out in the LEP Guidance. Agencies that already have developed title VI guidance that the Department of Justice determines is consistent with the LEP Guidance shall examine their existing guidance, as well as their programs and activities, to determine if additional guidance is necessary to comply with this order. The Department of Justice shall consult with the agencies in creating their guidance and, within 120 days of the date of this order, each agency shall submit its specific guidance to the Department of Justice for review and approval. Following approval by the Department of Justice, each agency shall publish its guidance document in the Federal Register for public comment.

SEC. 4. *Consultations.*

In carrying out this order, agencies shall ensure that stakeholders, such as LEP persons and their representative organizations, recipients, and other appropriate individuals or entities, have an adequate opportunity to provide input. Agencies will evaluate the particular needs of the LEP persons they and their recipients serve and the burdens of compliance on the agency and its recipients. This input from stakeholders will assist the agencies in developing an approach to ensuring meaningful access by LEP persons that is practical and effective, fiscally responsible, responsive to the particular circumstances of each agency, and can be readily implemented.

SEC. 5. *Judicial Review.*

This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any person.

WILLIAM J. CLINTON.

§ 2000d–2. Judicial review; administrative procedure provisions

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. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 2000d–1 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that chapter.

(Pub. L. 88–352, title VI, § 603, July 2, 1964, 78 Stat. 253.)

Editorial Notes

CODIFICATION

''Chapter 7 of title 5'' and ''that chapter'' substituted in text for ''section 10 of the Administrative Procedure Act'' and ''that section'', respectively, on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees. Prior to the enactment of Title 5, section 10 of the Administrative Procedure Act was classified to section 1009 of Title 5.

§ 2000d–3. Construction of provisions not to authorize administrative action with respect to employment practices except where primary objective of Federal financial assistance is to provide employment

Nothing contained in this subchapter shall be construed to authorize action under this subchapter by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

(Pub. L. 88–352, title VI, § 604, July 2, 1964, 78 Stat. 253.)

§ 2000d–4. Federal authority and financial assistance to programs or activities by way of contract of insurance or guaranty

Nothing in this subchapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

(Pub. L. 88–352, title VI, § 605, July 2, 1964, 78 Stat. 253.)

§ 2000d–4a. "Program or activity" and "program" defined

For the purposes of this subchapter, the term ''program or activity'' and the term ''program'' mean all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 7801 of title 20), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Fed-ties by eligible LEP persons. Each plan shall be consistent with the standards set forth in the LEP Guidance, and shall include the steps the agency will take to ensure that eligible LEP persons can meaningfully access the agency's programs and activities. Agencies shall develop and begin to implement these plans within 120 days of the date of this order, and shall send copies of their plans to the Department of Justice, which shall serve as the central repository of the agencies' plans.

SEC. 3. *Federally Assisted Programs and Activities.*

Each agency providing Federal financial assistance shall draft title VI guidance specifically tailored to its recipients that is consistent with the LEP Guidance issued by the Department of Justice. This agency-specific guidance shall detail how the general standards established in the LEP Guidance will be applied to the agency's recipients. The agency-specific guidance shall take into account the types of services provided by the recipients, the individuals served by the recipients, and other factors set out in the LEP Guidance. Agencies that already have developed title VI guidance that the Department of Justice determines is consistent with the LEP Guidance shall examine their existing guidance, as well as their programs and activities, to determine if additional guidance is necessary to comply with this order. The Department of Justice shall consult with the agencies in creating their guidance and, within 120 days of the date of this order, each agency shall submit its specific guidance to the Department of Justice for review and approval. Following approval by the Department of Justice, each agency shall publish its guidance document in the Federal Register for public comment.

SEC. 4. *Consultations.*

In carrying out this order, agencies shall ensure that stakeholders, such as LEP persons and their representative organizations, recipients, and other appropriate individuals or entities, have an adequate opportunity to provide input. Agencies will evaluate the particular needs of the LEP persons they and their recipients serve and the burdens of compliance on the agency and its recipients. This input from stakeholders will assist the agencies in developing an approach to ensuring meaningful access by LEP persons that is practical and effective, fiscally responsible, responsive to the particular circumstances of each agency, and can be readily implemented.

SEC. 5. *Judicial Review.*

This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any person.

WILLIAM J. CLINTON.

§ 2000d–2. Judicial review; administrative procedure provisions

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. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 2000d–1 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that chapter.

(Pub. L. 88–352, title VI, § 603, July 2, 1964, 78 Stat. 253.)

Editorial Notes

CODIFICATION

''Chapter 7 of title 5'' and ''that chapter'' substituted in text for ''section 10 of the Administrative Procedure Act'' and ''that section'', respectively, on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees. Prior to the enactment of Title 5, section 10 of the Administrative Procedure Act was classified to section 1009 of Title 5.

§ 2000d–3. Construction of provisions not to authorize administrative action with respect to employment practices except where primary objective of Federal financial assistance is to provide employment

Nothing contained in this subchapter shall be construed to authorize action under this subchapter by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

(Pub. L. 88–352, title VI, § 604, July 2, 1964, 78 Stat. 253.)

§ 2000d–4. Federal authority and financial assistance to programs or activities by way of contract of insurance or guaranty

Nothing in this subchapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

(Pub. L. 88–352, title VI, § 605, July 2, 1964, 78 Stat. 253.)

§ 2000d–4a. "Program or activity" and "program" defined

For the purposes of this subchapter, the term ''program or activity'' and the term ''program'' mean all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 7801 of title 20), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Fed-

CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2025, I electronically filed the foregoing Special Appendix with the Clerk of Court for the United States Court of Appeals for the Second Circuit using the ACMS system, which will send notice of such filing to all counsel of record in compliance with Local Rule 25.1(h)(2).

Dated: September 22, 2025

By: s/ Rachel Goodman

Rachel Goodman
Protect Democracy Project
82 Nassau Street, #601
New York, NY 10038
Tel: (202) 579-4582
Fax: (202) 769-3176
rachel.goodman@protectdemocracy.org

Counsel for Plaintiffs-Appellants