25-1529

To Be Argued By:
ALLISON M. ROVNER

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 25-1529

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, AMERICAN FEDERATION OF TEACHERS,

Plaintiffs-Appellants,

—v.—

UNITED STATES DEPARTMENT OF JUSTICE, PAMELA BONDI, in her official capacity as the U.S. Attorney General,

(Caption continued on inside cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR DEFENDANTS-APPELLEES

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Defendants-Appellees.

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UNITED STATES DEPARTMENT OF JUSTICE, 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, CANDICE JACKSON, IN HER 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, MIKE STUART, IN HIS OFFICIAL CAPACITY AS GENERAL COUNSEL OF THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, NATIONAL INSTITUTES OF HEALTH, JAY BHATTACHARYA, IN HIS OFFICIAL CAPACITY AS THE DIRECTOR OF THE NATIONAL INSTITUTES OF HEALTH, UNITED STATES GENERAL SERVICES ADMINISTRATION, EDWARD C. FORST, IN HIS OFFICIAL CAPACITY AS ADMINISTRATOR OF THE U.S. GENERAL SERVICES ADMINISTRATION, JOSH GRUENBAUM, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE FEDERAL ACQUISITION SERVICE,

Defendants-Appellees.

BRIEF FOR DEFENDANTS-APPELLEES

Preliminary Statement

Following numerous incidents of antisemitism and disruption of student life at Columbia University, several federal agencies terminated funding provided in grants and contracts to Columbia in March 2025. After the filing of this appeal, that terminated funding was largely restored pursuant to an agreement between the government and Columbia—and Columbia itself, which is not a party to this lawsuit, has not challenged the government's actions.

However, while negotiations between the government and Columbia to restore the funding were ongoing, plaintiffs, two organizations representing University faculty, filed this action, seeking to restore the grant and contract funding at issue. The district court correctly dismissed plaintiffs' claims because they lacked standing to insert themselves into a funding dispute between the government and non-party Columbia. The district court also correctly concluded that plaintiffs did not have representational standing to bring their claims because they had not alleged that any of their members suffered a cognizable injury caused by the government's conduct that was redressable by the injunctive relief they sought. Nor was there harm to the plaintiff organizations' core business activities such that the organizations themselves had standing. Moreover, federal court jurisdiction is also

lacking because the Tucker Act requires that plaintiffs bring this action, which sounds in contract, in the Court of Federal Claims, and this action has been mooted by the restoration of funding to Columbia.

For all those reasons, the district court's judgment should be affirmed.

Jurisdictional Statement

As explained below, the district court lacked subject matter jurisdiction over this action, which plaintiffs invoked under 28 U.S.C. § 1331. On June 16, 2025, the district court entered an opinion and order denying plaintiffs' motion for a preliminary injunction and dismissing the case, without prejudice, for lack of standing. (Special Appendix ("SPA") 1-30). Plaintiffs timely filed a notice of appeal that same day. (Joint Appendix ("JA") 935). This Court's jurisdiction is invoked under 28 U.S.C. § 1291, but as explained below, the Court lacks jurisdiction because the action is now moot.

Issues Presented for Review

1. Whether the district court lacked subject matter jurisdiction because plaintiffs do not have standing.

2. Whether the district court lacked subject matter jurisdiction under the Tucker Act.

3. Whether this matter is moot.

Statement of the Case

A. Procedural History

Plaintiffs commenced this action on March 25, 2025. (JA 8, 26-112). On April 3, 2025, plaintiffs moved for a preliminary injunction, which the government opposed. (JA 11, 18-19). The district court (Vyskocil, J.) entered a final order on June 16, 2025, denying a preliminary injunction and dismissing the case because plaintiffs lacked standing. (JA 24, SPA 1-30). Plaintiffs filed a notice of appeal on June 16, 2025. (JA 24, 935).

B. Factual Background

1. The Government's Grants and Contracts with Columbia

The government, through various agencies, provides funding to institutions of higher learning, including Columbia, using contracts and grants that are subject to specified terms and conditions. For example, the National Institutes of Health ("NIH"), an agency within the U.S. Department of Health and Human Services ("HHS"), awards grants to institutions that designate a principal investigator to lead the scientific and technical direction of research projects funded under the grant. 2 C.F.R. § 200.1, 42 C.F.R. § 52.2; (JA 909 ¶ 8).[1] NIH exercises broad discretion in awarding and administering grants. (JA 909 ¶ 8).

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[1] Although the version of the Declaration of Jon Lorsch appearing in Joint Appendix filed by plaintiffs

NIH awards grants "to those applicants whose approved projects will in the Secretary's judgment best promote the purposes of the statute authorizing the grant and the regulations of this part." 42 C.F.R. § 52.6(a); (JA 909 ¶ 8). When NIH awards a grant, it agrees to support the recipient with a specified level of funding for a specific period. (JA 909-10 ¶ 10). The award document requires recipients of NIH grant funds to comply with all federal statutes, regulations, policies, and the terms and conditions stated in the Notice of Award, including NIH's Grants Policy Statement. (JA 910 ¶ 11). The Grants Policy Statement, in turn, incorporates 2 C.F.R. § 200.340, which permits NIH to terminate a grant if it "no longer effectuates the program goals or agency priorities." (JA 910 ¶ 11).

Other agencies, such as the Department of Education ("ED"), similarly awarded grants directly to Columbia University or the University's Teachers College (JA 664-65, 667-68), and various government agencies also contract with Columbia (JA 654 ¶ 7).

2. The Government's Communications with Columbia Regarding Federal Funding

Following the October 7, 2023, attack on Israel by Hamas, there were numerous reported incidents of antisemitism on Columbia's campus, which it formed a task force to address. (JA 67-68 ¶¶ 165-67, 573, 576, 579, 588, 591, 595, 617). In a March 2024 report, Columbia's task force expressed "serious concerns"

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at JA 907-13 is unsigned, the version filed on the district court docket is signed.

that the University was not enforcing its own rules. (JA 596, 601). In a second report issued in August 2024, the task force noted that, regarding antisemitism, "the experiences reported during that period were even more extreme" and observed that Columbia had a "recurring lack of enforcement of existing University rules and policies" in the face of "even . . . the most clear-cut violations." (JA 617).

On January 29, 2025, President Trump issued Executive Order 14,188, "Additional Measures to Combat Anti-Semitism," instructing Executive Branch agencies to use "all available appropriate legal tools" to "combat anti-Semitism," which includes the "harassment" of Jewish students "on university and college campuses." (JA 322, 654 ¶ 4). Soon after, on February 3, 2025, the United States Department of Justice ("DOJ") announced the formation of a multi-agency Task Force to Combat Anti-Semitism. (JA 325, 654 ¶ 5).

On March 3, 2025, the General Services Administration ("GSA") sent a memorandum to Columbia, stating that it was "leading a Task Force comprehensive review of its 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." (JA 654 ¶ 6, 658-60). The memorandum advised that "alongside our fellow agencies, we will also be reviewing the greater than $5 billion of active grants between Columbia University, its affiliates and the Federal Government for potential compliance concerns, false claims or other infractions."

(JA 659). The memorandum further stated: "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." (JA 659).

On March 7, 2025, DOJ, HHS, ED, and GSA publicly announced the "immediate cancellation of approximately $400 million in Federal grants and contracts to Columbia due to the school's continued inaction in the face of persistent harassment of Jewish students." (JA 343, 655 ¶ 9). That same day, HHS placed a "hard funds restriction" on all grant awards to Columbia, which prevented Columbia from drawing down funds without further approval. (JA 911 ¶ 16).

On March 10, 2025, and again on March 14, 2025, NIH notified Columbia of 262 total grants to be terminated as inconsistent with NIH policy and requirements, as outlined in NIH's Grants Policy Statement and 2 C.F.R. § 200.340(a)(4), because the "awards no longer effectuate agency priorities" to "support institutions that foster safe, equal, and healthy working and learning conditions conducive to high-quality research and free inquiry." (JA 911-12 ¶ 17, 928, 931). The letter continued that "NIH is aware of recent events at Columbia University involving antisemitic action that suggest the institution has a disturbing lack of concern for the safety and wellbeing of Jewish students," and "[s]upporting research in such an environment is

plainly inconsistent with NIH's priorities." (JA 911-12 ¶ 17, 928-29, 931-32).

Similarly, on March 7, 2025, ED sent two letters to Columbia notifying Columbia of termination of two grants pursuant to 2 C.F.R. § 200.340(a)(4) on the basis that the grants "no longer effectuate[ ] Department priorities." (JA 664, 667). The ED letters explained that the grants "provide[ ] funding for programs that promote or take part in initiatives that unlawfully discriminate on the basis of . . . religion . . . ; that violate . . . 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." (JA 664, 667).

Finally, the government terminated certain federal contracts pursuant to the Federal Acquisition Regulation, which allows the government to terminate contracts for convenience when it is in the government's interest to do so. (JA 655-66 ¶¶ 10-11, 913 ¶ 21, 934).

On March 13, 2025, GSA, HHS, and ED sent a letter to Columbia outlining the "steps that [the government] regard[s] as a precondition for formal negotiations regarding Columbia University's continued financial relationship with the United States government." (JA 357-58 ("March 13 Letter")). The nine steps enumerated in the letter included, among other actions, enforcement of existing disciplinary policies; abolition of the University Judicial Board; banning of masks intended to conceal identity or intimidate others (with exceptions for religious and health reasons); adoption of a definition of antisemitism (though the

letter did not mandate any particular definition); and placement of the Middle East, South Asian, and African Studies ("MESAAS") department under academic receivership. (JA 357-58).

On March 21, 2025, Columbia released a memorandum entitled, "Advancing Our Work to Combat Discrimination, Harassment and Antisemitism at Columbia." (JA 360-63 (the "March 21 Memo")). It announced eighteen actions, many of which align with the steps in the March 13 Letter. For example, Columbia stated that relevant policies will "incorporate the definition of antisemitism recommended by Columbia's Antisemitism Taskforce in August 2024." (JA 361). But certain actions announced in the March 21 Memo differ from the specifications in the March 13 Letter. For example, with respect to mask restrictions, the March 21 Memo stated that masks would be prohibited "for the purpose of concealing one's identity in the commission of violations of University policies or state, municipal, or federal laws." (JA 361). With respect to the MESAAS department, Columbia appointed a Senior Vice Provost to focus on promoting excellence in regional studies and who would review its regional studies programs, including for the Middle East. (JA 362).

Columbia has explained that the actions it announced on March 21 had been underway for "many months" in advance of the March 13 Letter. (JA 672). The March 21 Memo itself explains that Columbia had "worked hard" to develop a "comprehensive strategy" in response to the antisemitism its Jewish community had faced since October 7, 2023. (JA 360).

From March 2025 through July 2025, the government and Columbia engaged in negotiations to restore funding to Columbia. (JA 656 ¶ 12, 912-13 ¶ 19).

3. Plaintiffs' Lawsuit

Plaintiffs, two organizations whose members include Columbia faculty, filed a complaint on March 25, 2025, against the government. (JA 8, 31-32 ¶¶ 13-15). The complaint asserted ten claims relating to the terminated funding to Columbia and the March 13 Letter, including claims based on alleged violation of First Amendment freedom of speech (JA 89-92 ¶¶ 286-297); imposition of "unconstitutional conditions" on federal funding (JA 92-93 ¶¶ 298-303); failure to follow procedural requirements, in violation of the APA and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, with respect to the funding withdrawal and March 13 Letter (JA 93-96 ¶¶ 304-318, JA 99-101 ¶¶ 334-341); and substantive violations of the APA with respect to the funding termination and March 13 Letter (JA 96-99 ¶¶ 319-33, JA 101-03 ¶¶ 342-51).[2] On April 3, 2025, plaintiffs filed their motion for a preliminary injunction. As relief, plaintiffs primarily sought declaratory and injunctive relief aimed at restoring

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[2] The complaint also alleged *ultra vires* action in excess of Executive Branch authority (JA 103-06 ¶¶ 352-370), violation of the Fifth Amendment Due Process Clause (JA 106-07 ¶¶ 371-377), and violation of the Tenth Amendment (JA 107-10 ¶¶ 378-385). On appeal, plaintiffs contest only the dismissal of the First Amendment and APA claims.

the terminated funding to Columbia and barring future termination of funding absent certain procedural requirements. (JA 110-11).

4. The District Court's June 16, 2025, Decision

In its June 16, 2025, opinion and order, the district court denied plaintiffs' motion for a preliminary injunction and dismissed the case on the basis that plaintiffs lacked standing. (SPA 1-30).[3]

The district court concluded that one overarching reason plaintiffs lacked standing was that "neither Plaintiffs nor their members were ever the recipients" of the grants and contracts with Columbia. (SPA 22). Rather, plaintiffs were "inserting themselves into a quarrel between the Executive Branch and non-party Columbia, which, Plaintiffs' own submissions make clear, Columbia wishes to resolve cooperatively." (SPA 21).

Next, the district court concluded that plaintiffs did not have organizational standing. (SPA 23-24). The district court explained that plaintiffs had not sufficiently asserted organizational standing in alleging harm to their "core business activities" resulting from their alleged "diver[sion] of internal resources of staff time and expenses to assist Columbia members" in responding to the government's demands and "the internal governance steps Columbia has announced."

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[3] Plaintiffs do not challenge on appeal the district court's denial of their preliminary injunction motion; they only challenge the dismissal of their case. (Br. 3).

(SPA 23-24 (citing *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 394 (2024), & *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 401 (2013)); JA 117 ¶ 20).

Regarding representational standing, the district court concluded that "Plaintiffs fail to establish that any injuries their members may have suffered are fairly traceable to Defendants." (SPA 24). With respect to plaintiffs' allegations of harm resulting from the funding terminations, the district court acknowledged that although "[t]he loss of professional opportunities or income may certainly constitute an injury in some cases[,] . . . here, Plaintiffs have not demonstrated that it makes a difference to their members whether the funding for their research and salaries comes from" the government or another source, including Columbia, which had "'committed to providing salary coverage during this immediate period of uncertainty.'" SPA 24-25 (quoting JA 172 ¶ 12, 716)).

With respect to allegations of chilled speech and academic freedom, the district court observed that the assertions of plaintiffs' members of "their 'subjective' feelings of being chilled are not sufficient for standing." (SPA 25 (quoting *Laird v. Tatum*, 408 U.S. 1, 13 (1972))). The district court also concluded that plaintiffs' concerns about additional funding freezes, about future demands that their departments be placed in receivership, and that Columbia's reforms represented acquiescence to the government's demands "are all purely subjective and speculative." (SPA 26).

The district court also concluded that "Plaintiffs fall short with respect to traceability." (SPA 27). The

district court explained that "Columbia had been planning the reforms it announced in its March 21 Memo . . . for 'many months' before any of the defendants made any demands" and also "exercised independent judgment," for example, by appointing a senior vice provost to review its portfolio of programs in regional areas, including for the Middle East. (SPA 27 (quoting JA 672)). Therefore, the district court concluded that "[i]nsofar 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." (SPA 28 (quoting *Murthy v. Missouri*, 603 U.S. 43, 58 (2024))).

In sum, the district court observed that "[d]espite submitting voluminous evidence, Plaintiffs fail to establish standing in their own right and fail to establish representational standing." (SPA 28). Because of the insufficiency of plaintiffs' legal theories, the district court dismissed the case and did not consider the merits of the preliminary injunction motion. (SPA 28).

The district court further noted that the Supreme Court's decision in *Department of Education v. California*, 604 U.S. 650 (2025), "raises several additional hurdles for Plaintiffs" because that decision "characterized [ED] '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.' " (SPA 28-29 (quoting *California*, 604 U.S. at 651)).

5. The Resolution Agreement Between the Government and Columbia Restoring Federal Funding

On July 23, 2025, after the district court's opinion and order and the filing of plaintiffs' appeal, the government entered into a resolution agreement with Columbia that restored "a vast majority" of funding that is the subject of plaintiffs' lawsuit. (*See* Columbia University Office of the President, "Our Resolution With the Federal Government," https://president.columbia.edu/content/our-resolution-federal-government; "Resolution Agreement," https://perma.cc/84EG-8MUC).[4] The government agreed to restore to Columbia the grants that had been terminated by HHS or NIH, while the grants terminated by ED and any other terminated contracts were not restored. Resolution Agreement ¶ 7. The agreement also included many of the steps contained in Columbia's March 21 Memo. Resolution Agreement ¶¶ 12-13, 27.

Summary of Argument

The district court correctly held that it lacked subject matter jurisdiction because plaintiffs did not have

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[4] The Court may take judicial notice of the Resolution Agreement. *See Dixon v. von Blanckensee*, 994 F.3d 95, 102-04 (2d Cir. 2021); *United States v. Aulet*, 618 F.2d 182, 187 (2d Cir. 1980).

standing to bring their claims. In doing so, the district court applied the appropriate legal standard. Although the court determined that plaintiffs lack standing as part of its denial of a preliminary injunction, such a ruling is proper when based on the failure of a plaintiff's legal theory rather than a lack of evidence. Because plaintiffs' action depends on the unsupported legal assertion that they may challenge the termination of grants and contracts to which they are not parties, the district court permissibly ruled on their lack of standing as part of the preliminary injunction proceeding. *See infra* Points 1.A.

The court's determination of plaintiffs' standing was itself correct. Plaintiffs failed to establish that they suffered any cognizable injury from the termination of grants and contracts to Columbia, which is not a party here. Although they label their claims as arising under the Constitution and federal statutes, at heart they depend on a contractual relationship that they are not part of; accordingly, they have not established any redressable injury that resulted from the termination of the contractual funds. *See infra* Point I.B.

With respect to representational standing on the First Amendment claims, the district court correctly concluded that plaintiffs failed to allege a cognizable injury to their members in the form of lost funding, chilled speech, or harm to academic freedom that was traceable to the government's actions, as opposed to the independent actions of non-party Columbia, and that could be redressed by the injunctive relief plaintiffs sought. *See infra* Point I.C.1.a. The district court

also properly concluded that plaintiffs lacked representational standing with respect to their APA and Title VI claims because they failed to sufficiently allege harm to their members caused by the government's actions. *See infra* Point I.C.1.b. Further, the district court correctly concluded that plaintiffs, as organizations, failed to sufficiently allege standing on their own behalf because they did not establish harm to their core regularly conducted activities. *See infra* Point I.C.2.

Finally, jurisdiction is lacking for two additional reasons. First, the Tucker Act precludes jurisdiction, as the source of plaintiffs' rights and the relief they seek sound in contract. *See infra* Point II. Second, plaintiffs' claims are now moot given that the terminated funding of which they complain has been restored, and they have failed to sufficiently plead nonmonetary harms. *See infra* Point III.

For these reasons, the district court's judgment should be affirmed.

ARGUMENT

Standard of Review

This Court reviews *de novo* a district court's dismissal of claims for lack of standing. *Do No Harm v. Pfizer Inc.*, 126 F.4th 109, 119 (2d Cir. 2025).

POINT I

The District Court Correctly Dismissed the Case Because Plaintiffs Lack Standing

A. The District Court Used the Appropriate Legal Standard in Dismissing Plaintiffs' Case

The district court correctly dismissed this action because plaintiffs could not meet their burden to establish standing.

When a district court denies a preliminary injunction because the plaintiff failed to establish standing, it may also consider whether the action as a whole must be dismissed for the same reason. *Do No Harm*, 126 F.4th at 120-21. In general, the standard for establishing standing in a preliminary injunction motion is higher than that on a defendant's motion to dismiss the complaint: at the pleadings stage, the plaintiff's allegations supporting its standing are presumed true, but to obtain a preliminary injunction, "a plaintiff's burden to demonstrate standing will normally be no less than that required on a motion for summary judgment," and therefore the plaintiff "cannot rest on . . . mere allegations . . . but must set forth by affidavit or other evidence specific facts" that establish its standing. *Id*. at 119 (quotation marks omitted). Thus, "dismissal of a plaintiff's claims because the plaintiff has failed to muster sufficient evidence to establish standing for a preliminary injunction would be premature." *Id*. at 121. But if "a plaintiff's failure to establish standing to secure a preliminary injunction has nothing to do with the measure of evidence the plaintiff has produced," but instead results from a failure of the

"plaintiff's legal theory itself," that "may doom the plaintiff's standing" and the district court "should dismiss the claim altogether." *Id*. at 120-21 (citing *Munaf v. Geren*, 553 U.S. 674, 691 (2008) ("Review of a preliminary injunction is not confined to the act of granting the injunction, but extends as well to determining whether there is any insuperable objection, in point of jurisdiction or merits, to maintenance of the bill, and if so, to directing a final decree dismissing it." (quotation marks and alteration omitted)).

That is what the district court did here. Plaintiffs' legal theory depends on the idea that they may challenge the termination of grants and contracts to which they are not parties—as the district court observed, plaintiffs are "inserting themselves into a quarrel between the Executive Branch and non-party Columbia." (SPA 21). In particular, "[t]he 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," when "neither Plaintiffs nor their members were ever the recipients of those grants and contracts." (SPA 22). Plaintiffs cannot establish standing to pursue that theory "no matter how much evidence [they] muster[ ]." *Do No Harm*, 126 F.4th at 121.

Similarly, as the district court explained, plaintiffs' legal theory with respect to organizational standing failed because "'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.'" (SPA 24 (quoting *Hippocratic Medicine*, 602 U.S. at 394; *Clapper*, 568 U.S. at 401; citing JA 117 ¶ 20)). Plaintiffs' claim of standing depends on its assertion that it is "*preparing* to respond to a potential development that has not occurred and is not 'certainly impending,'" which is legally insufficient even if true. (SPA 24 (citing *Clapper*, 568 U.S. at 401)). The district court similarly explained that plaintiffs' legal theory of representational standing was lacking where plaintiffs' alleged concerns about chilled speech and academic freedom as a result of the terminated funding and government's demands were "purely subjective and speculative," particularly where Columbia did not accede to the government's demands, but instead "exercised independent judgment" to implement measures to respond to the antisemitism faced by its Jewish community. (SPA 25-27; JA 595, 617-18, 672).

To be sure, the district court cited evidence, mainly from plaintiffs' declarations on these points, but did so for purpose of explaining that plaintiffs' legal theories failed. (SPA 24-25 (citing JA 117 ¶ 20, 157 ¶ 6, 171-72 ¶¶ 8, 11-12); SPA 26-28 (citing JA 357-63, 617-18)). Indeed, where the allegations in plaintiffs' complaint were insufficient to support standing, plaintiffs contend before this Court that they should be allowed to amend their pleading to add facts they supported with evidence as part of the preliminary injunction proceedings. (Br. 4 n.2, 32, 36, 42-43). But by addressing those same facts as stated in plaintiffs' evidentiary submissions, the district court already gave plaintiffs the benefit of considering what they wish to have pleaded in an amended complaint. The defect in plaintiffs' case is

not a matter of insufficient pleading or insufficient evidence—plaintiffs will not be able to establish standing because the legal basis of their action is unsound.

For similar reasons, plaintiffs did not "make a showing that the complaint's defects can be cured" and were thus not entitled to amend their complaint. *Porat v. Lincoln Towers Community Ass'n*, 464 F.3d 274, 276 (2d Cir. 2006). Plaintiffs rely on *Ronzani v. Sanofi S.A.*, 899 F.2d 195, 198 (2d Cir. 1990) (Br. 20), but that case does not "establish[ ] a broad rule to the effect that, in the case of a counseled plaintiff, abuse of discretion will be found and the case remanded whenever a district court fails to provide for repleading," *Porat*, 464 F.3d at 276. And as the district court noted, plaintiffs were already on notice about the potential defects in their theory of standing prior to filing their preliminary injunction motion. (SPA 28 n.10).

Plaintiffs' additional contention that the district court "erred by dismissing the case without any motion to dismiss, let alone briefing on such a motion" is mistaken. (Br. 20). The case cited by plaintiffs, *A.H. by E.H. v. New York State Department of Health*, 147 F.4th 270, 280 (2d Cir. 2025), *petition for cert. filed sub nom. Disability Rights New York v. New York State Department of Health*, No. 25-843 (Jan. 15, 2026), involved a reversal of the district court's dismissal of a complaint as moot where the parties only filed short pre-motion letters in advance of a motion to dismiss, and it was not "unmistakably clear" that the court lacked jurisdiction. *A.H. by E.H.*, 147 F.4th at 280. Here, by contrast, the parties fully briefed the issue of standing in connection with plaintiffs' preliminary

injunction motion. In this context, *Do No Harm* requires district courts to dismiss a complaint where the court lacks jurisdiction. 126 F.4th at 121 (citing *Munaf*, 553 U.S. at 691).

For these reasons, the district court applied the correct standard to analyze standing.[5]

B. The District Court Correctly Held That Plaintiffs Lack Standing to Enforce Payments to Non-Party Columbia

As the district court correctly concluded, plaintiffs lack standing to seek "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." (SPA 22; JA 26-112); *see California*, 604 U.S. at 650-51 (construing orders forbidding government from "terminating various . . . grants" and to "pay out past-due grant obligations" as "enforc[ing] a contractual obligation to pay money" (quotation marks omitted)).

At its "irreducible constitutional minimum," Article III standing requires a plaintiff, as the party invoking the Court's jurisdiction, to establish three elements: (1) "an injury in fact—an invasion of a legally

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[5] Even if this Court concludes otherwise, it need not remand to the district court as it is within the Court's discretion to determine whether plaintiffs' complaint sufficiently pleaded standing to survive a motion to dismiss. *See Do No Harm*, 126 F.4th at 123.

protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical"; (2) "a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court"; and (3) "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (quotation marks and alterations omitted). For an alleged injury in fact to be "actual or imminent" rather than impermissibly "speculative," "the injury must have already occurred or be likely to occur soon." *Hippocratic Medicine*, 602 U.S. at 381. If the injury has not come to pass, it must be "*certainly impending*"; "allegations of *possible* future injury are not sufficient." *Clapper*, 568 U.S. at 409 (quotation marks and alterations omitted); *accord Murthy*, 603 U.S. at 58 ("because the plaintiffs request forward-looking relief, they must face a real and immediate threat of repeated injury" (quotation marks omitted)).

At its heart, no matter that it is labeled an APA or Title VI action, this case is a challenge to the termination of funds provided by the federal government to Columbia, and seeks as its principal relief the payment of money to Columbia. (JA 110; SPA 22). But those funds were provided under grants and contracts, and "neither Plaintiffs nor their members were ever the recipients of those grants and contracts." (SPA 22). "Absent a contractual relationship there can be no contractual remedy," and "[s]uch a relationship exists if the plaintiff is in privity of contract with the defendant

or is a third-party beneficiary of the contract." *Hillside Metro Assocs., LLC v. JPMorgan Chase Bank, N.A.*, 747 F.3d 44, 49 (2d Cir. 2014) (quotation marks and alteration omitted; *quoted in* SPA 22). Third-party beneficiary status is only conferred if the "contract terms clearly evidence an intent to permit enforcement by the third party in question." *Id.* (quotation marks omitted). Here, plaintiffs do not dispute that they or their members were not parties to the terminated contracts, nor do they allege that the terms of the grants or contracts conferred third-party beneficiary status on them. They have therefore failed to allege any redressable injury that would give them standing to sue.[6]

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[6] Instead, plaintiffs contend they have a "stake in the terminated grants" based on the district court decisions in *President & Fellows of Harvard College v. HHS*, 798 F. Supp. 3d 77 (D. Mass. 2025), *appeals pending*, Nos. 25-2230, 25-2231 (1st Cir.), and *Thakur v. Trump*, 787 F. Supp. 3d 955 (N.D. Cal. 2025). (Br. 21-22). But, after plaintiffs' brief was filed, the Ninth Circuit stayed the preliminary injunction in *Thakur* pending appeal, on the basis that the researchers who challenged terminated grants were not likely to succeed on the merits because their claims were "disguised breach-of-contract claim[s]" that belonged in the Court of Federal Claims pursuant to the Tucker Act. *Thakur v. Trump*, __ F.4th __, No. 25-4249, 2025 WL 3760650, at *1-3 (9th Cir. Dec. 23, 2025). Although the court left in place a preliminary injunction that applied to a separate class of plaintiffs, who preliminarily

Similarly, this Court has previously concluded in affirming dismissal for failure to state a claim that researchers lack an "entitlement to the grant" sufficient to confer a property interest for purposes of establishing a Fifth Amendment due process claim. *Kalderon v. Finkelstein*, 495 F. App'x 103, 107 (2d Cir. 2012). In *Kalderon*, the Court concluded that the principal investigator on an NIH grant lacked an entitlement to the grant because, like here, she failed to identify a source that provided her with anything more than "an abstract need or desire for [the grant]," and "the regulations governing the Grant provide that it may be terminated without the consent of the recipient." *Id.* This lack of entitlement underscores plaintiffs' lack of standing here.

In short, plaintiffs' claims are all based on the notion that the government had a contractual obligation

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demonstrated that "the agencies selected [their] grants for termination based on viewpoint," *id.* at *4-*5, there is no comparable evidence arguably evincing viewpoint discrimination in this case. As for the *Harvard* decision, even putting aside the pending appeals, the district court there specifically distinguished that case from this one because there, unlike here, at least one researcher had "received notice directly from the federal government that his research was to stop," and the organizational plaintiffs had established that it was likely there would be no alternative funding and that, even if there were, the researchers would suffer concrete harm. 798 F. Supp. 3d at 111-12 (quoting SPA 11, 25).

to non-party Columbia to provide it with funding (JA 29 ¶ 7, 72-86 ¶¶ 185-273, 89-93 ¶¶ 286-303)—and plaintiffs have no standing to enforce any such obligation. That is true of plaintiffs' First Amendment claims as well, and defeats their attempt to analogize this case to *National Rifle Association v. Vullo*, 602 U.S. 175, 190 (2024), or *Bantam Books v. Sullivan*, 372 U.S. 58, 64 n.6 (1963). (Br. 22-23). *Vullo* did not address standing at all. *See Arizona Christian School Tuition Org. v. Winn*, 563 U.S. 125, 144-45 (2011) (decisions that "do not mention standing" do not "stand for the proposition that no [standing] defect existed"). Although *Bantam Books* addressed standing in a footnote, that case involved a government commission that sent notices to book distributors to "intimidate" them and "cause them, by reason of such intimidation and threat of prosecution," to suppress the sale and circulation of the plaintiff publishers' books. 372 U.S. at 63-64 & n.6 (quotation marks omitted). That allegation of injury directly traceable to the government's conduct bears no resemblance to this case, where plaintiffs have not "plausibly allege[d]" that the government took "adverse . . . action in order to punish or suppress [a] *plaintiff's* speech." *Vullo*, 602 U.S at 191 (emphasis added).[7] Rather, plaintiffs' own evidence demonstrates

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[7] Plaintiffs offer little more than unsupported assertions that facially legitimate actions were in fact prompted by improper motives to censor speech when no such motives are indicated in the documents terminating funding, press releases regarding the funding, or the March 13 Letter. Such assertions fail to satisfy the basic requirements of pleading. *Ashcroft v. Iqbal*,

that the government used its enforcement authority to act directly upon a regulated entity—Columbia—because of that entity's own conduct in failing to take sufficient action to combat antisemitism. (JA 67-68 ¶¶ 165-67, 573, 576, 579, 588, 591, 595-96, 601 617); *Penthouse Int'l, Ltd. v. McAuliffe*, 702 F.2d 925, 927-28 & n.6 (11th Cir. 1983) (threats of enforcement based on prosecutor's reasonable belief "give rise to no cause of action for an injunction" under the First Amendment); *cf. B&L Productions, Inc. v. Newsom*, 104 F.4th 108, 117 n.16 (9th Cir. 2024) (under *Vullo*, officials' motivation in enacting statute is only relevant to First Amendment challenge when they "reach beyond their authority to coerce others into doing something that the official cannot regulate directly"). As both the Supreme Court and this Court have held, "governmental entities may act properly in furtherance of legitimate state interests" even where there is an incidental effect on speech. *Greenwich Citizens Comm., Inc. v. Counties of Warren & Washington Industrial Development Agency*, 77 F.3d 26, 31 (2d Cir. 1996) (citing *Younger v. Harris*, 401 U.S. 37, 51 (1971), and *Cameron v. Johnson*, 390 U.S. 611, 619 (1968)).

The Court should likewise reject plaintiffs' assertion of standing on their APA and Title VI claims,[8]

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556 U.S. 662, 682 (2009) (plaintiff must marshal allegations that "invidious discrimination" was more plausible than "obvious alternative explanation[s]").

[8] The relevant provision of Title VI does not provide for an independent right of action under Title VI, but rather, only provides for judicial review "in

which again are based on the government's contractual relationship with non-party Columbia and seek to restore funding that has already been restored in relevant part—and therefore, again, assert no injury in fact to plaintiffs traceable to the government's conduct. (JA 28 ¶¶ 4-5, 55-79 ¶¶ 116-237, 93-103 ¶¶ 304-351); *California*, 604 U.S. at 651. Plaintiffs seek to save their claim to standing by pointing to cases that address the "zone of interests" protected by the statute. (Br. 24 (citing *Schlafly v. Volpe*, 495 F.2d 273, 277 (7th Cir. 1974), and *Board of Public Instruction v. Finch*, 414 F.2d 1068, 1075-77 (5th Cir. 1969))). But "the requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked" is "not derived from Article III" and does not

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accordance with" the APA. *See* 42 U.S.C. § 2000d-2. Further, as the government explained to the district court, the funding in question was not terminated pursuant to Title VI. (JA 655 ¶ 10, 911-12 ¶ 17). Although plaintiffs argue that it was legal error for the district court to "seemingly accept[] Defendants' assertion that they were not engaged in Title VI enforcement" (Br. 39 n.10) because plaintiffs alleged the contrary, that point was addressed by declarations submitted in connection with plaintiffs' preliminary injunction motion and was therefore appropriate for the district court to address when discussing that motion. (SPA 29). Regardless, even if this Court accepts plaintiffs' assertion as a plausible factual allegation, for the reasons set out in the text, the essentially contractual nature of the claim still means plaintiffs lack standing.

govern whether plaintiffs have met the constitutional prerequisites to demonstrate standing. *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126-27 (2014). No matter if a person is "aggrieved" or its grievance falls within a statute's zone of interests, it still must meet the requirements of Article III—which, as explained above, plaintiffs have not done. *See Air Courier Conference of America v. American Postal Workers Union AFL-CIO*, 498 U.S. 517, 523 (1991); *Schlafly*, 495 F.2d at 277 ("first question" is injury in fact).[9]

C. The District Court Correctly Held That Plaintiffs Failed to Sufficiently Plead Organizational or Representational Standing

The district court also correctly concluded that it did not have subject matter jurisdiction because plaintiffs failed to sufficiently plead representational or

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[9] *Finch* is inapposite as it did not even address zone of interests or standing; indeed, that suit was brought by an entity whose own funding had been discontinued and therefore unquestionably had been injured. *Finch*'s discussion of the benefits received by nonparties was in support of that court's decision to excuse the plaintiff's procedural default, an entirely different question from standing. 414 F.2d at 1072-76. Regardless, the district court recognized that plaintiffs in this case might be injured by "[t]he loss of professional opportunities or income," but properly concluded that plaintiffs had not sufficiently alleged such injury. (SPA 24-25).

organizational standing to support their constitutional and statutory claims.

Where, as here, the plaintiff is an organization, "[e]ither the organization can claim that it suffered an injury in its own right or, alternatively, it can assert standing solely as the representative of its members." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181, 199 (2023) (citation and quotation marks omitted). The latter approach, sometimes referred to as representational or associational standing, requires the organization to "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' allegations fall short of meeting either standard.

1. Plaintiffs Have Failed to Adequately Allege Representational Standing

a. Plaintiffs Lack Representational Standing to Bring Their First Amendment Claims

i. Plaintiffs Failed to Allege a Cognizable Injury

First, as the district court concluded, plaintiffs do not have representational standing on their First

Amendment claims because they failed to sufficiently allege injuries to their members. (SPA 24-27).

The crux of plaintiffs' First Amendment claims is that the government's termination of funding and unspecified threats of additional funding termination somehow have the "purpose and effect of infringing on free speech rights" and academic freedom. (Br. 26-27 (citing JA 79 ¶ 239, 90 ¶ 291, 103 ¶ 351)). The district court, which also gave plaintiffs the benefit of considering the numerous declarations they submitted, correctly concluded that plaintiffs' assertions as "to their 'subjective' feelings of being chilled are not sufficient for standing." (SPA 25 (quoting *Laird v. Tatum*, 408 U.S. 1, 13 (1972))). As the district court explained, "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." (SPA 25). Moreover, as the district court observed, plaintiffs' concerns about future funding freezes or demands made of Columbia "are all purely subjective and speculative." (SPA 26).

Although plaintiffs argue that the government's conduct would cause a "reasonable would-be speaker to self-censor," they fail to plausibly allege that any such self-censorship is a reasonable or predictable response to the specific government actions at issue in this case, namely the termination of funding to Columbia or conditions attached to that funding. (Br. 28-31); *Murthy*, 603 U.S. at 58. Instead, they rely on broad and conclusory statements about what they perceive "[t]he Trump Administration is particularly focused on" and

then make an unsupported leap to conclude that the March 2025 funding termination resulted in their self-censorship. (Br. 28-29 (citing JA 35 ¶ 38), Br. 30-31 (citing JA 34-37 ¶¶ 33-45; JA 39-42 ¶¶ 53-69; JA 44-49 ¶¶ 76-80, 86-91)).

For example, plaintiffs vaguely allege that one of their members, who they do not allege is associated with the MESAAS department, is "uncertain what they can and cannot say in the classroom or in public," is "afraid" of being recorded "in proximity to a rally or protest," believes they have been prevented from expressing support for Palestinian freedom and an anti-war perspective, and has concerns about students' being targeted for their speech. (JA 79-81 ¶¶ 243-249). Absent is any objective connection between this individual's purported self-censorship and the specific government action that is being challenged here.[10] The same is true for each of the individual members for whom plaintiffs attempt to allege First Amendment harm. (JA 81-83 ¶¶ 250-263).[11]

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[10] Similarly, for example, plaintiffs do not explain how concerns about using words that a "member understands the government to have deemed as related to 'DEI'" (Br. 29 (citing JA 81 ¶ 250)) would reasonably lead to self-censorship as a response to the government actions challenged here.

[11] A declaration submitted by Witness J, which plaintiffs urge this Court to consider while simultaneously arguing the district court erred in considering information outside the pleadings (Br. 18-20, 32-33;

These vague and subjective allegations of self-censorship, untethered to the government's actions in this case, are insufficient to allege the requisite injury to confer standing. *See Laird*, 408 U.S. at 13-14 & n.7 (explaining that "[a]llegations of a subjective chill" that resulted from a plaintiff's perceptions or beliefs about the government's actions, or speculative concerns about future government actions, are insufficient to allege injury for purposes of standing); *Murthy*, 603 U.S. at 73 ("[P]laintiffs 'cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending.'" (quoting *Clapper*, 568 U.S. at 416)); *Cerame v. Slack*, 123 F.4th 72, 81 n.12 (2d Cir. 2024) (noting, in the pre-enforcement context, that "without a credible threat of enforcement, any potential chilling effect on a plaintiff's speech will be insufficient to confer standing").

The cases plaintiffs cite (Br. 28, 31) only highlight the degree to which their allegations fall short of alleging injury. For example, in *National Organization for Marriage v. Walsh*, the "real and imminent" chill identified by this Court (in the context of assessing ripeness rather than standing) was the plaintiff organization's fear, which the Court credited, of violating a state statute by disseminating specifically identified

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JA 937-42), does not help plaintiffs establish a concrete injury. It merely provides vague, conclusory, and speculative statements alleging chill based on Columbia's appointment of a Senior Vice Provost to review the MESAAS department. (JA 940-41 ¶¶ 8-13).

mailings and broadcasts. 714 F.3d 682, 688-90 (2d Cir. 2013). Plaintiffs here have not alleged such concrete harm tied to the government's challenged conduct. Similarly, in *Speech First, Inc. v. Cartwright*, the Eleventh Circuit concluded that an organization had standing to challenge a university discrimination-harassment policy that "prohibit[ed] a broad swath of expressive activity" (including relating to race, national origin, religion, genetic information, and political affiliation) in "many forms" and was "imprecis[e]." *Speech First, Inc. v. Cartwright*, 32 F.4th 1110, 1120-22 (11th Cir. 2022) (quotation marks omitted). The court reasoned that given the policy's "astonishing breadth" and "slipperiness," it was "clear that a reasonable student could fear that his speech would get him crossways with the University, and that he'd be better off just keeping his mouth shut." *Id.* Plaintiffs have pointed to no similar government action here giving rise to injury of that kind.[12]

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[12] Plaintiffs also cite *Harvard*, 798 F. Supp. 3d 77, but that opinion involved specific "viewpoint-based demands" that differ considerably from the demands at issue here. *Compare id.* at 119 (demands to Harvard included, among other things, "audit[ing] the student body, faculty, and leadership for viewpoint diversity" and reporting that audit to the government), *with* JA 45-46 ¶ 78 (March 13 Letter to Columbia). To the extent the organizational plaintiffs in the *Harvard* case have representational standing on a First Amendment chilled speech theory—which the government will assert on appeal that they do not—that does not

ii. Plaintiffs Failed to Allege That Any Injury Was Caused by the Challenged Government Action and Redressable by an Injunction Against Them

Even if plaintiffs' allegations were sufficient to establish a cognizable harm to their members sufficient to convey standing on their First Amendment claims, plaintiffs do not sufficiently allege a harm traceable to the challenged government conduct or, relatedly, redressable through this action. *See Murthy*, 603 U.S. at 69 ("To obtain forward-looking relief, the plaintiffs must establish a substantial risk of future injury that is traceable to the Government defendants and likely to be redressed by an injunction against them."); *Clapper*, 568 U.S. at 414 ("declin[ing] to abandon [the Supreme Court's] usual reluctance to endorse standing theories that rest on speculation about the decisions of independent actors"). Plaintiffs' claims turn entirely on Columbia's actions or inactions—but "[w]hen . . . a plaintiff's asserted injury arises from the government's allegedly unlawful regulation (or lack of regulation) of *someone else,* much more is needed." *Lujan*, 504 U.S. at 562.

The district court correctly concluded that "Plaintiffs fall short with respect to traceability" of the alleged harm to the government's actions. (SPA 27). As an initial matter, the district court appropriately

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support plaintiffs' claims in this case that their members' speech has been chilled.

observed that Columbia's own March 21 Memo, which plaintiffs discuss in their complaint, explains that Columbia had "worked hard" to develop "a comprehensive strategy" in response to the antisemitism its Jewish community had faced since October 7, 2023. (SPA 18 (discussing March 21 Memo (JA 360); JA 47-48 ¶¶ 81-85)).[13] Moreover, as the district court observed, "Columbia did not merely implement the steps listed in the March 13 Letter from executive agencies, but rather exercised independent judgment." (SPA 27 (quoting JA 672)). The district court explained that, for example, "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.'" (SPA 27-28 (quoting March 21 Memo (JA 360))). Therefore, as the district court

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[13] Plaintiffs' contention (Br. 35-36 (citing SPA 27)) that the district court erred in discussing a statement made by Columbia in another district court case involving the same challenged conduct, that it had been planning the actions announced in the March 21 Memo for "many months," is incorrect. As the district court explained, it was entitled to consider that evidence, even if it is hearsay, in the context of considering a preliminary injunction motion. (SPA 18 n.6 (citing *Global Network Commc'ns, Inc. v. City of New York*, 458 F.3d 150, 157 (2d Cir. 2006) and *Mullins v. City of New York*, 626 F.3d 47, 52 (2d Cir. 2010))).

reasonably concluded, "[i]nsofar 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." (SPA 28 (quoting *Murthy*, 603 U.S. at 58, and citing *Department of Commerce v. New York*, 588 U.S. 752, 768 (2019))).[14]

Unlike this case, *Diamond Alternative Energy, LLC v. EPA*, cited by plaintiffs (Br. 33-35), involved "predictable" third party behavior, leading to "commonsense inferences." 606 U.S. 100, 116 (2025). In that case, the Supreme Court concluded that fuel producers had standing because the challenged regulations "force automakers to produce a fleet of vehicles that, as a whole, uses significantly less gasoline and other liquid fuels," which would harm the fuel producers, and it was "at least 'predictable' that invalidating the [challenged] regulations would likely result in the fuel producers ultimately selling more gasoline and

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[14] Plaintiffs' attempt to establish traceability by once again pointing to a declaration submitted by Witness J fails. (Br. 36; JA 938-42). That declaration does not include any facts suggesting that in appointing a Senior Vice Provost to review the programs in regional areas, including the Middle East, Columbia responded predictably to the government's demands.

other liquid fuels." *Id.* at 117, 124. Here, in sharp contrast, Columbia's independent responses were not traceable to the government's actions, nor would its response if an injunction were granted relating to the government's funding decisions be "predictable."

Nor, contrary to plaintiffs' contentions (Br. 33-34), is the speech of plaintiffs' members an "object" of the challenged government actions such that plaintiffs have standing. Plaintiffs and their members are no more the "object" of the government's action here than social media users were the "object" of the restrictions at issue in *Murthy*, where the Supreme Court held that plaintiffs alleging that government officials pressured social media platforms to suppress protected speech were required to show the platforms' likely response to that pressure to establish standing. *Murthy*, 603 U.S. at 57-58. Here, as in *Murthy*, the free speech concerns are sufficiently contingent on the independent actions of third parties to break the causal chain.

Murthy also demonstrates that plaintiffs have a "redressability problem" that is fatal to their claims. 603 U.S. at 73. In *Murthy*, the Supreme Court rejected the argument that plaintiffs' injuries, including alleged self-censorship, were redressable because social media platforms would "continue to suppress [the plaintiffs'] speech according to policies initially adopted under Government pressure." *Id.* The Court reasoned that the requested injunction would impose restrictions on the government defendants, but not the non-party social media companies, which would "remain free to enforce, or not enforce, those policies—even those tainted by initial governmental coercion."

Id. at 73. Here, Columbia is not a party to this lawsuit, and plaintiffs have not plausibly alleged that an injunction that required withdrawal of the demands in the March 13 Letter or prevented future funding termination absent certain conditions would alter Columbia's policies as stated in the March 21 Memo. Because their alleged First Amendment injuries are not redressable through the relief they seek, plaintiffs lack standing to bring First Amendment claims on a representational standing theory.[15]

b. Plaintiffs Lack Representational Standing to Bring Their Claims Under the APA and Title VI

With respect to their claims under the APA and Title VI, plaintiffs have also failed to sufficiently allege injury caused by the government's actions that is redressable by the relief they seek. Although the district court acknowledged that "[t]he loss of professional opportunities or income may certainly constitute an injury in some cases," the district court correctly concluded that plaintiffs had not sufficiently alleged such harm caused by the government's actions. And in addition, the declarations plaintiffs submitted with their preliminary injunction motion, and which plaintiffs now state could have been incorporated into their complaint, indicated that at least a portion of the funding loss was covered by other sources, further

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[15] As discussed *infra* Point III, plaintiffs are incorrect that they can seek compensatory damages on their claims. *See* Br. 38.

demonstrating that these alleged harms are not traceable to the government. (SPA 24-25 (citing JA 172 ¶ 12, 716)); (Br. 4 n.2, 32, 34, 36, 42-43, 45).

Moreover, the reputational harms alleged by plaintiffs, such as a "loss in . . . trust" between plaintiffs' members and their research collaborators, and "disrupt[ions]" to professional activities, including a risk that "prolonged loss of certain federal grants can put careers in jeopardy," are not the type of "concrete, particularized, and actual or imminent" injuries that are required to demonstrate standing. (Br. 40-43 (citing JA 73-76 ¶¶ 193, 195-98, 202, 209-12, 215, 218-19, JA 78-79 ¶¶ 231-37, JA 157, JA 815-16, JA 822, JA 870-71, JA 882-83, JA 885, JA 894-95)); *Diamond Alternative Energy*, 606 U.S. at 111 (quotation marks omitted).

Plaintiffs' assertion of long-term funding harm is particularly speculative, as the vast majority of funding, including the NIH/HHS grants—the only grants for which plaintiffs specifically allege cancellation caused harm to their members—have since been restored. (Br. 12; Resolution Agreement ¶ 7; JA 72-79 ¶¶ 185-237). To the extent plaintiffs allege they have suffered harm from a short-term funding pause, that cannot be redressed by forward-looking injunctive relief, as plaintiffs admit. (JA 73 ¶ 193 (noting impact on "the relationship of trust between this AAUP member and their project's collaborators outside of Columbia University, and that harm would persist even if this project were to restart"); JA 75 ¶ 212 ("even if it were possible to eventually get funding again, this AAUP/AFT member and the research team could not bring

this center together with the same quality and comprehensiveness")).

Because the alleged harms of plaintiffs' members from termination of funding are speculative and not redressable through the relief they seek, they are insufficient to establish plaintiffs' standing.

2. Plaintiffs Have Failed to Adequately Allege Standing on Their Own Behalf

Plaintiffs also fail to sufficiently allege that they have standing based on injuries to the organizations themselves. "[O]rganizations may have standing 'to sue on their own behalf for injuries they have sustained.'" *Hippocratic Medicine*, 602 U.S. at 393 (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379, n.19 (1982)). But to establish standing based on an organizational mission, a plaintiff must show the challenged action "'perceptibly impaired'" its activities. *Connecticut Parents Union v. Russell-Tucker*, 8 F.4th 167, 173 (2d Cir. 2021) (quoting *Havens Realty*, 455 U.S. at 379). Merely "divert[ing] its resources in response to a defendant's actions," *Hippocratic Medicine*, 602 U.S. at 395, or "expend[ing] resources to counteract illegal activity touching on [the plaintiff's] core mission," *Connecticut Parents*, 8 F.4th at 173 (quotation marks omitted), is insufficient. Rather, a "'perceptible impairment'" consists of an "involuntary material burden on [an organization's] established core activities"—that is, the challenged action "must impose a cost . . . that adversely affects one of the activities the organization regularly conducted (prior to the challenged act) in pursuit of its organizational mission."

Id. at 173-74; *accord Hippocratic Medicine*, 602 U.S. at 395 (defendant's actions must have "directly affected and interfered with [a plaintiff's] core business activities"). Indeed, the Supreme Court has advised that *Havens Realty*, which permitted standing based on a "perceptible impairment" test, was "an unusual case" and should not be "extend[ed] . . . beyond its context." *Hippocratic Medicine*, 602 U.S. at 396.

Plaintiffs have not established organizational standing under those standards. They allege they are "labor and membership organizations composed of higher-education professionals," and that "[k]ey to their organizational missions is supporting their members' career development while protecting their academic freedom." (Br. 46 (citing JA 31-32 ¶¶ 13-15, JA 84-85 ¶¶ 265-68)). But those broad allegations regarding the increased need for counseling, advising, and representation amount to nothing more than "expend[ing] resources" or "mak[ing] a significant effort to oppose" a government action—not anything like "an involuntary material burden on its established core activities." *Connecticut Parents*, 8 F.4th at 173. As the district court explained, "'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.'" (SPA 24 (quoting *Hippocratic Medicine,* 602 U.S. at 394)).

Nor do those allegations demonstrate injury to plaintiffs' "'core business activities.'" (SPA 23 (citing *Hippocratic Medicine*, 602 U.S. at 394-95)). Plaintiffs' vague and conclusory assertions that they have

suffered injury through "counsel[ing] Columbia chapter members about how faculty can maintain their professional careers in the face of funding cuts and related efforts to restrict . . . speech," and that they have been "forced to increase and alter the services they provide" (Br. 47-48 (citing JA 85-86 ¶¶ 269-72)) are insufficiently connected to any allegation that they engage in those ancillary activities as "core" "activities the organization regularly conducted (prior to the challenged act) in pursuit of its organizational mission." *Connecticut Parents*, 8 F.4th at 173. Nor does the additional information they provided in declarations (Br. 49 (citing JA 114-20, 122, 124-29, 794-95, 798-99)) suffice to show that a government action was causally connected to a concrete injury such that plaintiffs have standing. *See Hippocratic Medicine*, 602 U.S. at 390, 394-95 (finding individual doctors who alleged diversion of resources lacked standing, explaining that "the causal link between [the challenged regulatory action] and [the] alleged injuries [was] too speculative or otherwise too attenuated").[16]

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[16] Plaintiffs' reliance on *Centro de la Comunidad Hispana de Locust Valley v. Town of Oyster Bay*, 868 F.3d 104, 110 (2d Cir. 2017) (Br. 46), to support their claim to standing is misplaced. That decision predated the Supreme Court's decision in *Hippocratic Medicine*, which, as noted above, stated that the more lenient reading of *Havens Realty* adopted in *Centro* was incorrect. 602 U.S. at 396. Further, in *Centro* the plaintiff organization, whose "activities include[d] traveling to day laborer sites . . . to speak with laborers," alleged a

For the reasons discussed above in Point I.C.1.a.ii, plaintiffs have also failed to sufficiently allege traceability or redressability. Indeed, traceability and redressability are even more attenuated and difficult for plaintiffs to establish on their own behalf, as they are even further removed from the terminated funding they challenge.

The district court thus correctly concluded that plaintiffs lack standing.

POINT II

The District Court Lacked Jurisdiction Because Plaintiffs' Claims Are Barred by the Tucker Act

Separately, the Tucker Act also precludes the district court from exercising jurisdiction over plaintiffs' claims.

Although the district court did not address Tucker Act jurisdiction given that it dismissed for lack of standing, it correctly "not[ed]" that plaintiffs faced "additional hurdles" due to the Supreme Court's decision in *Department of Education v. California*, 604 U.S. 650 (2025). (SPA 28-29). As in *California*, this case involves federal government grants, and "the principal relief Plaintiffs seek is money." (SPA 28-29). The Supreme Court in *California* applied the Tucker Act's framework to that scenario, holding that " 'the APA's

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more significant and direct injury in asserting that an ordinance would make it more difficult to meet with and organize those laborers. 868 F.3d at 110.

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.' " (SPA 28-29 (quoting *California*, 604 U.S. at 651)). Moreover, after the district court's decision, the Supreme Court reaffirmed *California*'s holding in *National Institutes of Health v. American Public Health Association* ("*NIH*"), 145 S. Ct. 2658 (2025), which concerned termination of grants by NIH. The Court concluded that "[t]he Administrative Procedure Act's 'limited waiver of [sovereign] immunity' does not provide the District Court with jurisdiction to adjudicate claims 'based on' the research-related grants or to order relief designed to enforce any 'obligation to pay money' pursuant to those grants." *Id.* (quoting *California*, 604 U.S. at 651).[17] The same logic applies here and requires dismissal of plaintiffs' claims. *See Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025) (Supreme Court decisions on interim relief "inform how a court should exercise its equitable discretion in like cases"); *accord Trump v. CASA, Inc.*, 606

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[17] *See also Solutions in Hometown Connections v. Noem*, No. 25-1640, __ F.4th __, 2026 WL 179590, at *6 (4th Cir. Jan. 23, 2026) (holding that where plaintiffs sought an injunction to restore terminated funding and prohibit future terminated funding, "these claims for relief are grounded only on alleged contractual obligations to fund their grants and therefore are committed to the Court of Federal Claims to resolve" pursuant to *California*).

U.S. 831, 873 (2025) (Kavanaugh, J., concurring) (Supreme Court's interim orders often "effectively settle, *de jure* or *de facto*, the interim legal status of . . . executive actions nationwide").

That result is consistent with the test typically applied to assess whether a district court lacks subject matter jurisdiction under the Tucker Act. "Whether a claim is in essence a contract claim over which the Court of Federal Claims has exclusive jurisdiction depends on a two-pronged analysis: a court must examine both 'the source of the rights upon which the plaintiff bases his claims, and the type of relief sought.'" *Atterbury v. U.S. Marshals Service*, 805 F.3d 398, 406 (2d Cir. 2015) (quoting *Up State Federal Credit Union v. Walker*, 198 F.3d 372, 375 (2d Cir. 1999), and *Megapulse, Inc. v. Lewis*, 672 F.2d 959, 968 (D.C. Cir. 1982); alterations omitted).[18]

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[18] The Court should reject plaintiffs' apparent assertion that this test does not apply because Title VI provides for judicial review "in accordance with" the APA. (Br. 52-53); 42 U.S.C. § 2000d-2. Not only was the funding not terminated pursuant to Title VI (JA 655 ¶ 10, 912 ¶ 17), but the APA, in turn, states it does not apply "'if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought,'" *see* 5 U.S.C. § 702, which the Tucker Act does. *See Bakersfield City School District v. Boyer*, 610 F.2d 621, 628 (9th Cir. 1979) (concluding that Title VI/APA action properly belonged in the Court of Federal Claims pursuant to the Tucker Act).

The source of plaintiffs' rights is the grants and contracts to Columbia: plaintiffs' complaint rests on its challenge to the "summary termination of $400 million in federal funds" pursuant to those grants and contracts. (JA 26-112). Indeed, in the absence of those grants and contracts, "'it is likely that no cause of action would exist at all." *Up State Federal Credit Union*, 198 F.3d at 377 (quotation marks omitted). Therefore, regardless of the labels—APA, Title VI, or First Amendment—plaintiffs attach to their claims, they are in essence contractual. *See, e.g.*, *NIH*, 145 S. Ct. at 2658 (APA claims relating to grant terminations belong in Federal Court of Claims); *Sustainability Institute v. Trump*, __ F.4th __, No. 25-1575, 2026 WL 157120, at *6 (4th Cir. Jan. 21, 2026) ("the alleged statutory and constitutional violations do not alter the essentially contractual nature of Plaintiffs' APA claims before us on appeal"); *Tucson Airport Authority v. General Dynamics Corp.*, 136 F.3d 641, 647 (9th Cir. 1998) (where one claim was a due process claim, explaining that "[b]ecause the United States's obligation is in the first instance dependent on the contract, these claims are contractually-based" and "the district court lacks jurisdiction under the Tucker Act"); *Spectrum Leasing Corp. v. United States*, 764 F.2d 891, 894 (D.C. Cir. 1985) (concluding that district court lacked jurisdiction pursuant to the Tucker Act because the right to payment "is created in the first instance by the contract, not by the Debt Collection Act," the statutory vehicle through which plaintiff asserted its claim).

Additionally, the relief plaintiffs seek also sounds in contract. Although plaintiffs' complaint dresses the remedy they seek in terms of declaratory and

injunctive relief, the actual court intervention they ask for centers on grants and contracts: declarations that the "cancelation of federal grants" was unlawful, and injunctions requiring the government to "reinstate or restore all grants and contracts to Columbia" and prohibiting future grant and contract terminations. (JA 110-11). Claims for such relief belong in the Court of Federal Claims. *See Presidential Gardens Assocs. v. U.S. ex rel. Sec'y of Housing & Urban Development*, 175 F.3d 132, 143 (2d Cir. 1999) (concluding that the Tucker Act "specifically bar[s] . . . any injunctive, mandatory or declaratory relief against government officials when the result would be the equivalent of obtaining money damages"; where "the prime objective of the plaintiff is to obtain money from the Government," the district court lacks jurisdiction); *A.E. Finley Assoc., Inc. v. United States,* 898 F.2d 1165, 1167 (6th Cir.1990) ("[O]ne cannot circumvent exclusive jurisdiction in the Claims Court by suing simply for declaratory or injunctive relief in a case where such relief would be the equivalent of a judgment for money damages.").

Contrary to plaintiffs' assertions (Br. 57-58), the Court of Federal Claims may be able to consider constitutional claims. *See, e.g.*, *Consolidated Edison Co. of New York v. Department of Energy*, 247 F.3d 1378, 1385-86 (Fed. Cir. 2001) (directing district court to transfer case asserting constitutional, including due process, claims to the Court of Federal Claims in a case sounding in contract because "the Court of Federal Claims can supply an 'adequate remedy' to prevent the constitutional wrongs alleged by [plaintiff]," and the court "will not tolerate a litigant's attempt to artfully

recast its complaint to circumvent the jurisdiction of the Court of Federal Claims"); *Holley v. United States*, 124 F.3d 1462, 1466 (Fed. Cir. 1997) ("The presence of a constitutional issue does not erase the jurisdiction of the Court of Federal Claims based on a properly brought claim under the Tucker Act, or bar the court from considering the constitutional issue in the course of determining whether the discharge was wrongful.").[19]

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[19] The Court should reject plaintiffs' argument that they should be allowed to bring their claims in district court because they assert they cannot bring contract claims since they were not parties to the contracts between the government and Columbia. (Br. 57-58). It would lead to an absurd result if plaintiffs, as non-parties to the grants and contracts here, could use the APA, Title VI, and Constitution as a workaround to seek the same relief in district court that Columbia, as a party to the contracts, could potentially only seek in the Court of Federal Claims because of the Tucker Act. If plaintiffs cannot bring their claims in the Court of Federal Claims, they cannot bring their claims at all. *See Sustainability Institute*, __ F.4th __, 2026 WL 157120, at *7 n.7 ("[T]he fact that the Tucker Act does not allow the specific relief Plaintiffs seek does not mean that their claims must proceed under the APA; rather, it shows that Congress made the dispositive choice for contract claims against the United States to be limited to certain money damages.")

Accordingly, the district court lacked jurisdiction pursuant to the Tucker Act.

POINT III

The District Court and This Court Also Lack Jurisdiction Because Plaintiffs' Claims Are Moot

The district court and this Court also lack jurisdiction because plaintiffs' claims are now moot.

"The hallmark of a moot case or controversy is that the relief sought can no longer be given or is no longer needed." *Giambalvo v. Suffolk County*, 155 F.4th 163, 179 (2d Cir. 2025) (quotation marks omitted); *accord State Farm Mutual Auto. Ins. Co. v. Tri-Borough NY Medical Practice P.C.*, 120 F.4th 59, 78 (2d Cir. 2024) (appeal becomes moot when the "operative facts" change). Here, the primary relief plaintiffs sought was the restoration of funding to Columbia. (JA 110-11). The Resolution Agreement restored most of that funding. *See supra* Statement of Case B.5; (Resolution Agreement ¶ 7). Although plaintiffs are correct that ED grants and any terminated contracts were not restored by the Resolution Agreement, their complaint does not allege that their members were affected by any terminated funding besides the NIH/HHS grants that were restored through the Resolution Agreement. (Br. 59; Resolution Agreement ¶ 7; JA 72-79 ¶¶ 185-237).[20]

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[20] Even if the Court looks beyond the complaint to the declarations, none of the declarations allege harm from ED grants or HHS, ED, or GSA

In an attempt to render their case still viable, plaintiffs now purport to seek compensatory damages for past harms and refer to *Bivens* claims for First Amendment violations in their brief before this Court. (Br. 38, 59); *see Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). However, plaintiffs did not allege *Bivens* claims in district court, forfeiting that relief. *Krause v. Kelahan*, 161 F.4th 66, 89 (2d Cir. 2025). Even if plaintiffs had alleged those claims, they are not legally cognizable. *See, e.g.*, *Egbert v. Boule*, 596 U.S. 482, 492, 499 (2022) ("in most every case . . . no *Bivens* action may lie" and holding that "there is no *Bivens* action for First Amendment retaliation"). And compensatory damages are not otherwise available under the First Amendment or APA. (JA 26-111); *see, e.g.*, *Robinson v. Overseas Military Sales Corp.*, 21 F.3d 502, 510 (2d Cir. 1994) (affirming dismissal of constitutional damages claims against federal agencies and federal employees

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contracts. (JA 113-201, 785-822, 829-862, 868-906). Although one declaration alleges harm from a terminated National Aeronautics and Space Administration ("NASA") contract (JA 864-67), NASA is not a defendant here. To the extent that plaintiffs argue that under the Resolution Agreement defunding of the NIH grants could occur again (Br. 60; Resolution Agreement ¶ 8.c), plaintiffs have failed to show that " 'there is a reasonable expectation that [they] will be subject to the same action again.' " *Knaust v. City of Kingston*, 157 F.3d 86, 88 (2d Cir. 1998) (quoting *Spencer v. Kemna,* 523 U.S. 1, 17 (1998)).

in their official capacity on the basis of sovereign immunity); *County of Suffolk v. Sebelius*, 605 F.3d 135, 140 (2d Cir. 2010) ("sovereign immunity bars plaintiffs from seeking monetary compensation" under the APA, 5 U.S.C. § 702; quotation marks omitted). Therefore, plaintiffs' claims relating to terminated funding are moot.[21]

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[21] Further, the Court should reject plaintiffs' assertions that they should be able to proceed on claims of non-monetary harms and allegedly chilled speech and academic freedom (Br. 59-60), given that the district court correctly found that plaintiffs failed to sufficiently allege such harms resulting from the government's conduct. *See supra* Point I. If the Court concludes this appeal is moot, the government agrees with plaintiffs that the proper procedure would be to vacate the district court's judgment, particularly as the government's actions in entering into the Resolution Agreement restoring the funding caused the matter to be moot. *See, e.g.*, *Russman v. Board of Education*, 260 F.3d 114, 122 (2d Cir. 2001) ("In general, where the appellee has caused the case to become moot, we vacate the district court's judgment to prevent the appellee from insulating a favorable decision from appellate review.").

CONCLUSION

The judgment of the district court should be affirmed.

Dated: New York, New York
January 28, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), the undersigned counsel hereby certifies that this brief complies with the type-volume limitation of the Federal Rules of Appellate Procedure and this Court's Local Rules. As measured by the word processing system used to prepare this brief, there are 11,863 words in this brief.

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