UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL FAMILY PLANNING & REPRODUCTIVE HEALTH ASSOCIATION, Plaintiff, v. ROBERT F. KENNEDY, JR., in his official capacity as United States Secretary of Health and Human Services, *et al.*, Defendants.	No. 1:25-cv-01265 (ACR)

PLAINTIFF'S REPLY IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendants raise no genuine dispute of material fact in their Opposition to Plaintiff's Motion for Partial Summary Judgment (ECF No. 32) ("Defs.' Opp."). Indeed, they readily admit that, prior to withholding Plaintiff's Affected Members' Title X grants, they made no actual determination that any of the Affected Members were in violation of the terms or conditions of their grants and provided them no opportunity to voluntarily comply. This alone demonstrates that they violated the governing statute and regulations. Unable to escape this inevitable conclusion, Defendants instead proffer several red herrings and meritless jurisdictional arguments that, as detailed below, do nothing to undermine either Plaintiff's clear entitlement to judgment as a matter of law or this Court's ability to hear the present case. Accordingly, this Court should grant Plaintiff's motion for summary judgment.

I. Defendants Do Not Genuinely Dispute Any Material Fact and Do Not Mount a Serious Defense to the Merits of Plaintiff's Claims.

Contrary to Defendants' claim, Defs.' Opp. at 4–5, Plaintiff has satisfied its burden of demonstrating that there is no genuine dispute as to any material fact and that Plaintiff is entitled

to judgment as a matter of law. *See* Pl.'s Mem. in Supp. of Its Motion for Partial Summ. J. (ECF No. 26-1) ("Pl.'s Br.").[1]

To start, Defendants do not meaningfully dispute that the relevant statute and regulations require, among other things, that:

- Prior to "refus[ing] to grant or to continue assistance" for non-compliance with Title VI, there be an "express finding on the record after, an opportunity for a hearing, of a failure to comply . . . ." 42 U.S.C. § 2000d-1(1); *see also* 45 C.F.R. § 80.8(c).
- Prior to "refusing to grant or continue [] assistance" for non-compliance with Title VI, the government "advise[] the applicant or recipient of his failure to comply" and "determine[] that compliance cannot be secured by voluntary means . . . ." 45 C.F.R. § 80.8(c).
- Prior to "refusing to grant or continue[] assistance" for non-compliance with Title VI, the government "file with the committees of the House and Senate . . . a full written report of the circumstances and the grounds for such action," and wait until at least "thirty days have elapsed after the filing of such report" before taking any such action. 42 U.S.C. § 2000d-1; *see also* 45 C.F.R. § 80.8(c).
- Prior to effecting compliance with Title VI "by any other means," the government must "advise[] the appropriate person or persons of the failure to comply with the requirement and . . . determine[] that compliance cannot be secured by voluntary means." 42 U.S.C. § 2000d-1(2); *see also* 45 C.F.R. § 80.8(d).

[1] In setting out the standard of review, Defendants largely cite case law outlining the standard for assessing an arbitrary and capricious claim and a claim that an agency action is "unsupported by substantial evidence," Defs.' Opp. at 2—the latter of which Plaintiff didn't even plead—while neglecting to mention the standards applicable to the APA claims upon which Plaintiff moved.

- Prior to withholding funds if a grantee "*fails* to comply" with federal statutes, regulations, or the terms and conditions of a grant, HHS "determine[] that noncompliance cannot be remedied by imposing additional conditions." 45 C.F.R. § 75.371 (emphasis added).

Defendants did none of these things. That is undisputed. For example, Defendants do not dispute that "[p]rior to withholding NFPRHA's Affected Members' Title X grants pursuant to the March 31 Letters, HHS made no actual determination that any of NFPRHA's Affected Members had in fact violated or were in fact violating the terms or conditions of their grants." Defs.' Resp. to Pl.'s Statement of Material Facts Not in Dispute ¶ 33 (ECF No. 32-1) ("Defs.' Resp. to Pl.'s Facts"). Nor do Defendants dispute that "[p]rior to receipt of the March 31 Letters, NFPRHA's Affected Members were not provided any opportunity to voluntarily remedy any suspected violation of the terms or conditions of their grants." *Id.* ¶ 36. Defendants also do not dispute there was no express finding on the record, after an opportunity for a hearing, that any of NFPRHA's Affected Members failed to comply with Title VI. *Id.* ¶¶ 37–38. Furthermore, Defendants do not dispute they did not file any written reports with any House or Senate committee detailing the circumstances and grounds for withholding funds on the basis on non-compliance with Title VI, or wait 30 days after the filing of such reports before withholding funds. *Id.* ¶¶ 39–40. Because Defendants did not raise a genuine dispute as to *any* of the facts set forth in Plaintiff's Statement, *see* Defs.' Resp. to Pl.'s Facts, all those facts should be deemed admitted. *See, e.g.*, Local Rule 7(h)(1); *Bush v. District of Columbia*, 595 F.3d 384, 386 (D.C. Cir. 2010) (a non-moving party has the burden to produce admissible evidence establishing a genuine issue of material fact). Thus, based on the undisputed facts, Defendants have clearly violated the relevant statute and regulations. Pl.'s Br. at 10–16.

In the face of Defendants' clear violation of the law and regulations, Defendants raise a series of red herrings and nonresponsive arguments. For example, without any supporting authority, Defendants argue that they should be able to withhold funding while they investigate grantees' compliance with Title VI and/or grant terms and conditions. Defs.' Opp. at 6. But unless and until Congress amends the statute, and Defendants amend their own regulations, such action is prohibited.[2] The relevant statute and regulations are clear that Defendants cannot withhold funding until *after* they have made an actual determination that Title VI, or a grant term or condition, has been violated, and until *after* they have permitted the grantee an opportunity to voluntarily come into compliance. *See supra* 2–3.

Defendants also argue that the violation of these clear requirements did not cause Plaintiff's members "prejudice." Defs.' Opp. at 6. That argument is baffling. Defendants have introduced no evidence to undermine the logical—and well-supported—conclusion that withholding tens of millions of dollars in family planning funding caused harm to Plaintiff's Affected Members, their subrecipients, their staff, and hundreds of thousands of their Title X patients. *See* Decl. of Clare M. Coleman ¶¶ 36–45, Ex. 1 to Pl.'s Mot. for Partial Summ. J. (ECF No. 26-3) ("Coleman Decl.").[3]

[2] Contrary to Defendants' implications, Defs.' Opp. at 6, Plaintiff has never argued that Defendants cannot investigate whether a grantee is complying with grant terms or conditions or the law. Plaintiff has only argued that, under the relevant statute and regulations, Defendants cannot withhold funds *pending* such an investigation but can only do so after they have actually determined that a grantee has violated a grant term or condition or the law and have allowed the grantee an opportunity to try to come into compliance.

[3] Likewise, Defendants' assertion that they sent eight entity-specific letters identifying entity-specific concerns to eight different organizations, Defs.' Opp. at 6—ostensibly referring to Plaintiff's affected Planned Parenthood members—is both irrelevant to the claims Plaintiff has moved on and factually inaccurate. In fact, as the Administrative Record shows, Defendants sent a single, omnibus letter to all of the Planned Parenthood members and failed to identify any "entity-specific concerns" for five of the entities. *See* Administrative Record 456–459 (Letter from Defendant Amy Margolis to Planned Parenthood Entities, March 31, 2025) (attached as Exhibit 1 to Plaintiff's Opposition to Defendants' Motion for Summary Judgment, ECF No. 31-1).

In short, there is no genuine dispute as to any material fact, and Plaintiff is entitled to summary judgment.

II. Defendants' Jurisdictional Arguments Fail.

Unable to undermine Plaintiff's clear entitlement to judgment on the merits, Defendants attempt to escape this Court's review by repeating the jurisdictional arguments already raised in their cross-motion and refuted in Plaintiff's Opposition to Defendants' Motion to Dismiss or for Summary Judgement, ECF No. 31, at 1–11. Each is unavailing.

First, although it is unclear, Defendants seem to attack Plaintiff's Article III standing, maintaining that the two Affected Members originally identified in the complaint had their Title X funding restored, and that Plaintiff cannot identify *other* members with standing—including its new, fifteenth Affected Member—through a declaration filed with its summary judgment motion. Defs.' Opp. at 2–3, 7–8. But the law makes clear that Plaintiff did not need to amend its complaint to name additional members; it only needed to specifically identify "at least one" member that has standing in a declaration at the summary judgment stage. *See, e.g.*, *Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of Am. v. U.S. Dep't of Agric.*, 573 F. Supp. 3d 324, 335–36 (D.D.C. 2021) (Moss, J.). It is undisputed that Plaintiff has fulfilled that requirement. *See* Defs.' Resp. to Pl.'s Facts ¶¶ 16, 48 (identifying all fifteen NFPRHA members that had grants withheld by Defendants on March 31 and the eight members that still have their grants withheld); *see also* Defs.' Opp. at 7 (recognizing that paragraph 22 of the Coleman declaration "identifies Plaintiff's purported members").[4]

[4] Defendants' characterization of Plaintiff's members as "purported," Defs.' Opp. at 7, is mystifying given that the names of Plaintiff's Affected Members are provided in a declaration, Coleman Decl. ¶¶ 22, 35, and Defendants have adduced no evidence to the contrary. Accordingly, this fact is undisputed. Defs.' Resp. to Pl.'s Facts ¶¶ 16, 48.

Indeed, as Defendants themselves concede, at the pre-motion conference on July 15, 2025, the Court instructed Plaintiff "to *either* file an amended complaint *or* declaration identifying other members." Defs.' Opp. at 7 (emphasis added). Plaintiff chose the latter course. *See* Coleman Decl. ¶¶ 22, 35. The relevant, undisputed fact that establishes Plaintiff's standing is that at the time of the filing of the complaint on April 24, 2025, fourteen of its members had had their continuation grants withheld on March 31—two that were identified in the complaint and twelve more that were alleged in the complaint but not named. Complaint ¶ 24. Standing, of course, "must be assessed as of when the lawsuit was filed . . . ." *ITServe All., Inc. v. U.S. Dep't of Homeland Sec.*, 71 F.4th 1028, 1033 (D.C. Cir. 2023) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 570 n.4 (1992)). And Defendants have made no suggestion that this case is moot, nor could they, with grants still being withheld from eight Affected Members, including seven that were members on March 31 and April 24. Accordingly, Defendants' challenge to Plaintiff's standing should be rejected.

Second, Defendants make the same arguments regarding final agency action made in their Motion to Dismiss or for Summary Judgment. Defs.' Mot. to Dismiss or for Summary Judgment at 16–21 (ECF No. 28). Specifically, Defendants contest only Plaintiff's ability to satisfy the first prong of the *Bennett v. Spear*, 520 U.S. 154 (1997) test,[5] pointing out that the Agency designated the withholdings as "temporary" in the March 31 Letters and maintaining that there has been no "consummation of the agency's decisionmaking process" because the "process remains ongoing to this day" via the continued investigations and partial restoration of funds to some Affected

[5] As set forth in its opening brief, Plaintiff has easily satisfied the second prong, *see* Pl.'s Br. at 9–10, and Defendants do not contest that.

Members. Defs.' Opp. at 3–4. This argument fails for reasons already set forth in Plaintiff's Opposition, Pl.'s Opp. at 12–16, and recited here in brief for the sake of completeness.

To begin, Defendants' position elides the final agency action that Plaintiff is in fact challenging here: Defendants' decision to withhold funds using a cart-before-the-horse process of "withhold now, investigate later" that is flatly prohibited by statute and regulation. Compl. ¶¶ 4–6, 8, 12, 56, 62. As such, the fact that the Agency's investigations into some of the withheld grantees are ongoing and that some grantees have had funds restored, is irrelevant; the Agency's final action was the March 31 action withholding funds *through an unlawful process*. The decision to use that unlawful process, and the actual use of that unlawful process, was final when it happened, on March 31.

Moreover, Defendants' use of the word "temporary" in the letters—and the subsequent restoration of some of the withheld funds—does not alter the outcome here, as the law is clear that *final* action for purposes of the APA "does not mean *permanent*." *Widakuswara v. Lake*, 2025 WL 1166400, at *12 (D.D.C. Apr. 22, 2025) (Lamberth, J.), *appeal pending*, No. 25-5144, (D.C. Cir. filed Apr. 24, 2025). In other words, "just because [the agency] maintains the ability to reverse [the withholdings] at some unidentified point in the future, that does not change the fact that"—when the March 31 Letters were issued—the agency had "made decisions, communicated them to their . . . grantees, and thereby altered their rights and obligations." *Id.*; *see also Drs. for Am. v. Off. of Pers. Mgmt.*, 766 F. Supp. 3d 39, 51 (D.D.C. 2025) (Bates, J.) (the fact "that an agency may restore the removed webpages in the future does not mean that the agency's prior removal decision was not the consummation of an agency's decisionmaking process."); Pl.'s Opp. at 13–14 (citing cases). Thus, under the law, Defendants' decision to withhold funds effective March 31 is reviewable by this Court under the APA.

Third, Defendants briefly list three additional alleged "deficiencies" already identified in their cross-motion as reasons why this Court should not reach the merits: (1) that exclusive jurisdiction over this case lies in the Court of Federal Claims; (2) that Plaintiff's claims are not ripe; and (3) that Plaintiff's claims are unreviewable under the APA because adequate alternative remedies exist. Defs.' Opp. at 4. Rather than repeat the reasons why these arguments are without merit, Plaintiff incorporates by reference the responses contained in its opposition to Defendants' cross-motion. *See* Pl.'s Opp. at 1–11, 16.

CONCLUSION

For all the foregoing reasons, and the reasons set forth in Plaintiff's opening brief, Plaintiff is entitled to judgment as a matter of law, and therefore respectfully requests that this Court grant its motion for summary judgment, issue an order vacating the March 31 letters, and declare that Defendants' March 31 withholding violated the relevant statute and regulations.[6]

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Respectfully submitted,

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[6] Defendants claim that the appropriate remedy is remand, not vacatur. Defs.' Opp. at 7. But where, as here, the agency has violated unambiguous, governing law and regulations and has taken action that is clearly "unlawful, 'vacatur is the normal remedy.'" *Bridgeport Hosp. v. Becerra*, 108 F.4th 882, 890 (D.C. Cir. 2024) (quoting *Allina Health Servs. v. Sebelius*, 746 F.3d 1102, 1110 (D.C. Cir. 2014)).

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