

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DALLAS COUNTY, TEXAS,

Plaintiff,

v.

ROBERT F. KENNEDY, JR., Secretary,
United States Department of Health and
Human Services, et al.,

Defendants.

Civil Action No. 25-4242 (CRC)

**DEFENDANTS' REPLY IN SUPPORT OF ITS MOTION
TO DISMISS**

Plaintiff Dallas County, Texas brings this suit claiming violations of the Administrative Procedure Act, 5 USC § 551 *et seq.*, and the Constitution due to the termination of a COVID-19-era grant. *See generally* Amend. Compl. (ECF No. 1). Plaintiff filed their Complaint on December 5, 2025, and filed a Motion for Preliminary Injunction on December 8, 2025. Defendants filed their Combined Opposition to Plaintiff’s Motion for Preliminary Injunction and Motion to Dismiss, on January 16, 2026 (ECF Nos. 11 and 12). Plaintiff filed its Reply and Response on February 6, 2026 (ECF No. 13). Defendants now submit this Reply in support of its Motion to Dismiss.

ARGUMENT

On September 17, 2020, Plaintiff entered into a contract with the Texas Department of State Health Services (“TDSHS”) for a grant stemming from monies provided by the Centers for Disease Control (“CDC”) to the State of Texas. *See* Compl. (ECF No. 1) at ¶ 37. The initial terms of the contract between Plaintiff and Texas set the expiration date on April 30, 2022. *Id.* The contract was extended on multiple occasions, with the last extension executed on May 7, 2024, and extending the funding until July 31, 2026. In sum, the grant would potentially provide Dallas with \$15,760,022.00. *Id.* at ¶ 35. On March 25, 2025, TDSHS notified Plaintiff that the grant was terminated. *See* Pl. Resp. (ECF No. 13) at 11. Plaintiffs currently contend that there is “over \$2.9 million” remaining to the grant funding. *Id.* at ¶ 36. Plaintiffs now seek restoration of the grant. *See* Compl. (ECF No. 1) at (C)–(D).

In their Motion to Dismiss (ECF No. 11), Defendants argue that Plaintiff’s claims fail for a variety of reasons. First, Plaintiff’s lack standing, as its injury is not fairly traceable to actions of the Defendants and that Plaintiff’s requested relief would not likely remedy the claimed injury, as TDSHS expressly terminated Plaintiff’s grant and TDSHS is not a party to this litigation. *See* Def. Mot. to Dis. (ECF No. 11) at § I(A). Defendants also argue that because Plaintiff’s claims are

essentially contract claims for money, Plaintiff's claims should be brought in the Court of Federal Claims pursuant to the Tucker Act, 28 USC § 1491(a)(1), and therefore this Court lacks jurisdiction. *Id.* at § I(B). Defendants further argue that Plaintiff's Constitutional and ultra vires claims fail as a matter of law, as they improperly restate statutory challenges. *Id.* at § I(C). And while those challenges remain, admissions in Plaintiff's Response Brief (ECF No. 13) directly undercut their claims of standing by showing exactly how inextricably the claims are tied to the underlying grant contact with TDSHS, in both their expectation of relief and choices of claims, location, and defendant(s).

Plaintiff's unsuccessfully attempt to walk a tight rope: they assert they are entitled to the funding because they are due the funds from a contract, but state that this suit does not concern a contract. Such arguments are unpersuasive. Even as Plaintiff staunchly argues that its claims are not contractual and they do not seek money, even a cursory review of the claims, arguments supporting them, and relief sought, tell a different story. All of the contours of Plaintiff's expectations about its continued receipt of the grant funding is directly informed by the terms of its contact with TDSHS, including the amount, duration, and expected compliance. Yet, when pressed about the fact its claims are contractual and should be brought against the other party to that contract—the State of Texas—Plaintiff admits that no such claims can be brought because the terms of the contact between Plaintiff and TDSHS specifically prohibit such suits. *See* Pl. Resp. (ECF No. 13) at n. 1. Undeterred, Plaintiff now brings this suit to seek better terms than what it ever enjoyed with TDSHS, under their contact.

I. Plaintiff's Admissions Undercut Its Standing to Sue HHS.

Plaintiff's claims all stem from its contact with TDSHS. While asserting that they do not seek a monetary remedy, the injury claimed is the "\$2.9 million" related to the grant. *See* Compl. (ECF No. 1) at ¶¶ 36; (D). That amount is not random; that amount constitutes the remainder of

undelivered funds on Plaintiff's contract with TDSHS at the time of termination. *See* Compl. (ECF No. 1) at ¶ 36. Plaintiff also seeks preliminary injunctive relief due to irreparable harm that may occur if the funds are not restored in an expedited manner, citing potential post-COVID disease monitoring. *See* Compl. (ECF No. 1) at ¶ 64; Prelim. Inj. (ECF No. 5-1) at 11-12. But, looking closely, there is another reason: Plaintiff's contract with TDSHS expires at the end of July. *See* Pl. Resp. (ECF No. 13) at 37. ("Dallas County contract with TDSHS was set to expire on July 31, 2026, [...] and without a preliminary injunction [...] none of the nearly \$3 million in remaining funding may be used by Dallas County...") Also, Plaintiff challenges the grant termination because "Dallas County was in full compliance with the terms of the grant award." *Id.* at 9. And the "terms of the grant award" Plaintiff refers to consists of its *contract* with TDSHS.

These tells notwithstanding, the most important terms of the contract are those that concern the relationship between Plaintiff and TDSHS. Plaintiff argues that it maintains standing to sue HHS because TDSHS, as a mere pass-through for federal funds, is not the proper Defendant. *See* Compl. (ECF No. 1) at 9. But there is a more logical answer, which Plaintiffs conspicuously note in a footnote:

"TDSHS cannot be joined as a necessary party to this matter because [it] is not liable to Dallas County for any damages associated with grant termination. Exh. G to Huang Decl., Section 3.1. TDSHS also enjoys sovereign immunity for breach of contract claims, and so is not subject to suit by Dallas County."

See Pl. Resp. (ECF No. 13) at n. 1. This admission is key. By the terms of the contract, the underlying connection between Plaintiff's claimed injury and relief sought, Plaintiff is barred from recovering any monies from TDSHS. *See also* Ex. H (ECF No 5-4) at 29. Moreover, the contract expressly authorizes TDSHS to "terminate the Contract *at any time* when, in its close discretion [TDSHS] determines that termination is in the best interests of the State of Texas," adding that TDSHS's "right to terminate the Contract for convenience is cumulative of all rights and remedies

which exist now or in the future.” *Id.* See also Pl. Resp. (ECF No. 13) at 6. This clear language specifically contemplates termination of the grant unilaterally and without cause. Moreover, the contract with TDSHS also includes venue provisions requiring all claims to be brought in “a court of competent jurisdiction of Travis County, Texas.” *Id.* at 32. Accordingly, any claims seeking to challenge the termination should be brought against Texas, in Texas.

Yet Plaintiff still seeks to obtain the underlying benefit of the contract—the undelivered funds—following unilateral termination, according to the terms of the contract, by TDSHS. And because the contract expressly prohibits recovery, Plaintiff now attempts to circumvent the terms of the contract and request this Court invalidate decisions made by the federal government. See Ex. H. (ECF No. 5-4) at 29. Such circuitous attempts at recovery would bestow Plaintiff far greater contractual rights and protection than what was envisioned in the contract or that it enjoyed with TDSHS. *Id.*

To avoid this conundrum, Plaintiff attempts to compare its case to *Harris County, Texas v. Kennedy*, Civ. A. No. 25-1275 (D.D.C.) (CRC). But this also fails. As Plaintiff has openly admitted, some of the claims brought by Harris County concern grants which Harris County directly entered into with HHS. See Pl. Resp. (ECF No. 13) at 12; See also Pl. Resp. to Stay (ECF No. 17) at 2–3. Yet there is no such contractual privity between HHS and Plaintiff in this case.

Plaintiffs suing in federal courts must have standing to raise their claims. *City of Waukesha v. EPA*, 320 F.3d 228, 233 (D.C. Cir. 2003) (citing *Sierra Club v. EPA*, 292 F.3d 895, 898 (D.C. Cir. 2002)). This requires a plaintiff to “show (1) it has suffered a ‘concrete and particularized’ injury (2) that is ‘fairly traceable to the challenged action of the defendant’ and (3) that is ‘likely’ to be ‘redressed by a favorable decision,’ i.e., a decision granting the plaintiff the relief it seeks.” *Elec. Priv. Info. Ctr. v. Presidential Advisory Comm’n on Election Integrity*, 878 F.3d 371, 377

(D.C. Cir. 2017) (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 102, (1998) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)). The plaintiff carries the burden of establishing these factors. *Tanner-Brown v. Haaland*, 105 F.4th 437, 443 (D.C. Cir. 2024) (citing *Arpaio v. Obama*, 797 F.3d 11, 19 (D.C. Cir. 2015)).

Here, Plaintiff lacks standing to sue HHS because TDSHS terminated the grant, without any involvement by HHS. *See* Pl. Resp. (ECF No. 13) at 11. Plaintiff argues that the termination was the direct result of Defendants' actions and therefore constitute intervening events by a third party which had a "determinative or coercive effect" over the actions of TDSHS. *See* Pl. Resp. (ECF No. 13) at 6. Yet, "courts have routinely rejected suits for injunctive relief that are directed against executive agencies but that seek to change the behavior of third parties." *Johnson v. Becerra*, 111 F.4th 1237, 1244 (D.C. Cir. 2024).

II. Plaintiff's Claims Should Have Been Brought in the Court of Federal Claims.

Plaintiff attempts to circumvent the terms of their contract with TDSHS, and, importantly, the need to bring this claim in the Court of Federal Claims, by merely stating that they only seek to challenge Defendants' policy decisions. But this trick was previously exposed by Justice Gorsuch in his concurring opinion in *Nat'l Institutes of Health v. Am. Pub. Health Ass'n*, 145 S. Ct. 2658, 2664 (2025), the most recent decision by the Supreme Court in the grant termination context:

"[T]he court of appeals asserted that [...] the claims here do not "depen[d] on the terms and conditions of the grant awards." But that is also incorrect. In both cases, respondents' injury and alleged right to payment stem from the government's refusal to pay promised grants according to the terms and conditions that accompany them." (cleaned up).

This very issue was recently before the Court of Appeals for the Fourth Circuit. *Sustainability Inst. v. Trump*, 165 F.4th 817 (4th Cir. 2026). There, a group of nonprofit

organizations and local governments brought suit against federal actors for termination of grant funding, raising APA and constitutional claims. *Id.* at 821. The District Court granted the *Sustainability Inst.* plaintiffs preliminary injunction and order the restoration of the grants, finding the plaintiffs had jurisdiction outside of the Court of Federal Claims. *Id.* at 823–24. On appeal, a unanimous three-panel determined that the district court erred and found that Plaintiff’s APA claim were a veiled attempt to recast their grant contract. *Id.* at 827 (“Plaintiffs identify no source of law, besides their grant agreements, guaranteeing them the relief they seek: continued payments on those grants.”) The same situation appears before this Court: Plaintiff painstakingly attempts to undercut the impact of its contract by presenting claims specifically styled to avoid impact impact of the contract. This attempt should be rejected. Accordingly, Plaintiff’s claims, if pursued against the United States, should properly be brought in the Court of Federal Claims in accordance with the Tucker Act, 28 USC § 1491(a)(1).

CONCLUSION

For these reasons, Defendants respectfully request that the Court grant its motion and dismiss this matter.

Dated: April 28, 2026

Respectfully submitted,

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