

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DALLAS COUNTY, TEXAS,

Plaintiff,

v.

ROBERT F. KENNEDY, JR., in his official
capacity as Secretary of the United States
Department of Health and Human Services,
et al,

Defendants.

Case No. 1:25-cv-4242 (CRC)

PLAINTIFF DALLAS COUNTY, TEXAS'S SUPPLEMENTAL BRIEFING

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TO THE HONORABLE COURT:

INTRODUCTION

During argument on May 14, 2026, the Court requested additional briefing on two matters: 1) the applicability of *Global Health Council v. Trump*, 153 F.4th 1 (D.C. Cir. 2025), to the claims asserted by Dallas County; and 2) whether Dallas County could assert claims in the Court of Federal Claims against the Defendants for breach of an implied contract or as a third-party beneficiary of the grant contract between CDC and the State of Texas. *Transcript of Motion Hearing Held Before the Honorable Christopher R. Cooper, United States District Judge* (May 14, 2026), pp. 4-5, 23-24. At the Court's invitation, Dallas County tenders this supplemental brief to address those issues.

ARGUMENT

I. Applicability of *Global Health Council* to Dallas County's Separation of Powers Claim

As noted in Dallas County's previous briefing, the Supreme Court held in *Dalton v. Specter*, 511 U.S. 462, 473-74 (1994), that a plaintiff alleging a violation of the Constitution must establish that the executive branch has acted in the absence of any statutory authority, while a claim that the executive branch simply acted in excess of its statutory authority does not give rise to a constitutional claim. *See* ECF No. 13, *Plaintiff Dallas County, Texas's Reply in Support of its Motion for a Preliminary Injunction and Response to Defendants' Motion to Dismiss*, pp. 28-30. Dallas County argues that the Defendants had no statutory authority to terminate its pass-through funding, and that *Dalton* is inapplicable to Dallas County's constitutional claims. *Id.*

In *Global Health Council*, the D.C. Circuit applied *Dalton* to claims brought by grant recipients which alleged that the executive branch's suspension of foreign aid grant funding was an unconstitutional separation of powers violation. *Global Health Council*, 153 F.4th at 13-17.

The plaintiffs specifically alleged that the executive branch's unilateral decision to impound funds appropriated by Congress for foreign aid in the Further Consolidated Appropriations Act of 2024 without following the Impoundment Control Act ("ICA") violated the separation of powers provision, in addition to the Administrative Procedure Act ("APA"). *AIDS Vaccine Advocacy Coalition v. U.S. Dep't of State*, 770 F. Supp. 3d 121, 136, 143-48 (D.D.C. 2025). This district court issued a preliminary injunction that enjoined the defendants from enforcing or giving effect to the executive order, prohibited the defendants from unlawfully impounding the funds at issue, and required the defendants to make available for obligation all funds that Congress had appropriated. *Id.* at 155.

On appeal by the defendants, the D.C. Circuit held that *Dalton* prohibited the plaintiffs from bringing a freestanding separation of powers claim because the plaintiffs' claims were essentially statutory in nature. *Global Health Council*, 153 F.4th at 16-17. The D.C. Circuit reasoned that the constitutional claims were based upon the executive branch's refusal to spend the money appropriated by Congress and to follow the procedures set forth in the ICA. *Id.* at 14 n.8, 15 n.11. In that regard, the reasoning of *Global Health Council* is somewhat difficult to apply in practice. Conceptually, any action by the executive that has no specific support in any statute can be liberally construed as some type of statutory violation. As the dissent in *Global Health Council* noted, a refusal by the executive to enforce all statutes would not be considered a constitutional violation but rather violations of each individual statute, and thus be essentially unreviewable. *Global Health Council*, 153 F.4th at 40 n. 7 (Pan, J., dissenting).

Nonetheless, *Global Health Council* is distinguishable from this case. The plaintiffs in that case specifically argued that the executive branch failed to follow both the ICA and the Congressional appropriation for the grants at issue, which gave rise to their separation of powers

claim. *AIDS Vaccine Advocacy Coalition*, 770 F. Supp. 3d at 136, 143-48. By way of contrast, while Dallas County has pled that the Defendants have failed to follow the ICA, it has not alleged failure to follow the ICA as grounds for its separation of powers claim. See ECF No. 13, pp. 34-35; ECF No. 1, *Complaint for Declaratory and Injunctive Relief*, p. 22.

That distinction is significant because the ICA violation allegations appear to have been central to this Court's reasoning. For example, this Court asserted that the executive branch's actions were contrary to the appropriations made by Congress, but it specifically noted that the defendants did so for policy reasons and without undertaking the impoundment process. *AIDS Vaccine Advocacy Coalition*, 770 F. Supp. 3d at 144-45. Although the dissenting opinion in *Global Health Council* stated that the failure to follow the ICA was a "sideshow," *Global Health Council*, 153 F.4th at 41 (Pan, J. dissenting) and the majority opinion indicated that the executive branch's violation of the Congressional appropriation act and other statutes made the dispute "fundamentally statutory," *id.* at 15 n.11, the plaintiffs' allegations regarding the defendants' failure to adhere to the appropriation statutes were not otherwise addressed in the D.C. Circuit's analysis regarding *Dalton's* application. *Global Health Council*, 153 F.4th at 13-17. Most of that section of the Circuit Court's opinion focused on the ICA allegations. *Id.* *Global Health Council* certainly could be read broadly to stand for the proposition that the executive branch's failure to obligate funds pursuant to Congressional appropriation measures do not properly give rise to constitutional claims under *Dalton*, but the nature of the plaintiffs' allegations related to the ICA suggests otherwise. *Global Health Council*, 153 F.4th at 13-17. Thus, *Global Health* is distinguishable from Dallas County's case and does not require this Court to dismiss the separation of powers claim.

Further, in a grant termination case in which several local governmental entities made

allegations identical to Dallas County's, the Northern District of Illinois declined to follow *Global Health Council* and held that *Dalton* does not preclude plaintiffs who do not simply allege ICA violations from asserting separation of powers claims against the government for freezing funds that have been appropriated by Congress. *City of Chicago v. U.S. Dep't of Homeland Security*, 815 F. Supp. 3d 727, 738, 751 (N.D. Ill. 2025). The *City of Chicago* court reasoned that the plaintiff's claims in that case implicated "weighty concerns ... regarding the balance of power between the executive and legislative branches." *Id.* at 751. The court likewise reasoned that the ICA also expressly disclaimed the preclusion of constitutional claims. *Id.* (citing 2 U.S.C. § 681(1)).

The essence of Dallas County's separation of powers claim is that Defendants effectively repealed Congressional action by refusing to spend funds appropriated for specific purposes without any authority to do so. ECF No. 13, p. 37. This perhaps implicates the ICA, but it does not allege actions in excess of the ICA that trigger *Dalton*. *Global Health Council* thus does not foreclose Dallas County's constitutional separation of powers claim. *Dalton*, 511 U.S. at 473-74.

II. Applicability of *Global Health Council* to Dallas County's APA Claims

In *Global Health Council*, the D.C. Circuit further held that the plaintiffs could not assert APA claims that the defendants acted contrary to law by violating the ICA, when that act's statutory scheme did not contemplate citizen suits for its enforcement. *Global Health Council*, 153 F.4th at 17-20. The D.C. Circuit did not reach the issue of whether the plaintiffs could bring APA claims against the executive branch for failing to enforce the appropriations act passed by Congress, because the district court's decision was based upon the allegations that the defendants failed to follow the ICA procedures. *Id.* at 19 n.17. The D.C. Circuit further left open the possibility that the plaintiffs could assert APA claims based upon the ICA after that act's "statutory processes [have] run their course." *Id.* at 20 n.18.

As it pertains to Dallas County's APA unconstitutional and contrary to law claim, Dallas County's complaint alleges that Defendants' termination of grant funding and the implementation of the decision to terminate funding were not authorized by statute, defied the relevant appropriations acts, and were not permitted by any statute (including the ICA). ECF No. 1, p. 25. However, Dallas County has not asserted that the Defendants violated the ICA. *Id.* Thus, *Global Health Council* does not preclude Dallas County's claim under the APA. *Global Health Council*, 153 F.4th at 17-20.

III. Dallas County's Ability to Assert Claims Against the Government for Implied Contract or as a Third Party Beneficiary

In the May 14, 2026, hearing, the Court questioned whether Dallas County's claims arose in contract, either because there was in implied contract between CDC and Dallas County, or because Dallas County was a third-party beneficiary of a contract between CDC and the State of Texas. *Transcript of Motion Hearing* (May 14, 2026), pp. 23-24. The answer is "No," and the Court of Federal Claims does not have jurisdiction over Dallas County's claims. The Court of Federal Claims has jurisdiction to render judgment upon any claim against the United States founded upon any express or implied contract with the government. 28 U.S.C. § 1491(a)(1). To have standing to sue the United States on a contract claim, a plaintiff must have privity of contract with the government through an actual or implied contract. *Anderson v. United States*, 344 F.3d 1343, 1351 (Fed. Cir. 2003).

An implied-in-fact contract is one that is inferred from the conduct of the parties. *City of Cincinnati v. U.S.*, 153 F.3d 1375, 1377 (Fed. Cir. 1998). To establish an implied-in-fact contract, a party must show: 1) mutuality of intent to contract; 2) consideration; and 3) lack of ambiguity in offer and acceptance. *City of El Centro v. U.S.*, 922 F.2d 816, 820 (Fed. Cir. 1990). When the United States is a party to the contract, a party must also show that the governmental representative

whose conduct is relied upon had actual authority to bind the government in contract. *Id.* Thus, “an implied in fact contract arises when an express offer and acceptance are missing but the parties’ conduct indicates mutual assent.” *City of Cincinnati*, 153 F.3d at 1377.

In this case, Dallas County does not have a contract with the government, express or implied. It is a pass-through recipient that receives funding from the government through its contract with the State of Texas. ECF No. 5-3, *Declaration of Philip Huang*, pp. 3-6 (¶¶ 5-8). In that regard, it is akin to a subcontractor of a prime contractor that has direct privity with the United States.

A subcontractor ordinarily does not have standing to sue the government on contractual claims. *R&R Conner Aviation, L.L.C. v. U.S.*, 174 Fed. Cl. 89, 94-95 (Fed. Cir. 2024). A subcontractor may sue the government, however, if it can establish that it is an intended third-party beneficiary of a contract with the government. *Id.* at 95. Third-party beneficiary status is an “exceptional privilege” that is not to be granted liberally. *Id.* To establish third-party beneficiary status, the contract must reflect the express or implied intention to benefit the third-party directly, and the contracting officer must have been put on notice of the relationship between the prime contractor and subcontractor so that the intent to benefit the third-party is attributable to the contracting officer. *Id.*

Other than the information provided by Defendants in ECF No. 24, *Notice of Supplemental Information*, Dallas County is not aware of the specific terms of any contracts for the grant funding at issue between the CDC and the State of Texas. However, subcontractors who agree to supply materials, labor, or services to general contractors are typically not third-party beneficiaries merely because the contract would benefit them; instead, they are only incidental beneficiaries. *R&R Conner Aviation*, 174 Fed. Cl. at 95. Thus, Dallas County, as a pass-through recipient, is only an

incidental beneficiary of any grant agreements between the State of Texas and Defendants regarding the funding in this matter.

CONCLUSION

Dallas County appreciates the opportunity to provide this additional briefing to the Court.

Please contact us if the Court desires additional briefing.

Dated: May 21, 2026.

Respectfully submitted,

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* Motion to appear *pro hac vice* granted

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CERTIFICATE OF SERVICE

On May 21, 2026, I caused this document to be filed with the clerk of court for the U.S. District Court, District of Columbia. I hereby certify that I have caused this document to be served on all counsel and/or *pro se* parties of record by a manner authorized by Federal Rules of Civil Procedure 5(b)(2).

/s/ Todd Sellars
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