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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ARGHAVAN SALLES; ABIGAIL HATCHER;
ANDREA ROSSO; ANN D. COHEN-WILSON;
DOLORES ALBARRACIN; HEIDI MOSESON;
JADE PAGKAS-BATHER; JONATHAN KYLE
DAW; KATIE EDWARDS; KELTON MINOR;
MICHAEL D. GREEN; SARA JACKSON;
SUZANNE BELL; JORDAN DOE 1; JORDAN DOE
2; JORDAN DOE 3; and JORDAN DOE 4, *on behalf
of themselves and all others similarly situated,*

Plaintiffs,

v.

NATIONAL INSTITUTES OF HEALTH; JAY
BHATTACHARYA, *in his official capacity as
Director of the National Institutes of Health*; UNITED
STATES DEPARTMENT OF HEALTH AND
HUMAN SERVICES; ROBERT F. KENNEDY, JR.,
*in his official capacity as Secretary of the United States
Department of Health and Human Services*; and
UNITED STATES DOGE SERVICE,

Defendants.

Case No. 3:26-cv-10510-SK

**NOTICE OF MOTION AND MOTION
FOR PROVISIONAL CLASS
CERTIFICATION**

Judge: Hon. Sallie Kim

Courtroom: Courtroom C, 15th floor

Date: Nov. 16, 2026

Time: 9:30 a.m.

* Application for *Pro Hac Vice* Admission Forthcoming

**Out-of-State Licensee Renewal Pending

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on Nov. 16, 2026 at 9:30 a.m., or as soon thereafter as this matter may be heard, Plaintiffs Arghavan Salles, Abigail Hatcher, Andrea Rosso, Ann D. Cohen-Wilson, Dolores Albarracín, Heidi Moseson, Jade Pagkas-Bather, Jonathan Kyle Daw, Katie Edwards, Kelton Minor, Michael D. Green, Sara Jackson, Suzanne Bell, Jordan Doe 1, Jordan Doe 2, Jordan Doe 3, and Jordan Doe 4 (collectively, “Plaintiffs”) hereby move this Court for an Order provisionally certifying the proposed classes defined herein.

Plaintiffs request provisional certification under Federal Rules of Civil Procedure 23(a) and (b)(2) of two putative classes:

- **Termination Class**: All principal investigators, multiple-principal investigators, researchers, or project leaders for National Institutes of Health (“NIH”) research grants identified for termination based on the Challenged Policies, whose grants remain terminated.
- **Policy Class**: All persons who have an existing NIH grant and/or who applied or will apply for an NIH grant whose grant or application is subject to termination, denial, rephrasing, or renegotiation based on the Challenged Policies; and all persons who would apply for an NIH grant but for the Challenged Policies.

Plaintiffs seek provisional certification for the purpose of obtaining the classwide preliminary relief sought in their Motion for Stay and Preliminary Injunction. Additionally, Plaintiffs ask the Court to provisionally appoint the American Civil Liberties Union Foundation, the American Civil Liberties Union Foundation of Northern California, Protect Democracy, the Center for Science in the Public Interest, and Jacobson Lawyers Group PLLC as class counsel under Rule 23(g).

The relief requested is based upon this Notice of Motion and Motion, the incorporated Memorandum of Law, the supporting Declarations and Proposed Order filed herewith, Plaintiffs’ Motion for Stay and Preliminary Injunction and supporting Declarations (ECF 33–49), and the Declarations and accompanying exhibits submitted with the Doe Plaintiffs’ Administrative Motion to Proceed Pseudonymously (ECF 7–10). This Motion is also based on all papers, evidence, and records on file in this action, including Plaintiffs’ Class Action Complaint (ECF 1) and any other written or oral evidence or argument as may be requested or permitted by the Court.

INTRODUCTION

This action challenges system-wide policies developed and implemented by Defendants NIH, Jay Bhattacharya, the Department of Health and Human Services (“HHS”), Robert F. Kennedy, Jr., and the United States DOGE Services (“USDS”) (collectively, “Defendants”) to (1) leverage NIH’s funding power to target and suppress the expression of disfavored views, compel speech, and terminate funding for speech it dislikes, all in violation of the First Amendment, and (2) contradict congressional mandates designed to prevent the politicization of the NIH grant award process, ignore regulations limiting the circumstances in which grant termination is allowed, and impose arbitrary and capricious grant-screening mechanisms without explanation or even public disclosure, all in violation of the Administrative Procedures Act (“APA”).

These policies violate the rights of thousands of biomedical and behavioral researchers across the country, including Plaintiffs. To stop these continuing violations, Plaintiffs are seeking a stay and preliminary injunction on behalf of themselves and two classes of similarly situated researchers. Specifically, Plaintiffs and the putative classes ask that Defendants be preliminarily enjoined from applying the “Challenged Policies” as they are defined herein and in Plaintiffs’ Motion for Stay and Preliminary Injunction, that the Challenged Policies be stayed under 5 U.S.C. § 705, and that the unconstitutionally terminated grants be reinstated. Mot. for Stay & Prelim. Inj., ECF 33 (“MPI”) at 15.

Plaintiffs now ask this Court to certify two provisional classes for the purpose of issuing this preliminary relief. Provisional class certification is appropriate here because the Challenged Policies apply generally to each of the proposed classes and Plaintiffs’ class claims and the defined classes meet all Federal Rule of Civil Procedure 23 requirements.

Specifically, Plaintiffs seek provisional certification of the following classes:

Termination Class: All principal investigators, multiple-principal investigators, researchers, or project leaders for NIH research grants identified for termination based on the Challenged Policies, whose grants remain terminated.

Policy Class: All persons who have an existing NIH grant and/or who applied or will apply for an NIH grant whose grant or application is subject to termination, denial, rephrasing, or renegotiation based on the Challenged Policies; and all persons who would apply for an NIH grant but for the Challenged Policies.

1 The proposed Classes (the Termination Class and Policy Class) meet the requirements of Federal
2 Rules of Civil Procedure 23(a)(1)–(4) and 23(b)(2). *First*, the Classes are each sufficiently numerous
3 that joinder would be impracticable. Even counting conservatively, the proposed Termination Class
4 includes researchers on more than 1,000 NIH grant-funded projects that were terminated under the
5 Challenged Policies. The Policy Class includes thousands of researchers who continue to work under or
6 pursue NIH grants, and are therefore at risk of termination, denial, rephrasing, and/or renegotiation
7 pursuant to the Challenged Policies. Many of those in the Termination Class are also in the Policy Class,
8 as researchers often have both terminated and active grants and may also be pursuing applications for
9 future funding.

10 *Second*, this case involves common, class-wide questions of fact and law. Members of the
11 Termination Class share common facts because they were awarded NIH grants, and these grants were
12 terminated by Defendants based on the Challenged Policies. The legal questions underpinning
13 commonality of this class include whether the Challenged Policies discriminate based on viewpoint, and
14 whether terminating class members' grants based on these Challenged Policies was a violation of the
15 First Amendment, including because it constituted retaliation for protected speech. Similarly, the Policy
16 Class members share common facts as each class member seeks to maintain a non-terminated NIH grant
17 or pursue an application for a grant, but their projects and proposals are subject to potential termination,
18 denial, rephrasing, and/or renegotiation pursuant to the Challenged Policies. The Policy Class raises the
19 common questions of whether Defendants' Challenged Policies subject Policy Class members to
20 termination, denial, rephrasing, or renegotiation based on perceived viewpoint; whether the Challenged
21 Policies compel speech; whether this violates the First Amendment; as well as the common questions of
22 whether Defendants' Challenged Policies are arbitrary and capricious and contrary to statutory and
23 regulatory authority in violation of the APA.

24 *Third and Fourth*, the proposed class representatives for the Termination Class and Policy Class
25 are proper because their claims are typical of unnamed class members, they have no conflicts with any
26 unnamed class members, and they can adequately represent the Classes. The Termination Class is
27 represented by Plaintiffs Salles, Rosso, Cohen, Daw, and Doe 2. As demonstrated below, each of these
28 Plaintiffs had an active NIH grant that was terminated by Defendants pursuant to the Challenged

Policies and in retaliation for their protected speech. The Policy Class is represented by Plaintiffs Salles, Hatcher, Rosso, Cohen, Albarracín, Moseson, Pagkas-Bather, Daw, Edwards, Minor, Green, Jackson, Bell, and Does 1–4. Each of the proposed Policy Class representatives has a non-terminated NIH grant or an application for a grant that has been or could be flagged by the Challenged Policies for compelled rephrasing, renegotiation, or denial. Each Termination Class representative and each Policy Class representative shares similar injuries and seeks the same relief as the absent class members they represent.

Finally, Defendants have acted—and absent relief, will continue to act—on grounds that are generally applicable to the proposed Termination Class and Policy Class by carrying out policies that violate the proposed class members’ rights under the United States Constitution and the APA.

Plaintiffs seek urgent preliminary relief on a classwide basis because Defendants will otherwise continue employing their Challenged Policies—injecting unlawful viewpoint discrimination, retaliation, and arbitrary and capricious requirements into a process built to fund and maintain our Nation’s most compelling and important scientific work and the people who generate it. At least one court within this district has provisionally certified classes like the proposed Classes under similar circumstances involving the unlawful termination of federal grants. *See, e.g., Thakur v. Trump*, 787 F. Supp. 3d 955, 1005 (N.D. Cal. 2025), *aff’d in part, rev’d in part and remanded*, 176 F.4th 1187 (9th Cir. 2026). Accordingly, and for the reasons further set forth below, Plaintiffs respectfully request that the Court provisionally certify the proposed Classes under Rules 23(a) and (b)(2).

BACKGROUND

I. Defendants’ Challenged Policies Replace Scientific Merit Review with Viewpoint-Based Screening.

As set forth in detail in Plaintiffs’ Complaint and Motion for Stay and Preliminary Injunction, Defendants have enacted policies that prohibit the award of new or continuing scientific research funding to projects that Defendants suspect will lead to speech that communicates certain disfavored viewpoints. MPI at 9–14. The crux of these policies, the “Challenged Policies,” is simple: starting in January 2025, Defendants have systematically terminated and renegotiated NIH grants and denied research proposals in an effort to silence certain disfavored views. These policies label research that

Defendants believe is based on, motivated by, or likely to communicate disfavored views about diversity, equity, and inclusion (“DEI”); gender identity; climate change; misinformation; and vaccine hesitancy as low-value, unscientific, or otherwise unsuitable for NIH funding. Decl. of Oscar Heanue, ECF 49 (“Heanue”) ¶ 8, Ex. 4 at 2; *id.* ¶ 15, Ex. 11; *id.* ¶ 16, Ex. 12; *id.* ¶ 17, Ex. 13; *id.* ¶ 18, Ex. 14; *id.* ¶ 19, Ex. 15 at 4; *id.* ¶ 20, Ex. 16 at 5. They also impose an extra-statutory level of final review for both new and continuing awards, and forbid deference to non-politically appointed scientists in that review. Exec. Order No. 14332, §§ 3(a), 4(b)(ii)(A), (B), (D), 90 Fed. Reg. 38929 (Aug. 7, 2025); Decl. of Doe 1, ECF 7 (“Doe 1”) ¶ 13, Ex. 3 at 3, 5.

The so-called “alignment process” used to implement the policies begins with a computational text-analysis tool that flags grants and applications that use any of 235 forbidden terms which Defendants associate with the disfavored viewpoints. Doe 1 ¶ 13, Ex. 2 at 12–16. Projects flagged by this algorithm are subject to extra review by NIH staff. Heanue ¶ 22, Ex. 18 at 2, 5. Staff are directed to either terminate a grant or deny an application outright; or to compel researchers to remove flagged language and concepts and instead adopt the language that Defendants prefer upon threat of termination or denial. *Id.* at 3, 5; *see also* Heanue ¶ 21, Ex. 17; Decl. of Doe 3, ECF 9 (“Doe 3”), ¶¶ 16–27; Decl. of Doe 4, ECF 10 (“Doe 4”) ¶¶ 10, 12, 15, 17–19.

II. Defendants’ Challenged Policies Harm Researchers Whose NIH Grants Were Terminated (Termination Class).

As of September 2026, more than one thousand NIH grants have been (and remain) terminated under the Challenged Policies. Decl. of Grayce Zelphin (“Zelphin”) ¶ 13, Ex. 1. Research grants previously held by Plaintiffs Salles, Rosso, Cohen, Daw, and Doe 2 are among them. Decl. of Salles, ECF 34 (“Salles”) ¶ 11; Decl. of Rosso, ECF 36 (“Rosso”) ¶ 25; Decl. of Cohen-Wilson, ECF 37 (“Cohen”) ¶ 21; Decl. of Daw, ECF 41 (“Daw”) ¶ 15; Decl. of Doe 2, ECF 8 (“Doe 2”) ¶ 23. Like all others with grants terminated under the Challenged Policies, these Plaintiffs are researchers who submitted applications that were selected for funding through NIH’s extremely rigorous two-step, peer-review-driven process. Salles ¶ 6; Rosso ¶¶ 10–11; Cohen ¶¶ 11–12; Daw ¶¶ 8, 10–11; Doe 2 ¶¶ 11–13. Their research covers diverse topics, ranging from Alzheimer’s disease and other diseases related to aging (Cohen ¶ 10; Rosso ¶¶ 11–12, 14–15; Doe 2 ¶¶ 4, 27, 37), to kidney disease (Daw ¶ 18), to sexual

1 harassment in the biomedical research field (Salles ¶¶ 6–8). However, their grants share a common
 2 thread—Defendants determined that each of the Plaintiffs’ grants were likely to result in speech
 3 communicating views that are now prohibited (Cohen ¶ 22; Salles ¶ 15; Rosso ¶¶ 25–26; Daw ¶¶ 16–17;
 4 Doe 2 ¶ 23). Thus, under the Challenged Policies, they were terminated based on the protected views of
 5 researchers; the views that Defendants expected the project results, publications, or presentations to
 6 express; and/or the speech that in fact resulted from the funding. *See, e.g.*, Cohen ¶ 22; Salles ¶¶ 14–15;
 7 Doe 2 ¶ 23; Daw ¶¶ 16–18. The terminations are causing irreparable harm, in the form of silenced or
 8 delayed speech, professional repercussions, and more, including to Plaintiffs Salles, Cohen, Rosso, Daw,
 9 and Doe 2. *See* Cohen ¶¶ 24–28; Salles ¶ 16; Rosso ¶¶ 32–36; Daw ¶¶ 19–22; Doe 2 ¶ 28.

10 **III. Defendants’ Challenged Policies Harm Researchers Whose Grants or Applications are**
 11 **Subject to Denial, Rephrasing, Renegotiation, and Future Termination (Policy Class).**

12 Under the Challenged Policies, Defendants continue to screen grants and applications to ferret
 13 out the disfavored viewpoints. Heanue, Ex. 15 at 7; *id.* Ex. 16; *id.* Ex. 17; *id.* Ex. 18. Once Defendants
 14 identify any aspect of a project as likely to result in speech communicating a disfavored viewpoint, the
 15 Challenged Policies require it to be renegotiated, denied, or terminated. *Id.* Ex. 18 at 2, 3, 5. Like
 16 thousands of other researchers, Plaintiffs Salles, Hatcher, Rosso, Cohen, Albarracín, Moseson, Pagkas-
 17 Bather, Daw, Edwards, Minor, Green, Jackson, Bell, and Does 1–4 have grants or applications that have
 18 been or will be screened under the Challenged Policies for their potential to result in disfavored speech.
 19 Salles ¶ 11; Decl. of Hatcher, ECF 35 (“Hatcher”) ¶ 9; Rosso ¶¶ 22–26; Cohen ¶ 16; Decl. of
 20 Albarracín, ECF 38 (“Albarracín”) ¶¶ 14–15, 22; Decl. of Moseson, ECF 39 (“Moseson”) ¶¶ 23, 30–34;
 21 Decl. of Pagkas-Bather, ECF 40 (“Pagkas-Bather”) ¶¶ 12, 15, 21; Daw ¶ 14; Decl. of Edwards, ECF 42
 22 (“Edwards”) ¶ 14; Decl. of Minor, ECF 43 (“Minor”) ¶¶ 19–25; Decl. of Green, ECF 44 (“Green”) ¶¶
 23 12–13, 16–17; Decl. of Jackson, ECF 45 (“Jackson”) ¶ 21; Decl. of Bell, ECF 46 (“Bell”) ¶¶ 17, 19;
 24 Doe 1 ¶¶ 12–14, 17–18; Doe 2 ¶ 23; Doe 3 ¶¶ 16, 18–27; Doe 4 ¶¶ 10, 12, 15, 17–19. And, because
 25 their research-related speech is perceived to contain viewpoints now prohibited by the Challenged
 26 Policies, Plaintiffs’ NIH grants or applications are (or would be) subject to renegotiation, compelled
 27 revision, denial, or termination. Pagkas-Bather ¶¶ 15–19, 21; Bell ¶¶ 10, 13, 17, 21 27–28, 31, 33;
 28 Albarracín ¶ 26; Moseson ¶¶ 34–40; Edwards ¶¶ 14–18; Doe 1 ¶¶ 17–18; Doe 3 ¶ 30; Doe 4 ¶¶ 14–15.

LEGAL STANDARD

Courts in the Ninth Circuit routinely grant provisional class certification to plaintiffs seeking interim relief. *See, e.g., Thakur*, 787 F. Supp. 3d at 999 (provisionally certifying class of university researchers asserting APA and First Amendment claims); *Doe #1 v. Trump*, 957 F.3d 1050, 1069 (9th Cir. 2020) (denying motion to stay district court’s grant of nationwide preliminary injunction on behalf of a provisionally certified class); *Al Otro Lado v. Wolf*, 952 F.3d 999, 1005 n. 4 (9th Cir. 2020) (noting Ninth Circuit has “approved provisional class certification for purposes of preliminary injunction proceedings”); *Maney v. Brown*, 516 F. Supp. 3d 1161, 1171 (D. Or. 2021); *see also Kingdom v. Trump*, No. 1:25-CV-691-RCL, 2025 WL 1568238, at *3 (D.D.C. June 3, 2025) (certifying class in action seeking to stay policy under APA Section 705). Here, Plaintiffs seek preliminary relief in the form of an injunction and a Section 705 stay to halt enforcement of the Challenged Policies and seek reinstatement of the terminated grants. *See MPI* at 31.

Plaintiffs seeking provisional class certification must satisfy the requirements of Federal Rule of Civil Procedure 23. *See Thakur*, 787 F. Supp. 3d at 997. Under Rule 23, the moving party must meet each of the four requirements of Rule 23(a)—(1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation—and also satisfy at least one subsection of Rule 23(b). “In resolving a dispute about whether class certification is proper, the district court may consider material beyond the pleadings” *Maney*, 516 F. Supp. 3d at 1172 (internal quotations omitted).

Although the Court’s analysis under Rule 23 “may entail some overlap with the merits of the plaintiff’s underlying claim,” courts cannot “engage in free-ranging merits inquiries at the certification stage.” *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 465–66 (2013) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (internal quotations omitted)).

ARGUMENT

I. The Proposed Termination Class and Policy Class Meet the Requirements of Rule 23(a).

Rule 23(a) requires plaintiffs to show that (1) the class is so numerous that joinder of all members is impracticable, (2) questions of law or fact exist that are common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the

representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). Here, the proposed Classes satisfy each of these requirements.

A. Numerosity

A class may be provisionally certified if it is “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). The standard is not “whether joinder is a literal impossibility.” *A.B. v. Haw. State Dep’t of Educ.*, 30 F.4th 828, 837 (9th Cir. 2022) (internal quotations and citations omitted). “Rather, the question is whether joinder of all class members is *practicable*—i.e., *reasonably* capable of being accomplished.” *Id.* Courts, in turn, define impracticability as “only the difficulty or inconvenience of joining all members of the class.” *Harris v. Palm Springs Alpine Ests., Inc.*, 329 F.2d 909, 913–14 (9th Cir. 1964).

The specific number of members in a class is not dispositive. Indeed, courts “routinely” deem joinder impracticable where a class comprises 40 or more members, *Villalpando v. Exel Direct Inc.*, 303 F.R.D. 588, 605–06 (N.D. Cal. 2014) but have also deemed it “impracticable in cases involving as few as 25 class members,” *Gilbert v. MoneyMutual, LLC*, 318 F.R.D. 614, 621 (N.D. Cal. 2016). Plaintiffs need only “show some evidence of or reasonably estimate the number of class members.” *Kincaid v. City of Fresno*, 244 F.R.D. 597, 601 (E.D. Cal. 2007) (internal quotations omitted).

Where, as here, only equitable relief is sought, “the numerosity requirement is relaxed and plaintiffs may rely on [] reasonable inference[s] arising from plaintiffs’ other evidence that the number of unknown and future members” makes joinder impracticable. *C.R. Educ. & Enf’t Ctr. v. Hosp. Props. Tr.*, 317 F.R.D. 91, 100 (N.D. Cal. 2016), *aff’d*, 867 F.3d 1093 (9th Cir. 2017) (alterations in original) (internal quotations omitted) (citing *Sueoka v. United States*, 101 F. App’x 649, 653 (9th Cir. 2004)); *see also Kingdom*, 2025 WL 1568238, at *13 (finding numerosity satisfied on a motion for provisional class certification where plaintiffs sought relief in the form of a stay pursuant to § 705, noting the “impracticality” of counting unknown future class members). This relaxed requirement recognizes that avoiding duplicative suits brought by other class members promotes judicial economy. *Pole v. Estenson Logistics, LLC*, No. CV 15-07196 DDP (Ex), 2016 WL 4238635, at *5 (C.D. Cal. Aug. 10, 2016).

Here, the numerosity requirement is easily met for both the Termination and the Policy Classes. Currently, more than 1,000 NIH grant-funded projects remain terminated due to NIH’s mass viewpoint-

1 driven termination of research grants under the Challenged Policies. Zelphin ¶ 13, Ex. 1. Each
 2 terminated NIH grant impacts the principal investigator, as well as any other researchers supported by
 3 the award—all of whom are putative Termination Class members. Doe 2 ¶¶ 25–29; Jackson ¶¶ 27, 30;
 4 Decl. of Doe 5, ECF 47 (“Doe 5”) ¶¶ 21, 24). Accordingly, there are thousands of putative Termination
 5 Class members.

6 The Policy Class is even larger. NIH provides between 50,000 and 60,000 grants a year to more
 7 than 300,000 researchers at more than 2,500 universities, medical schools, and other research
 8 institutions in every state. Heanue ¶ 7, Ex. 3 at 2. The number of individuals who apply for grants is far
 9 greater. While it is impossible to know precisely how many of these thousands of researchers are
 10 currently being impacted by the Challenged Policies, over fiscal years 2025 and 2026, disfavored
 11 words—such as “Equity,” “Disparities,” “Racial,” and “Gender”—were removed from more than a
 12 thousand different existing grant titles according to data collected from NIH Reporter. Zelphin ¶ 14, Ex.
 13 2. This comports with Plaintiffs’ experiences. *See* Doe 3 ¶¶ 16–18; Doe 4 ¶¶ 16–17; Rosso ¶ 20.
 14 Researchers who were compelled to alter or remove language in other grant materials, as well as those
 15 who have resisted (and will likely be denied or have grants terminated as a result), are also included in
 16 the Policy Class. *See, e.g.,* Bell ¶¶ 17, 19, 28 (altered language); Moseson ¶¶ 23–24, 31, 36 (same);
 17 Green ¶¶ 10–13, 15–17 (same); Albarracín ¶¶ 15–17 (same); Edwards ¶¶ 16–17 (same); Pagkas-Bather
 18 ¶¶ 11–12 (same); Minor ¶¶ 22–25 (same); Cohen ¶¶ 16–20 (same); Hatcher ¶ 12 (same); Jackson ¶¶ 21–
 19 26 (resisted). Taken together, the evidence suggests that the membership of the Policy Class numbers in
 20 the thousands.

21 Moreover, this estimate does not include future members who will be subjected to the
 22 Challenged Policies. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1203 (N.D. Cal. 2017), *aff’d sub*
 23 *nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). When a “class’s membership changes
 24 continually over time, that factor weighs in favor of concluding that joinder of all members is
 25 impracticable.” *A.B.*, 30 F.4th at 838; *see also J.D. v. Azar*, 925 F.3d 1291, 1322 (D.C. Cir. 2019)
 26 (observing “classes including future claimants generally meet the numerosity requirement due to the
 27 impracticality of counting such members, much less joining them” (internal quotations omitted)); *cf.*
 28 *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 370 (C.D. Cal. 1982) (“Where the exact size of the class

1 is unknown but general knowledge and common sense indicate that it is large, the numerosity
2 requirement is satisfied.”).

3 Accordingly, the proposed Classes meet the numerosity requirement of Rule 23(a)(1).

4 **B. Commonality**

5 Rule 23(a)(2) requires that “there are questions of law or fact common to the class.” Fed. R. Civ.
6 P. 23(a)(2). Plaintiffs’ claims “must depend upon a common contention.” *Wal-Mart Stores*, 564 U.S. at
7 350. A contention is common where “it is capable of classwide resolution—which means that
8 determination of its truth or falsity will resolve an issue that is central to the validity of each one of the
9 claims in one stroke.” *Id.* “Even a single common question” will satisfy Rule 23(a)(2). *Wal-Mart Stores*,
10 564 U.S. at 359 (cleaned up); *see Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 981 (9th Cir. 2011)
11 (construing Rule 23(a)(2) requirements “permissively”). Moreover, “[a]ll questions of fact and law need
12 not be common to satisfy the commonality requirement. The existence of shared legal issues with
13 divergent factual predicates is sufficient.” *Gonzalez v. U.S. Immigr. And Customs Enf’t*, 975 F.3d 788,
14 807 (9th Cir. 2020) (internal quotations and alterations omitted). “Thus, where the circumstances of each
15 particular class member vary but retain a common core of factual or legal issues with the rest of the
16 class, commonality exists.” *Parsons v. Ryan*, 754 F.3d 657, 675 (9th Cir. 2014) (internal quotations
17 omitted).

18 In the Ninth Circuit, commonality is satisfied where, as here, Plaintiffs “challenge[] a system-
19 wide practice or policy that affects all of the putative class members.” *Armstrong v. Davis*, 275 F.3d
20 849, 868 (9th Cir. 2001); *accord Gonzalez*, 975 F.3d at 808; *see also Kingdom*, 2025 WL 1568238, at
21 *14 (commonality satisfied on motion for provisional certification for purposes of § 705 relief where
22 plaintiffs challenged a “blanket policy” affecting class members); 7A Wright, Miller & Kane, Fed.
23 Practice & Proc. § 1763, at 226 (4th ed. 2025) (“[C]lass suits for injunctive or declaratory relief by their
24 very nature often present common questions satisfying Rule 23(a)(2).”).¹ Both the Termination Class

26 ¹ *See, e.g., Gonzalez*, 975 F.3d at 807–09 (affirming finding that commonality requirement was met
27 where plaintiffs alleged the government had an unlawful policy and practice of basing probable cause
28 determinations on “only a check of an online database”); *Hernandez v. Lynch*, No. EDCV 16-00620-
JGB (KKx), 2016 WL 7116611, at *17 (C.D. Cal Nov. 10, 2016) (finding commonality among class of
detained immigrants challenging the same bond determination policies and practices); *Doe #1 v. Trump*,
335 F.R.D. 416, 433–34 (D. Or. 2020) (finding commonality requirement satisfied “in cases involving

1 and Policy Class satisfy the commonality requirement because both classes are challenging the legality
 2 of system-wide policies which have resulted in either class members' grant terminations (Termination
 3 Class) and/or class members being subject to forced renegotiation, rephrasing, and/or denial, or causing
 4 them to withhold applications for NIH funding as futile under the policies (Policy Class).

5 For the Termination Class, each putative class member was subject to, and terminated pursuant
 6 to, the same Challenged Policies. Accordingly, the Termination Class members share a "common core"
 7 of facts—that they were terminated and why. *Parsons*, 754 F.3d at 675. The "determination as to the
 8 legality of those common policies," i.e. determining whether these terminations were based on unlawful
 9 viewpoint discrimination and made in retaliation for protected speech in violation of the First
 10 Amendment, "will resolve class-wide claims 'in one stroke.'" *Cruz v. MM, 879, Inc.*, 329 F.R.D. 639,
 11 646 (E.D. Cal. 2019) (quoting *Wal-Mart Stores*, 564 U.S. at 350). The Termination Class tees up
 12 multiple common questions of law and fact, such as:

- 13 • Whether Defendants' termination of class members' NIH grants was based on viewpoint;
- 14 • Whether viewpoint-based termination of class members' NIH grants violates the First
 15 Amendment;
- 16 • Whether Defendants terminated class members' NIH grants based on class members'
 17 refusal or inability to comply with unconstitutional compelled speech conditions; and
- 18 • Whether Defendants' termination of class members' NIH grants was retaliatory under the
 19 First Amendment.

19 Because the Termination Class's claims are "capable of classwide resolution" and the
 20 determination of these common questions "will resolve an issue that is central to the validity of each one
 21 of the claims in one stroke," the Termination Class meets the commonality requirement. *Wal-Mart*
 22 *Stores*, 564 U.S. at 350.

23
 24
 25 challenges to systemic immigration policies and procedures, even though immigration decisions
 26 ultimately involve discretionary decisions by consular officers"); *Ms. L v. U.S. Immigr. & Customs*
 27 *Enft*, 331 F.R.D. 529, 539 (S.D. Cal. 2018) (finding commonality requirement satisfied where plaintiffs
 28 challenged government's "practice of separating migrant parents and children and keeping them separate
 without a showing the parent is unfit"); *Rodriguez v. Hayes*, 591 F.3d 1105, 1122–23 (finding
 commonality despite individualized differences because of common questions concerning
 constitutionality of prolonged immigration detention).

The Policy Class similarly satisfies the commonality requirement. As defined, the Policy Class includes those researchers whose NIH grants or applications have been, or would be, subject to termination, denial, rephrasing, or renegotiation based on Defendants’ Challenged Policies. While there is variation in the precise outcome suffered by each class member and the status of each class members’ pursuit of NIH funding, common contentions of law and fact will drive the resolution of their claims. *See Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 588 (9th Cir. 2012). For the proposed Policy Class, these common questions of law and fact include:

- Whether the Challenged Policies penalize certain disfavored viewpoints in government-facilitated private speech, and whether that is a violation of the First Amendment;
- Whether the Challenged Policies impose compelled speech conditions on funding in violation of the First Amendment;
- Whether the Challenged Policies are final agency actions;
- Whether the Challenged Policies are arbitrary and capricious in violation of the APA;
- Whether the Challenged Policies usurp each Institute and Center Director’s statutory authority to make the final decision on grant applications, and that is contrary to law under the APA; and
- Whether the Challenged Policies require existing awards be terminated for misalignment with agency priorities that were adopted after the awards were made, and whether this is contrary to law under the APA.

Central to each of these inquiries are Defendants’ system-wide policies, that similarly impact all Policy Class members. Accordingly, the proposed Classes satisfy the commonality requirement of Rule 23(a)(2).

C. Typicality

Rule 23(a)(3) requires that the claims “of the representative parties [be] typical of the claims . . . of the class.” Fed. R. Civ. P. 23(a)(3). “The test of typicality is ‘whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.’” *Parsons*, 754 F.3d at 685 (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)). The inquiry “focuses on the nature of the claim” that the proposed class representative brings, and not “the specific facts from

which it arose.” *Gonzalez*, 975 F.3d at 809 (internal quotation marks omitted); *see also Armstrong*, 275 F.3d at 868 (typicality is “satisfied when each class member’s claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant’s liability.”) (internal quotations omitted).

Like commonality, the typicality requirement “is permissive and requires nothing more than that a class plaintiff’s claims be reasonably coextensive with those of absent class members.” *Gonzalez*, 975 F.3d at 809 (internal quotations omitted). Typicality “is not primarily concerned with whether each person in a proposed class suffers the same type of damages; rather, it is sufficient for typicality if the plaintiff endured a course of conduct directed against the class.” *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1118 (9th Cir. 2017).

Here, Plaintiffs’ claims are typical of proposed class members’ claims because they all arise from, and challenge the legality of, Defendants’ Challenged Policies. The same course of events—specifically, Defendants’ adoption and application of the Challenged Policies (for the Policy Class), and Defendants’ terminations under the Challenged Policies (for the Termination Class)—are what have caused class members’ injuries. For each class, the proposed representatives of that class suffered similar injuries and request the same relief as absent class members.

1. Termination Class

For the Termination Class, each proposed class representative is a researcher listed on an NIH grant that was terminated based on the Challenged Policies. *See Salles* ¶¶ 11–15, Exs. 2 & 3; *Rosso* ¶¶ 25–30, Exs. 3 & 4; *Cohen* ¶ 21, Ex.3; *Daw* ¶¶ 15–17, Exs. 3 & 4; *Doe 2* ¶¶ 23–24, Ex. 2. The putative Termination Class’s claims arise from shared facts, such as (1) class members are researchers on NIH-funded grants; (2) that were terminated; (3) because Defendants determined that the grants ran afoul of the Challenged Policies, i.e., the grants did not align with NIH/HHS priorities and would result in the communication of views that Defendants disfavor. Accordingly, because the proposed class representatives share these facts with absent class members, and these shared facts underlie each of the class claims, the typicality requirement is met. *See, e.g., Armstrong*, 275 F.3d at 868–69; *see also Thakur*, 787 F. Supp. 3d at 1001–02 (finding typicality where plaintiffs’ grants were flagged by a keyword search and terminated pursuant to the same government policies).

2. Policy Class

Similarly, the Policy Class representatives bring claims typical of those of the putative class they represent. Each Plaintiff-representative's claims are coextensive with the claims of absent class members because all claims stem directly from the Defendants' adoption and enforcement of the Challenged Policies. Plaintiffs, like all putative class members, engage in NIH-funded research and would like to pursue future NIH-funded research. *See* Salles ¶¶ 6, 18; Hatcher ¶¶ 6, 28–30; Rosso ¶¶ 8, 38; Cohen ¶¶ 7, 29–30; Albarracín ¶¶ 8, 27; Moseson ¶¶ 12, 14–15, 42; Pagkas-Bather ¶¶ 8, 16, 21–22; Daw ¶ 8; Edwards ¶¶ 8, 24; Minor ¶¶ 6–7, 29; Green ¶¶ 8–10, 20; Jackson ¶¶ 7, 28, 31–32; Bell ¶¶ 8, 22, 30–33; Doe 1 ¶¶ 6, 20; Doe 2 ¶¶ 8, 30; Doe 3 ¶¶ 11–12; Doe 4 ¶¶ 8, 29. And, their research is and will continue to be negatively impacted by the Challenged Policies because their projects include words or are perceived to communicate viewpoints prohibited by the Challenged Policies—including disfavored viewpoints regarding “DEI” (Salles ¶ 7; Hatcher ¶ 7; Rosso ¶ 9; Cohen ¶ 8; Pagkas-Bather ¶¶ 9, 11, 16, 21–22; Daw ¶ 9; Green ¶¶ 9, 12; Jackson ¶¶ 12, 21; Doe 1 ¶ 7; Doe 2 ¶ 17; Doe 4 ¶5), gender identity (Moseson ¶¶ 5, 24; Edwards ¶¶ 11–12; Doe 3 ¶ 4), climate change (Minor ¶ 3; Bell ¶ 31), vaccine hesitancy (Albarracín ¶ 25), misinformation (Albarracín ¶ 25), and abortion (Bell ¶¶ 16–17, 19; Moseson ¶¶ 5, 18, 23–24, 36; Doe 1 ¶ 17). *See also* MPI at 13–16.

The Policy Class's First Amendment Claims are based on allegations that the Challenged Policies unlawfully (1) screen grants and applications for projects that Defendants believe will result in speech communicating disfavored viewpoints; and (2) penalize the researchers of these screened applications and grants (including by compelling adoption of the government's preferred viewpoints in research-related speech). Plaintiffs have all had their research screened for potential to communicate disfavored views under the Challenged Policies. *See* Salles ¶¶ 14–15; Hatcher ¶ 12; Rosso ¶¶ 22–25; Cohen ¶ 16; Albarracín ¶¶ 14–15, 22, 26; Moseson ¶¶ 23–24, 29–36; Pagkas-Bather ¶¶ 12, 15, 17–18; Daw ¶¶ 15–17; Edwards ¶¶ 14–15; Minor ¶¶ 19–21; Green ¶¶ 12, 16; Jackson ¶ 21; Bell ¶ 17; Doe 1 ¶ 12; Doe 2 ¶¶ 22–23; Doe 3 ¶¶ 16, 25; Doe 4 ¶ 17. And all Plaintiffs continue to be penalized under the Challenged Policies. *See* Salles ¶¶ 18–20, 22; Hatcher ¶ 12–24, 26, 28–30; Rosso ¶ 36; Cohen ¶¶ 27, 30; Albarracín ¶¶ 19, 24–27, 19, 22, 24–29; Moseson ¶¶ 23–24, 28–42; Pagkas-Bather ¶¶ 12, 15–22; Daw ¶ 22; Edwards ¶¶ 15–24; Minor ¶¶ 19–29; Green ¶¶ 12–21; Jackson ¶¶ 21–32; Bell ¶¶ 17–21, 27–33;

Doe 1 ¶¶ 9–10, 12–14, 16–23; Doe 2 ¶¶ 30–37; Doe 3 ¶¶ 16–22, 25–34, 36–37; Doe 4 ¶¶ 11–13, 15, 17–28. Accordingly, Plaintiff-representatives’ claims are typical of similarly situated researchers who are, or will be, impacted by the Challenged Policies and who all share the same bases for a First Amendment challenge.

The Policy Class’s APA claims are also rooted in the legality of the Challenged Policies and are shared between Plaintiff-representatives and the putative class. Plaintiff-representatives claim Defendants violated the APA because the Challenged Policies are contrary to law and are arbitrary and capricious. MPI at 24. Plaintiffs’ APA claims hinge on the statutory authority and reasoning underlying the Challenged Policies, and the legality of their requirements. Because the *policies* challenged in this suit are “not unique” to the individual Plaintiffs—indeed the analysis is identical regardless of any variance in the Plaintiffs’ circumstances—the Policy Class representatives’ claims are typical. *Parsons*, 754 F.3d at 685. All members of the proposed Policy Class that Plaintiffs seek to represent are being “injured by the same course of conduct.” *Id.*; *see also Kingdom*, 2025 WL 1568238, at *14 (finding proposed class met typicality requirement where all putative class members faced injury under the same blanket policy).

Accordingly, the proposed Classes satisfy the typicality requirement of Rule 23(a)(3).

D. Adequacy

Under Rule 23(a)(4), the Court must be satisfied that the “representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). This factor is assessed by answering two questions: “(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *Evon v. Law Offs. of Sidney Mickell*, 688 F.3d 1015, 1031 (9th Cir. 2012) (internal quotations and alterations omitted). This requirement “‘tend[s] to merge’ with the commonality and typicality criteria of Rule 23(a).” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 626 n.20 (1997) (alteration in original); *see Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982) (explaining that commonality and typicality “serve as guideposts” to ensure “the named plaintiff’s claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence”).

1 The individual Plaintiffs seeking to represent the proposed Termination and Policy Classes
2 satisfy both aspects of adequacy.

3 *First*, there is no conflict between the individual Plaintiffs and the proposed class members. All
4 members of each class suffer the same injury, and all seek the same relief. *See Nightingale v. USCIS*,
5 333 F.R.D. 449, 462 (N.D. Cal. 2019) (finding plaintiffs to be adequate representatives where they had a
6 “shared interest” or “mutual goal” with proposed class members to ensure lawful FOIA response
7 practices); *Kingdom*, 2025 WL 1568238, at *14 (finding plaintiffs satisfied the adequacy requirement
8 where they all faced the same “legal injury” as the putative class members). For the Termination Class,
9 proposed class representatives, like absent class members, seek reinstatement of their terminated grants.
10 For the Policy Class, proposed class representatives, like absent class members, seek to enjoin the
11 Challenged Policies. Neither Class nor any of the putative class representatives seek, nor could they
12 seek, guaranteed funding or a competitive advantage in the NIH extramural grant process that would
13 potentially generate a conflict. Instead, proposed class representatives, like the putative classes they
14 represent, seek only to vindicate their legal injuries and achieve the mutual goal of ensuring lawful NIH
15 grant and application review processes.

16 *Second*, the proposed class representatives understand that they are bringing their claims on
17 behalf of the putative classes and will vigorously prosecute this action on behalf of all class members
18 and subclass members. *See Salles* ¶ 23; *Hatcher* ¶ 31; *Rosso* ¶ 40; *Cohen* ¶ 31; *Albarracín* ¶ 30; *Moseson*
19 ¶ 43; *Pagkas-Bather* ¶ 23; *Daw* ¶ 24; *Edwards* ¶ 25; *Minor* ¶ 30; *Green* ¶ 22; *Jackson* ¶ 33; *Bell* ¶ 34;
20 *Doe 1* ¶ 28; *Doe 2* ¶ 42; *Doe 3* ¶ 38; *Doe 4* ¶ 30. Plaintiffs seek preliminary relief on behalf of both
21 proposed Classes as a whole, they share a common interest in ensuring the protection of their legal
22 rights, and they have no interest that is actually or potentially antagonistic to other putative members of
23 the proposed Class they represent. Accordingly, Plaintiffs meet the adequacy requirement of Rule
24 23(a)(4).

25 ***Proposed class counsel.*** Counsel representing the Plaintiffs are experienced civil rights attorneys
26 and practitioners in federal constitutional litigation, administrative law, class actions, and complex
27 litigation. *See Zelphin* ¶ 1–11; Decl. of Rachel Meeropol; Decl. of Shalini Agarwal; Decl. of Lisa
28 Mankofsky; Decl. of Daniel Jacobson. Plaintiffs’ counsel have adequately and thoroughly investigated

the claims prior to bringing this suit, and they will vigorously prosecute this action on behalf of the proposed Classes. Zelphin ¶ 11; Meeropol ¶ 11; Agarwal ¶ 8; Mankofsky ¶ 9; Jacobson ¶ 17–19. For these reasons, proposed class counsel also meet the requirements of Rules 23(a)(4) and 23(g).

In sum, the proposed Classes satisfy each requirement of Rule 23(a).

II. The proposed Classes meet the requirements of Rule 23(b)(2).

In addition to satisfying the requirements of Rule 23(a), the proposed Classes should be provisionally certified because Defendants have “acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2).

The “primary role” of Rule 23(b)(2) has “always been the certification of civil rights actions.” *Parsons*, 754 F.3d at 686 (citing *Amchem Products, Inc.*, 521 U.S. at 614). “The key to [a] (b)(2) class is ‘the indivisible nature of the . . . declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.’” *Wal-Mart Stores*, 564 U.S. at 360 (citation omitted). This standard is “unquestionably satisfied when members of a putative class seek uniform . . . declaratory relief from policies or practices that are generally applicable to the class as a whole.” *Parsons*, 754 F.3d at 688. Similarly, courts routinely certify or provisionally certify Rule 23(b)(2) classes seeking vacatur relief under the APA. *See, e.g., Thakur*, 787 F. Supp. 3d at 1004–05 (granting provisional certification of a Rule 23(b)(2) class and vacating a federal action); *Scholl v. Mnuchin*, 494 F. Supp. 3d 661, 691 (N.D. Cal. 2020) (certifying a Rule 23(b)(2) class and vacating a federal action); *Kidd v. Mayorkas*, 734 F. Supp. 3d 967, 976, 987 (C.D. Cal. May 15, 2024) (same, granting provisional certification); *Casa Libre/Freedom House v. Mayorkas*, No. 2:22-cv-01510-ODW (JPRx), 2023 WL 3649589, at *14–15 (C.D. Cal. May 25, 2023) (certifying Rule 23(b)(2) class seeking only APA vacatur relief); *Refugee & Immigr. Ctr. for Educ. & Legal Servs. v. Noem*, No. CV 25-306 (RDM), 2025 WL 1825431, at *49, 51 (D.D.C. July 2, 2025) (certifying Rule 23(b)(2) class, vacating federal guidance, and entering declaratory judgment). Rule 23(b)(2) does not require the Court to examine “the viability or bases of the class members’ claims for relief” nor find “that all members of the class have suffered identical injuries.” *Parsons*, 754 F.3d at 688.

1 “It is sufficient if class members complain of a pattern or practice that is generally applicable to the class
2 as a whole.” *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998).

3 The proposed Classes are prototypical Rule 23(b)(2) classes. *First*, Defendants have acted on
4 grounds generally applicable to the proposed Classes because they have subjected all members of the
5 proposed Classes to the same unlawful Challenged Policies. Courts have regularly certified Rule
6 23(b)(2) classes where, as here, plaintiffs challenge uniform policies and practices generally applicable
7 to the class. *See, e.g., Walters*, 145 F.3d at 1047 (affirming certification of Rule 23(b)(2) class where
8 plaintiffs sought equitable relief against INS practices in document fraud proceedings); *Rodriguez*, 591
9 F.3d at 1125–26 (same); *Ortega-Melendres v. Arpaio*, 836 F. Supp. 2d 959, 990–91 (D. Ariz. 2011)
10 (same).

11 *Second*, the prospective relief that Plaintiffs request for the proposed Classes is appropriate for
12 the Classes as a whole because the requested relief addresses Defendants’ failure to comply with the
13 Constitution and federal law on a systemic level. Plaintiffs request an injunction to prevent Defendants
14 from continuing to implement their unlawful policies pending judicial review. Because this remedy will
15 provide preliminary relief to all members of the proposed Classes, provisional certification under Rule
16 23(b)(2) is appropriate. *See Parsons*, 754 F.3d at 689 (finding Rule 23(b)(2) requirements met where
17 “every [person] in the proposed class is allegedly suffering from the same (or at least a similar) injury
18 and that injury can be alleviated for every class member by uniform changes in [the agency’s] policy
19 and practice”). Furthermore, the Policy Class also seeks vacatur relief and a stay under the APA, and
20 “courts have routinely certified Rule 23(b)(2) classes seeking vacatur relief under the APA.” *Nat’l TPS*
21 *All. v. Noem*, 830 F. Supp. 3d 939, 964 (N.D. Cal. 2025).

22 Whether Plaintiffs are entitled to the requested relief is not the proper inquiry to determine
23 provisional certification. “All the Court does at this time is observe that the lawfulness or unlawfulness
24 of the [challenged actions] is capable of systemwide treatment by way of a declaration” *Casa*
25 *Libre/Freedom House*, 2023 WL 3649589, at *10 (certifying Rule 23(b)(2) class in a challenge to the
26 way DHS processed Special Immigrant Juvenile petitions); *see also* Fed. R. Civ. P. 23(c)(1) advisory
27 committee’s note to 2003 amendment (“[A]n evaluation of the probable outcome on the merits is not
28 properly part of the certification decision[.]”).

1 Accordingly, Plaintiffs respectfully request that the Court provisionally certify the proposed
2 Classes under Rule 23(b)(2).

3 **CONCLUSION**

4 For the foregoing reasons, the Court should provisionally certify the proposed Termination Class
5 and the proposed Policy Class under Federal Rules of Civil Procedure 23(a) and 23(b)(2). Additionally,
6 Plaintiffs request that the Court provisionally appoint the American Civil Liberties Union Foundation,
7 American Civil Liberties Union of Northern California, Protect Democracy, the Center for Science in
8 the Public Interest, and Jacobson Lawyers Group PLLC class counsel pursuant to Rule 23(g).

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10
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Respectfully submitted,



12
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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ARGHAVAN SALLES; ABIGAIL HATCHER;
ANDREA ROSSO; ANN D. COHEN-WILSON;
DOLORES ALBARRACIN; HEIDI MOSESON;
JADE PAGKAS-BATHER; JONATHAN KYLE
DAW; KATIE EDWARDS; KELTON MINOR;
MICHAEL D. GREEN; SARA JACKSON;
SUZANNE BELL; JORDAN DOE 1; JORDAN DOE
2; JORDAN DOE 3; and JORDAN DOE 4, *on behalf
of themselves and all others similarly situated,*

Plaintiffs,

v.

NATIONAL INSTITUTES OF HEALTH; JAY
BHATTACHARYA, *in his official capacity as
Director of the National Institutes of Health*; UNITED
STATES DEPARTMENT OF HEALTH AND
HUMAN SERVICES; ROBERT F. KENNEDY, JR.,
*in his official capacity as Secretary of the United States
Department of Health and Human Services*; and
UNITED STATES DOGE SERVICE,

Defendants.

Case No. 3:26-cv-10510-SK

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
PROVISIONAL CLASS
CERTIFICATION**

* Application for *Pro Hac Vice* Admission Forthcoming

** Out-of-State Licensee Renewal Pending

(Additional Counsel on Behalf of Plaintiffs)

**AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA**

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Telephone: (301) 823-1148

* Application for *Pro Hac Vice* Admission Forthcoming

[PROPOSED] ORDER

The Court, having considered Plaintiffs' Motion for Provisional Class Certification, hereby GRANTS the Motion as follows:

IT IS ORDERED that the following classes be provisionally certified under Federal Rules of Civil Procedure 23(a) and 23(b)(2):

- **Termination Class**: All principal investigators, multiple-principal investigators, researchers, or project leaders for National Institutes of Health ("NIH") research grants identified for termination based on the Challenged Policies, whose grants remain terminated.
- **Policy Class**: All persons who have an existing NIH grant and/or who applied or will apply for an NIH grant whose grant or application is subject to termination, denial, rephrasing, or renegotiation based on the Challenged Policies; and all persons who would apply for an NIH grant but for the Challenged Policies.

The Court finds that, based on the claims advanced in Plaintiffs' [REDACTED] Action Complaint (ECF 1) and the supporting evidentiary record related to their Motion for Preliminary Injunction (ECF 33) and Motion for Provisional Class Certification (ECF __), including the Declarations and accompanying exhibits submitted with the Doe Plaintiffs' Administrative Motion to Proceed Pseudonymously (ECF 7–10) the requirements of Rule 23(a) are met. Specifically, the Court finds that (1) each class is so numerous that individual joinder of all members is impracticable; (2) questions of law or fact exist that are common to each class; (3) the claims of the representative plaintiffs are typical of the claims of the putative classes; and (4) the class representatives will competently and vigorously represent the interests of each class, and have no interests that conflict with those of other class members. *See* Fed. R. Civ. P. 23(a)(1)-(4). As to the requirements of Rule 23(b)(2), the Court finds that the above-referenced record meets Plaintiffs' burden of proof to establish the efficacy of classwide adjudication of common questions, and that Defendants have "acted or refused to act on grounds that apply generally to the class." Fed. R. Civ. P. 23(b)(2).

IT IS FURTHER ORDERED that Plaintiffs Salles, Rosso, Cohen, Daw, and Doe 2 shall be appointed as representatives of the Termination Class and that Plaintiffs Salles, Hatcher, Rosso, Cohen, Albarracín, Moseson, Pagkas-Bather, Daw, Edwards, Minor, Green, Jackson, Bell, and Jordan Does 1-4 shall be appointed as representatives of the Policy Class.

1 IT IS FURTHER ORDERED that, pursuant to Federal Rules of Civil Procedure 23(a)(4) and
2 23(g), the American Civil Liberties Union Foundation, the American Civil Liberties Union Foundation
3 of Northern California, Protect Democracy, the Center for Science in the Public Interest, and the
4 Jacobson Lawyers Group PLLC shall be appointed as counsel for both of the two putative classes. The
5 Court makes this decision based on submissions by counsel at each of the foregoing organizations and
6 deems the representation appropriate because counsel have helped to investigate the claims in this
7 action; have engaged in extensive class action litigation or other complex federal litigation involving
8 statutory claims and constitutional issues; have demonstrated knowledge of the applicable law; and will
9 faithfully devote their time and resources to representing the two putative classes.

10 This order “may be altered or amended before final judgment.” Fed. R. Civ. P. 23(c)(1)(C).

11 **IT IS SO ORDERED.**

12
13 Dated: Nov. __, 2026

14 Hon. Sallie Kim
United States Magistrate Judge
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28

AMERICAN CIVIL LIBERTIES UNION FOUNDATION

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Attorneys for Plaintiffs

(Additional Counsel on Following Page)

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Defendants.

Case No. 3:26-cv-10510-SK

**DECLARATION OF GRAYCE
ZELPHIN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PROVISIONAL CLASS
CERTIFICATION**

* Application for *Pro Hac Vice* Admission Forthcoming

**Out-of-State Licensee Renewal Pending

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Washington, DC 20016

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* Application for *Pro Hac Vice* Admission Forthcoming

1 I, Grayce Zelphin, declare:

2 1. I am an attorney admitted to practice in California. I am a Senior Staff Attorney at the
3 American Civil Liberties Union Foundation of Northern California (“ACLU-NC”), counsel for Plaintiffs
4 in this action. I submit this declaration in support of Plaintiffs’ Motion for Provisional Class
5 Certification.

6 2. I have personal knowledge of the facts set forth in this declaration, and if called to testify
7 as a witness thereto, could do so competently under oath. I submit this declaration in support of
8 Plaintiffs’ Motion for Provisional Class Certification pursuant to Federal Rule of Civil Procedure 23.

9 3. The ACLU-NC is a non-profit corporation that is tax-exempt under § 501(c)(3) of the
10 Internal Revenue Code. It is a nonpartisan organization dedicated to defending the civil liberties and
11 civil rights guaranteed by the federal and state constitutions. The ACLU-NC does not receive
12 government funding. The ACLU-NC litigates civil rights cases, frequently in conjunction with private
13 counsel, combining our expertise in civil rights and impact litigation with the resources and experience
14 of the private bar. The ACLU-NC has served as lead counsel in dozens of civil rights class actions and
15 has served as lead class counsel before this Court on many occasions.

16 4. I have been an attorney with the ACLU-NC since November 2020 and have been
17 involved in all aspects of this case. To my knowledge, ACLU-NC has no conflicts of interest that would
18 prevent the firm from providing zealous representation to the named Plaintiffs and the putative classes
19 they represent.

20 5. I have been an active member of the State Bar of California since 2011. I received a Juris
21 Doctor degree from U.C. Berkeley School of Law in May 2011. Prior to joining the ACLU-NC, I
22 worked as an Associate at the law firm Boies Schiller Flexner (2018-2019) and at Skadden, Arps, Slate,
23 Meagher & Flom LLP (2011-2014, 2015-2017). I also served as a judicial law clerk to the Honorable
24 Consuelo B. Marshall on the U.S. District Court for the Central District of California and for the
25 Honorable Ann Claire Williams on the U.S. Court of Appeals for the Seventh Circuit.

26 6. I have extensive experience litigating complex civil rights and class action cases. In both
27 private practice and nonprofit civil rights practice, I have served as counsel representing both defendants
28 and plaintiffs in federal class actions and putative class actions, including: *In Re: Toyota Motor Corp.*

1 *Unintended Acceleration marketing, Sales, Practices, and Products Liability Litigation* (C.D. Cal., No.
 2 8:10ml2151-JVS-FMOx) (representing defendant and opposing class certification in complex and novel
 3 products liability matter; settlement reached); *Hernandez v. Lynch* (C.D. Cal., Case No. 5:16-00620-
 4 JGB-KK) (representing plaintiff-class in securing a classwide injunction requiring Immigration and
 5 Customs Enforcement agents to consider a person's financial capacity and ability to pay when setting
 6 immigration detention bond amounts); *Geary v. Pacifica* (N.D. Cal., Case No. 3:21-cv-01780)
 7 (representing plaintiff-class in securing classwide preliminary injunction requiring city to desist
 8 enforcing an unconstitutional policy against unhoused individuals; settlement reached); *Navarro v.*
 9 *Mountain View* (N.D. Cal., 5:21-cv-05381-NC) (representing putative plaintiff class in challenging a
 10 citywide policy on constitutional grounds; settlement reached); *Mathis v. County of Siskiyou* (E.D. Cal.,
 11 2:22-cv-01378-KJM-AC) (representing putative plaintiff class seeking to secure water access on behalf
 12 of rural community and challenging unconstitutional police practices; settlement reached).

13 7. Other members of the ACLU-NC who represent Plaintiffs and the putative classes in this
 14 litigation are Neil Sawhney and Chessie Thacher, both who have deep experience representing plaintiffs
 15 in class action and civil rights cases. Both are also members in good standing of the California State Bar
 16 and the Bar of this Court.

17 8. Neil Sawhney has been an active member of the State Bar of California since 2014. He
 18 received a Juris Doctorate from Stanford Law School in 2014. Prior to joining the ACLU-NC, he was an
 19 associate at Gupta Wessler LLP (2020-2023), and a Senior Staff Attorney at the Southern Poverty Law
 20 Center's Economic Justice Project (2017-2020). Before that, Mr. Sawhney clerked for the Honorable
 21 Marsha Berzon of the U.S. Court of Appeals for the Ninth Circuit and the Honorable Goodwin Liu,
 22 Associate Justice of the California Supreme Court from 2016-2017.

23 9. Mr. Sawhney has extensive experience litigating complex civil rights and class litigation.
 24 He served as class co-counsel for a certified class challenging unlawful labor practices in *Mills v. Target*
 25 *Corp.*, No. 20-1460-JGB (C.D. Cal. 2021), which he later argued before the Ninth Circuit. *See Mills v.*
 26 *Target Corp.*, 2023 WL 2363959 (9th Cir. Mar. 6, 2023). He also served as co-counsel to putative
 27 classes in *Brooks v. Thomson Reuters Corporation*, No. 3:21-cv-01418-EMC-KAW (N.D. Cal. 2021), a
 28 statewide challenge to the defendant's violation of Californian's privacy rights; *Abiala v. Barr*, No.

7:19-cv-00082-HL (M.D. Ga. 2019), a constitutional challenge to federal immigration officials' detention of immigrants on unaffordable cash bond; *Stewart v. Azar*, No. 1:18-cv-00152-JEB (D.D.C. 2018), a constitutional and APA challenge to the federal government's implementation of Medicaid work requirements in Kentucky; and *Egana v. Blair's Bail Bonds, Inc.*, No. 2:17-cv-05899-WBV-DMD (E.D. La. 2017), a novel suit brought under the Racketeer Influence and Corrupt Organizations Act challenging abusive bail-bond practices.

10. Chessie Thacher has been an active member of the State Bar of California since 2014. She received a Juris Doctorate from Stanford Law School. Before joining the ACLU-NC in February 2020, she was a litigator at Kecker, Van Nest & Peters LLP (2013-2019), and also clerked for the Hon. Robert P. Patterson, Jr. on the U.S. District Court for the Southern District of New York and for the Hon. Sidney R. Thomas for the U.S. Court of Appeals for the Ninth Circuit.

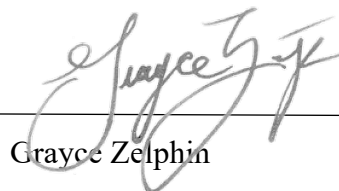
11. Prior to filing the instant litigation, ACLU-NC, along with its co-counsel at the American Civil Liberties Foundation, Protect Democracy, Center for Science in the Public Interest, and the Jacobson Lawyers Group PLLC, diligently and thoroughly investigated the Plaintiffs' claims both legally and factually.

12. I have attached to this declaration true and correct copies of publicly promulgated documents, as follows:

13. Attached hereto as **Exhibit 1** is a true and correct copy of a printout from *Grant Disruptions: National Institutes of Health*, Grant Witness (September 25, 2026), <https://grantwitness.org/nih>.

14. Attached hereto as **Exhibit 2** is a true and correct copy of an article by Jeremy M. Berg, *Characterizing Coerced Word Removal from NIH Grants in Fiscal Year 2026*, Stand Up For Sci. Found. (Sep. 11, 2026), <https://perma.cc/4X43-6N9X>.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Pasadena, CA this 25 day of September 2026.



Grayce Zelphin

Exhibit 1

We have a new site and would love your feedback

REACH OUT →



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Updates ▾

About

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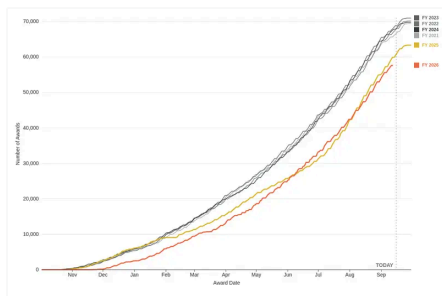
GRANT DISRUPTIONS

National Institutes of Health

Often called the “crown jewel” of American biomedical and public health science by members of both parties in Congress, NIH funds more health science research than any other agency or institution in the world.

LAST UPDATED AUGUST 24, 2026

Agency Pulse



Grantmaking Progress at NIH

Track NIH's progress in making grants across institutes, mechanisms, and states, and compare it to previous fiscal years.

[→ VIEW ANALYSIS](#)

Grant Disruptions at a Glance

State **ALL STATES** Category **ALL** [COPY LINK](#) [EXPORT CSV](#)

Summary

5,780

Number of disrupted grants

GRANTS THAT WERE DISRUPTED SINCE WE STARTED TRACKING DISRUPTIONS, INCLUDING THOSE NOW RESTORED

4,549

Grants restored

GRANTS THAT WERE DISRUPTED AND LATER RESTORED

1,231

Grants disrupted

GRANTS THAT ARE STILL DISRUPTED AND HAVE NOT BEEN RESTORED



Dollars at stake

BILLIONS OF DOLLARS IN FEDERAL INVESTMENTS IN HEALTH SCIENCE RESEARCH HAVE BEEN DISRUPTED.

\$15B

Total award value for disrupted grants

TOTAL FUNDING OBLIGATION OF DISRUPTED GRANTS

\$7.1B

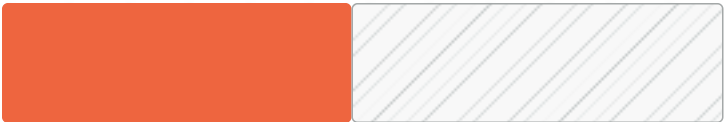
Dollars outlaid

FUNDING PAID BEFORE DISRUPTION

\$7.6B

Dollars unpaid

FUNDING REMAINING AT DISRUPTION



Most recent grant disruptions

NIH CONTINUES TO ALTER AND TERMINATE GRANTS. THESE ARE SOME RECENT EXAMPLES.

DISRUPTED AUG 17, 2026

**Microbial drivers of
metabolically unhealthy
obese phenotype**

\$360K

Dollars outlaid

\$174K

Dollars unpaid

→ GRANT INFO

DISRUPTED AUG 10, 2026

**Predictors of Altered
CNS Structure, Function,
and Connectomics in the
Elderly using a Health
Disparities Framework**

\$7.1M

Dollars outlaid

\$2.5M

Dollars unpaid

→ GRANT INFO

DISRUPTED AUG 10, 2026

**Longitudinal |
Neighborhood
Cognitive Age
Alzheimer's D
in Disinvested
American Nei**

\$7.6M

Dollars outlaid

→ GRANT INFO



Where grant disruptions occurred

NEARLY EVERY STATE IN THE COUNTRY HAS LOST NIH FUNDS UNDER TRUMP.

State

Congressional District

cancer

coronavirus¹⁹⁷ network¹⁹¹ CRISPR¹⁷⁹ COVID¹⁷³

implementation¹⁶⁸ adolescent¹⁶³ amyloid¹⁶⁰ brain¹⁶⁰

resistance¹⁶⁰ Alzheimer's¹⁵⁸¹⁴⁹ neuronal¹⁴³ american¹³⁷

RNA¹³³ prevention¹²⁸ diabetes¹²⁶ signaling¹²⁶

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Methods: Agency Grantmaking Over Time



Agency Pulse: Grantmaking at NIH



Agency Pulse: Multiyear Funding at NIH



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Explore the grants list

Click on each column to define filters based on them, or search for specific keywords. Scroll right to see additional columns, or download the full dataset via .csv for even more information.

Loading grants...

Methodology

Our methods for tracking disrupted NIH grants

We aggregate data from as many sources as possible. These include government-wide datasets, including multiple datasets hosted at USASpending.gov, as well as agency-specific datasets where available. We cross-check these datasets with each other and with crowdsourced first-hand reports of grant terminations, freezes, reinstatements, and other events. We also verify and validate our datasets with primary source documents, including Notices of Award that Principal Investigators or affected institutions send to us. Finally, we scrape data from court filings, whistleblower reports, and news articles. To the greatest extent possible, we list each piece of evidence that supports our classification of any specific grant.

A more detailed, NIH-specific explanation of our methods is coming soon.

[REPORT A GRANT](#)

Submit a terminated grant

If you or someone you know has had a grant terminated, frozen, suspended, not renewed, or otherwise disrupted for any reason, please report it to us. We will not share any information you submit to us without your prior express permission.

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National Science Foundation

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SAMHSA

Substance Abuse and Mental Health Services
Administration

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AHRQ

Agency for Healthcare Research and Quality

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Reach out to the Grant Witness team.



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WITNESS

An independent, grant-level record of federal science funding disruption.

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Exhibit 2

Characterizing Coerced Word Removal from NIH Grants in Fiscal Year 2026

By Jeremy M. Berg PhD, Stand Up for Science Advisor

Initial Observations

The National Institutes of Health (NIH) under the current administration has been disrupting and terminating research and training grants on the grounds that they “[no longer effectuate the program goals or agency priorities.](#)” Many of these disruptions are connected to “DEI” as articulated in an [early Executive Order](#). This presents “DEI,” without much definition, as a recent priority. But NIH, with considerable support and pressure from Congress, has developed programs to increase representation of groups historically underrepresented in biomedical research, including racial and ethnic minorities, women, individuals with disabilities, and others, going back to the 1970s.

In contrast to this congressional mandate, NIH staff are now charged with reviewing both new and existing grant applications for “misalignment” with “agency priorities” and enforcing changes when this is the case. This process has been called “renegotiation” or even “remediation.” However, there has been relatively little transparency into the process. Some of the early grant flagging was apparently done by individuals associated with DOGE, or by program officers or grants management specialists working under orders. However, more information is generally not made public in any way and investigators and institutions, interested in getting their grants funded, rarely discussed the process.

For most NIH grants which are awarded for more than one year, funding for the second and subsequent years are contingent on the submission of a scientific and financial progress report. These reports are reviewed both by program officers (doctorate-level scientists) who review the scientific progress and the plans for the upcoming grant period, and by grants management specialists who review spending and compliance with the terms and conditions of the grant award. Under normal circumstances, 98-99% of these non-competitive renewal grants are funded, sometimes after some back-and-forth between the principal investigator and their institution and NIH staff.

In August 2025, a colleague of mine made an offhand comment to me that a grant he was involved with had finally had its non-competitive renewal grant awarded, but only after they had modified the title and abstract. This is a sad state of affairs but also presented an opportunity to bring some visibility into the scope and characteristics of the “renegotiation” process. What words and phrases are not “in alignment”? Conveniently, titles and abstracts for funded grants are publicly available on the [NIH Reporter website](#). Under normal circumstances, titles do not change from year to year, and abstracts also often remain unchanged. But if titles are being changed in response to these renegotiations, then this should be trackable using publicly available data.

I downloaded the relevant records from NIH Reporter and looked for grants that had been funded in fiscal year 2024 and were due for non-competitive renewal awards in fiscal year 2025. If such awards had been made, I compared their 2024 and 2025 titles. For the 777 awards I found, some had insignificant changes such as typo corrections. For others, however, very specific words had been removed.

To visualize the changes, I uploaded the removed words into a [commercial word cloud generator](#). The resulting word cloud confirmed my suspicions.

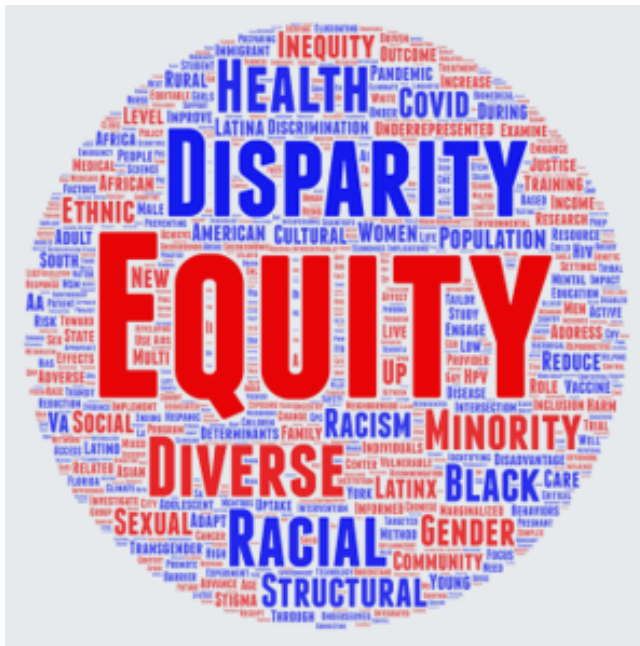


Fig. 1

Word cloud of removed words from 777 grants with non-competitive renewals funded in fiscal year 2025.

I posted the [results of this analysis on Bluesky](#). This was picked up by the press and [a story soon appeared](#) about these “banned words” that NIH leadership had repeatedly claimed did not exist. NIH has subsequently confirmed that they have developed a computer-based screening tool that examines grant applications to look for terms that are “not aligned with agency priorities.” NIH Director Jayanta Bhattacharya claims that program staff are not or should not be using this tool for identifying terms out of alignment, but this is contrary to the practice being imposed on program officers. For example, at the [2026 Coordinating Center on the Economics of AD/DRD Prevention Treatment \(minute 29\)](#), he was asked by an NIH program officer if he was “aware that your program staff are being asked to remove words from applications and to tell applicants to remove words from applications?” He responded, “That’s against my orders. There is no banned word list. You have heard how I want to do this. If they are telling you to remove words, they should not be telling you do to that.”

It is not clear who “they” is in this sentence but reports from NIH program staff indicate that “they” includes Jon Lorsch, Deputy Director for Extramural Research, the most senior grants official at NIH. Either Director Bhattacharya is unaware of how the agency he is charged to lead is conducting its business, or he is engaged in high level gaslighting of his staff and the public.

Results for Fiscal Year 2026

I have now repeated this analysis for non-competitive renewal grants funded in the current fiscal year (fiscal year 2026). The results are remarkably similar to those seen previously. Of approximately 25,000 non-competitive renewal awards, slightly over 600 have one or more words added or removed. The word most commonly missing was “Alzheimers.” Examination revealed that this was due to changes from “Alzheimers” to the correct form “Alzheimer’s” for 135 grants. I removed “Alzheimers,” “Parkinsons” and “Childrens” from the list since these were common changes made as corrections, rather than for some other reason. I also omitted words that were removed from only a single grant since these were mostly typo corrections or similar and, in any case, do not occur frequently.

The remaining 556 removed words were visualized using the word cloud generator.

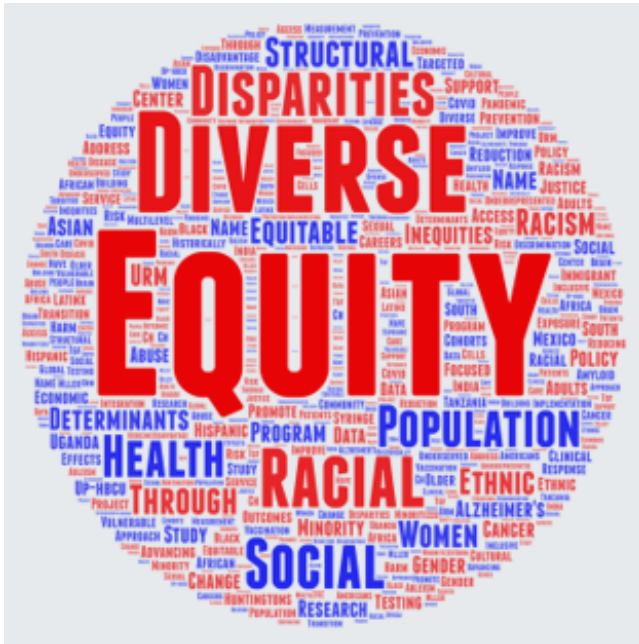


Figure 2.

Word cloud of removed words from approximately 500 grants with non-competitive renewals funded in fiscal year 2026.

This is strikingly similar to what I observed in the previous fiscal year. The most commonly removed words were “Equity” (25 occurrences), “Diverse” (24 occurrences), “Racial” (14 occurrences), “Social” (12 occurrences), and “Disparities” (12 occurrences).

To provide more context about these changes, here is a set of selected changes:

... Intervention to Improve HIV Prevention Service Engagement and Intersectional Stigma among **Racially Diverse Women** Who Use Drugs

to

... Intervention to Improve HIV Prevention Service Engagement among **People** Who Use Drugs

Social Determinants of Vision Health in Children

to

Preventing Vision Loss in Childhood

.... An Academic and Community Alliance to Eliminate **Disparities** throughout the Fibroid Experience...

to

... An Academic and Community Alliance to Eliminate **Differences** throughout the Fibroid Experience...

Improving the delivery **and equity** of inpatient palliative care: a hybrid type I pragmatic cluster trial

to

Research Education Program **to Promote Diversity** in Immunologic and Allergic Diseases

to

Research Education Program in Immunologic and Allergic Diseases

Recruitment and Retention for Alzheimer's Disease **Diversity Genetic Cohorts** in the ADSP

to

Recruitment and Retention for Alzheimer's Disease **Detailed Genetic Cohorts** in the ADSP

and

Promoting **Equity** of Cancer Screening and Follow-up for Lung Cancer.

to

Promoting Improvements in Screening and Follow-up for Lung Cancer **in Rural Communities**

These changes are clearly based on specific words rather than a more detailed analysis of concepts. For example, the following change was made.

Viral Diversity an Innovative Biomarker for Refining Estimates of HIV Incidence

to

HIV-1 Genetic Variability as a Biomarker to Refine HIV Incidence Estimates

“Viral Diversity” relates to the population of HIV virus genomes present and does not have any connection to diversity of the human population. This was replaced with “HIV-1 Genetic Variability.” This is a reasonable change, but it seems likely that this change was made because the term “diversity” was flagged by the NIH screening tool, rather than a content-based analysis.

Efficiency of Word Removal

It is not clear how efficiently these terms were removed across NIH grants. This is especially true since many of the terms removed from grant titles might be used in other contexts. I focused on 36 terms: equity, disparities, social, determinants, equitable, populations, racial, racism, gender, inequities, Africa, African, Black, diversity, Latinx, minority, racially, ableism, discrimination, underrepresented, underserved, cultural, disadvantage, Hispanic, historically, immigrant, inequalities, justice, Mexico, minorities, minoritized, racially/ethnically, sexual, Tanzania, Uganda, and vulnerable.

I compared the number of grant titles containing these words that were due for a non-competitive renewal in fiscal year 2025 with the number of those from titles from which the words were removed.

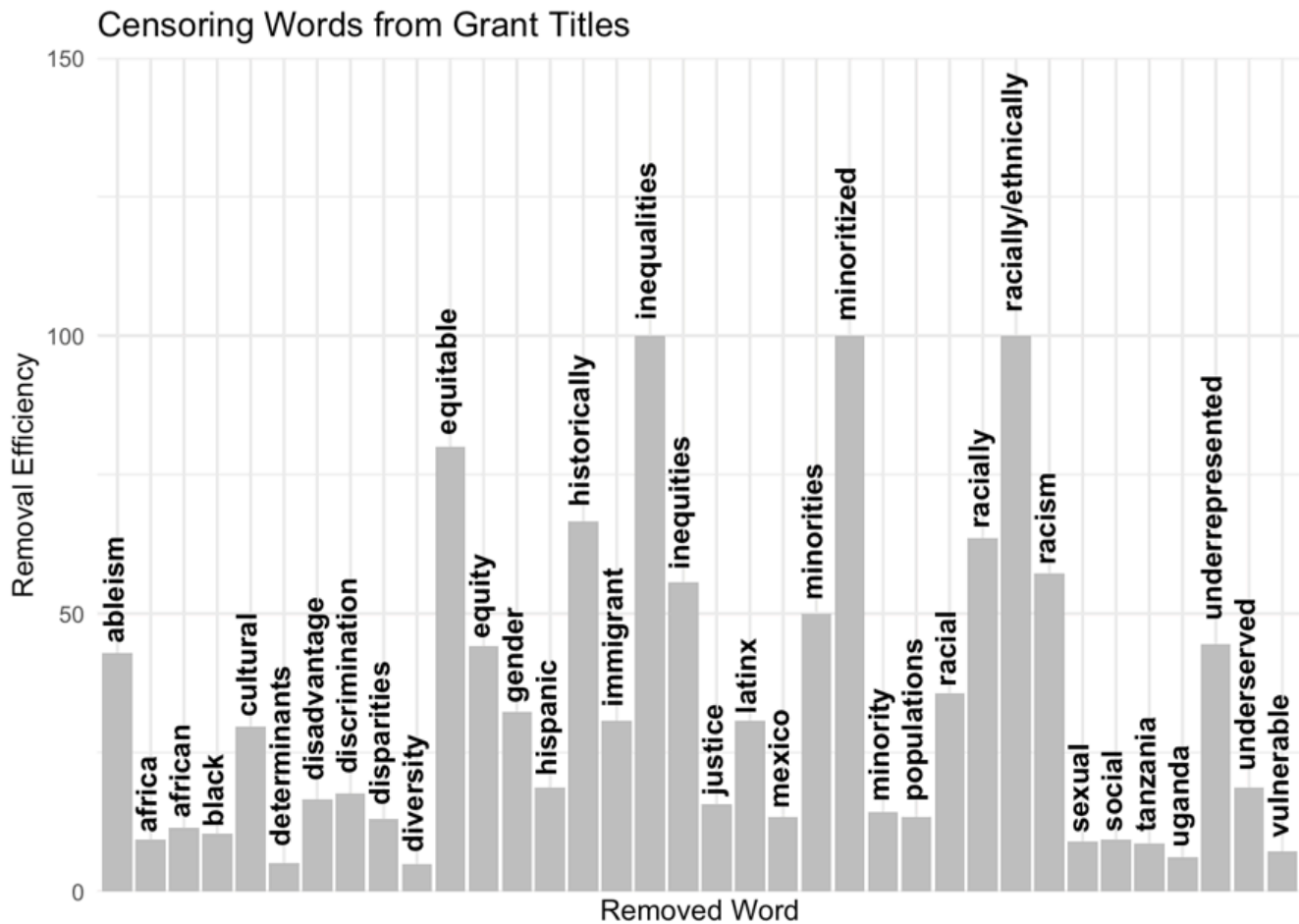


Figure 3. The percentage of eligible grant titles from fiscal year 2025 containing one of the selected words from which the word was removed.

The results show that the terms “inequalities,” “minoritized” and “racially/ethnically” were removed every time they occurred. The overall average removal efficiency was 11.5%.

I also examined the distribution of these grants across NIH Institutes and Centers.

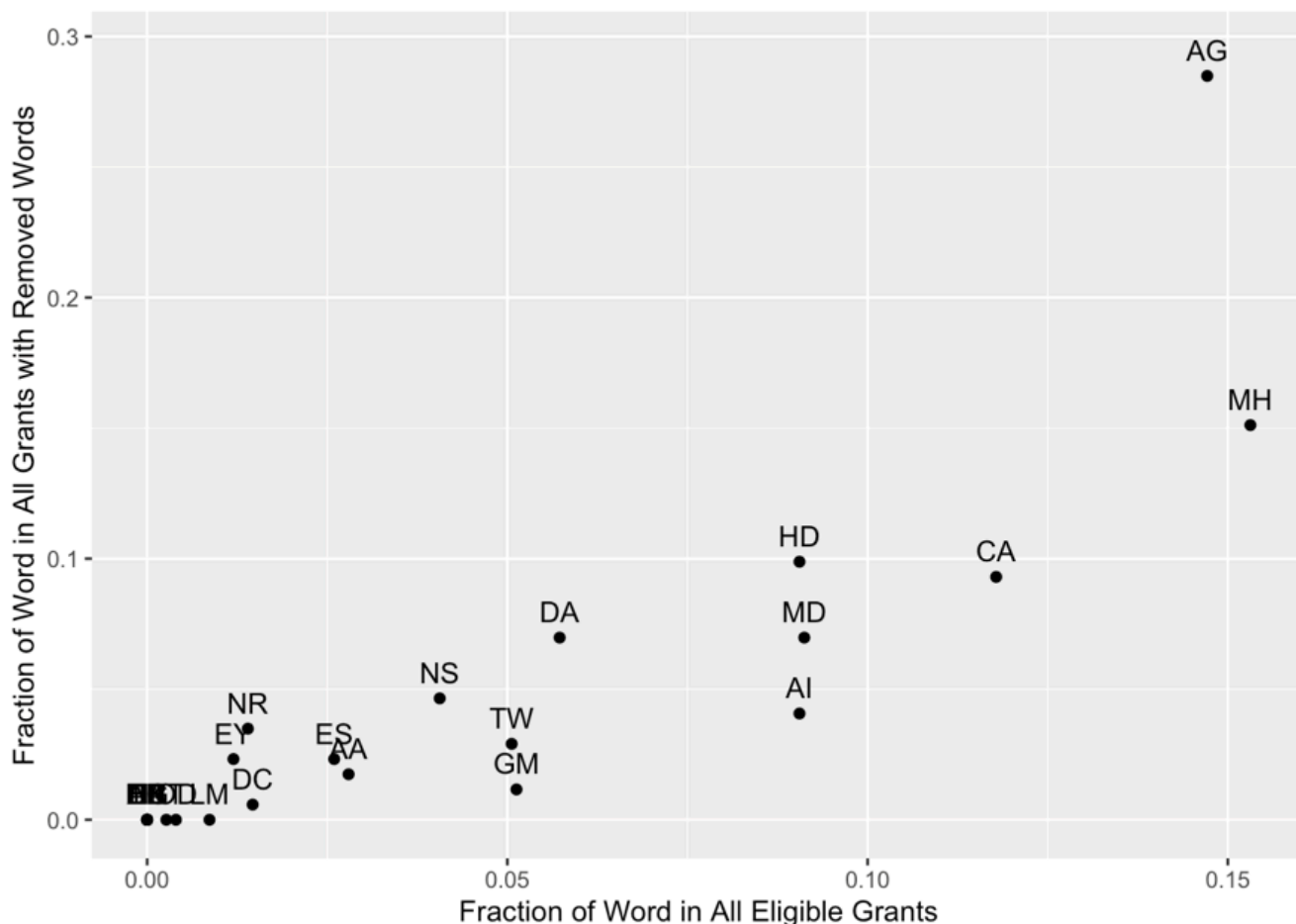


Figure 4. The distribution of word removal across NIH institutes and centers, designated with two-letter abbreviations.

The relatively linear trend shows that, overall, all institutes and centers removed words from a similar fraction of the eligible grants that contained those words. The overall Pearson correlation coefficient is 0.87.

Taken together, these observations suggest that the renegotiation process is being driven by the Office of the Director or other centralized office such as the Office of Extramural Research.

Conclusions

The removal of words and terms from NIH grants upon the awarding of non-competitive renewals continues much as it occurred in fiscal years 2024 to 2025. These changes are made by principal investigators and institutions under coercion from NIH about changes that are required in order for grants to be funded. It is unclear how much this affects the actual research being conducted, as opposed to the language used to describe it, although this may be amenable to analysis over time. Moreover, this approach certainly underestimates the true changes since other changes in scope or approach must be occurring without changes in grant titles. The censorship is radically different from anything that I have seen at NIH in the more than 40 years that I have been interacting with this agency. It is detrimental to science and to stewardship of public funds.

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**UNITED STATES DISTRICT COURT
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SAN FRANCISCO DIVISION**

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MICHAEL D. GREEN; SARA JACKSON;
SUZANNE BELL; JORDAN DOE 1; JORDAN DOE
2; JORDAN DOE 3; and JORDAN DOE 4, *on behalf
of themselves and all others similarly situated,*

Plaintiffs,

v.

NATIONAL INSTITUTES OF HEALTH; JAY
BHATTACHARYA, *in his official capacity as
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STATES DEPARTMENT OF HEALTH AND
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*in his official capacity as Secretary of the United States
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UNITED STATES DOGE SERVICE,

Defendants.

Case No. 3:26-cv-10510-SK

**DECLARATION OF RACHEL
MEEROPOL IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PROVISIONAL CLASS
CERTIFICATION**

* Application for *Pro Hac Vice* Admission Forthcoming

**Out-of-State Licensee Renewal Pending

1 *(Additional Counsel on Behalf of Plaintiffs)*

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3 **FOUNDATION OF NORTHERN CALIFORNIA**

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13 **PROTECT DEMOCRACY PROJECT**

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* Application for *Pro Hac Vice* Admission Forthcoming

1 I, Rachel Meeropol, declare:

2 1. I am an attorney admitted to practice in New York. I am a Senior Counsel at the
3 American Civil Liberties Union Foundation (“ACLU”), counsel for Plaintiffs in this action. I submit this
4 declaration in support of Plaintiffs’ Motion for Provisional Class Certification.

5 2. I have personal knowledge of the facts set forth in this declaration, and if called to testify
6 as a witness thereto, could do so competently under oath.

7 3. The ACLU is a non-profit corporation that is tax-exempt under § 501(c)(3) of the Internal
8 Revenue Code. It is a nonpartisan organization dedicated to defending the civil liberties and civil rights
9 guaranteed by the federal and state constitutions. The ACLU does not receive government funding. The
10 ACLU litigates civil rights cases, frequently in conjunction with private counsel, and local state
11 affiliates, combining our expertise in civil rights and impact litigation with the resources and experience
12 of the private bar. The ACLU has served as lead counsel in thousands of civil rights class actions and
13 has served as lead class counsel before this Court on past occasions.

14 4. I have been an attorney with the ACLU since September of 2022 and have been involved
15 in all aspects of this case. To my knowledge, ACLU has no conflicts of interest that would prevent the
16 firm from providing zealous representation to the named Plaintiffs and the putative Classes they
17 represent.

18 5. I have been an active member of the State Bar of New York since 2003. I received a Juris
19 Doctor degree from New York University School of Law in 2002. Prior to joining the ACLU, I
20 worked at the Center for Constitutional Rights (CCR), where I was a Senior Staff Attorney and the
21 Associate Director of Legal Training and Education.

22 6. I have extensive experience litigating complex civil rights and class action cases,
23 including long-standing representation of certified plaintiff classes in *Ashker v. Governor*, No. C 09-
24 5796, 2014 WL 2465191 (N.D. Cal. 2014) and *Yellow Kidney v. Montana Office of Public Instruction*,
25 No. DDV-21-398 (Montana). I am part of the legal team in *APHA v. NIH*, No. 25-cv-10787 (D. Mass.)
26 (“*APHA*”), which resulted in the reinstatement of hundreds of illegally terminated NIH grants after a full
27 bench trial. I also served as lead counsel on *Turkmen v. Ashcroft*, a class action lawsuit against high-
28 level federal officials for the post-9/11 detention and abuse of Muslim non-citizens, which I argued

1 before the Supreme Court in 2017. Among my extensive body of litigation, I have also represented
2 individuals in Tennessee challenging disability discrimination, the Ramapough Lenape Nation in their
3 struggle against discriminatory zoning, federal prisoners in restrictive Communication Management
4 Units, and environmental activists targeted as “terrorists” for non-violent protest activities.

5 7. Other members of the ACLU who represent Plaintiffs and the putative class in this
6 litigation are Olga Akselrod, Vera Eidelman, and Alexis Agathocleous. All have deep experience
7 representing plaintiffs in complex civil rights cases. All three are members in good standing of the State
8 Bar of New York. Vera Eidelman is also a member of the State Bar of California, with her out-of-state
9 license renewal pending.

10 8. Olga Akselrod has been an active member of the State Bar of New York since 2003. She
11 received a Juris Doctorate from New York University School of Law in 2002. Ms. Akselrod joined the
12 ACLU’s Racial Justice Program in 2019, where she has worked on several complex civil rights and
13 class action cases, including representing certified classes in *Fenty v. Penzone*, No. 2:20-cv-01192-SPL-
14 JZB (D. Ariz.) and *Brown v. Lexington County*, No. 3:17-cv-01426-SAL (D. S.C.). Ms. Akselrod was
15 also part of the legal team in *APHA*. Prior to joining the ACLU, she worked for thirteen years at the
16 Innocence Project, where she served as Senior Staff Attorney and Director of Intake and Evaluation.
17 Before that, Ms. Akselrod was the recipient of the Fried Frank NAACP Fellowship, through which she
18 served as an Associate at Fried Frank, LLP (2002–2004) and subsequently Assistant Counsel at the
19 NAACP Legal Defense and Education Fund (2004–2006).

20 9. Vera Eidelman was admitted to the State Bar of California in 2016, became inactive after
21 moving to New York, and is currently seeking to reinstate active status. She has been an active member
22 of the State Bar of New York since 2019. She received a Juris Doctorate from Yale Law School. Ms.
23 Eidelman is a senior staff attorney with the ACLU’s Speech, Privacy, and Technology Project, which
24 she joined in 2016. Before joining the ACLU, she served as a law clerk to the Hon. Beth Labson
25 Freeman of the U.S. District Court for the Northern District of California. Ms. Eidelman has extensive
26 experience litigating First Amendment cases.

27 10. Alexis Agathocleous is a Deputy Director of the ACLU Racial Justice Program. He has
28 been an active member of the State Bar of New York since 2004. He received a Juris Doctorate from

1 Yale Law School in 2003. Prior to joining the ACLU, Mr. Agathocleous was a staff attorney at the
2 Innocence Project, Deputy Legal Director at the Center for Constitutional Rights, Director of the
3 Reinvestigation Project at the Office of the Appellate Defender (OAD) in New York City and a Marvin
4 M. Karparkin Fellow with the ACLU. Mr. Agathocleous has extensive experience litigating complex
5 constitutional and administrative claims.

6 11. Prior to filing the instant litigation, ACLU, along with its co-counsel at the American
7 Civil Liberties Foundation of Northern California, Protect Democracy, Center for Science in the Public
8 Interest, and the Jacobson Lawyers Group PLLC, diligently and thoroughly investigated the Plaintiffs'
9 claims both legally and factually.

10 I declare under penalty of perjury that the foregoing is true and correct, and that this declaration
11 was executed at New York, NY this 21st day of September 2026.

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14 Rachel Meeropol
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v.

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UNITED STATES DOGE SERVICE,

Defendants.

Case No. 3:26-cv-10510-SK

**DECLARATION OF SHALINI GOEL
AGARWAL IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PROVISIONAL CLASS
CERTIFICATION**

* Application for *Pro Hac Vice* Admission Forthcoming

** Out-of-State Licensee Pending

(Additional Counsel on Behalf of Plaintiffs)

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* Application for *Pro Hac Vice* Admission Forthcoming

1 I, Shalini Goel Agarwal, declare:

2 1. I am an attorney admitted to practice in Washington, D.C. I am a Special Counsel at the
3 Protect Democracy Project (“Protect Democracy”), counsel for Plaintiffs in this action. I submit this
4 declaration in support of Plaintiffs’ Motion for Provisional Class Certification.

5 2. I have personal knowledge of the facts set forth in this declaration, and if called to testify
6 as a witness thereto, could do so competently under oath.

7 3. Protect Democracy is a non-profit organization that is tax-exempt under § 501(c)(3) of
8 the Internal Revenue Code. It is a cross-ideological group dedicated to defeating the authoritarian threat,
9 building more resilient democratic institutions, and protecting our freedom and liberal democracy.
10 Protect Democracy does not receive government funding. Protect Democracy litigates civil rights cases,
11 frequently in conjunction with private counsel, combining our expertise in civil rights and impact
12 litigation with the resources and experience of the private bar. Protect Democracy has served as lead
13 counsel in several civil rights class actions.

14 4. I have been an attorney with Protect Democracy since November 2021 and have been
15 involved in all aspects of this case. To my knowledge, Protect Democracy has no conflicts of interest
16 that would prevent it from providing zealous representation to the named Plaintiffs and the putative
17 Classes they represent.

18 5. I lead the team of Protect Democracy attorneys working on this matter. I graduated with
19 my Juris Doctor from U.C. Berkeley School of Law in 2006. I have maintained an active litigation
20 practice for about 19 years. Prior to Protect Democracy, I worked as a Senior Supervising Attorney at
21 the Southern Poverty Law Center (2017-2020), as a Staff Attorney at the American Civil Liberties
22 Union of Florida (2011-2016), as a Staff Attorney in the Housing Discrimination section of the
23 Washington Lawyers’ Committee for Civil Rights (2009-2010), and as a Law Fellow at Relman &
24 Colfax (2007-08). I also served as a judicial law clerk to the Honorable David S. Tatel for the U.S. Court
25 of Appeals for the D.C. Circuit.

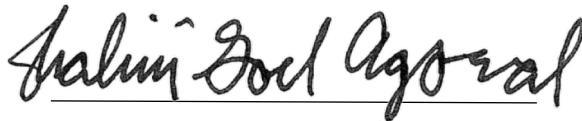
26 6. I have had an active bar license since 2007. I have been an active member of the Florida
27 Bar since 2011 and am currently an active member of the D.C. Bar (where I gained admission in 2009)
28 and an inactive member of the California Bar (where I gained admission in 2007). I am an experienced

civil rights litigator and have been counsel in some class action cases. My civil rights cases include *APHA v. NIH* (D. Mass., Case No. 1:25-cv-10787-WGY), *Honeyfund v. DeSantis* (N.D. Fla., Case No. 4:22-cv-227-MW/MAF), *PEN American Center, Inc. v. Escambia County School District* (N.D. Fla., Case No. 3:23-cv-10385-TKW-ZCB), *Frailhat v. ICE* (C.D. Cal., Case No. 5:19-cv-01546-JGB-SHK), *Harvard v. Dixon* (N.D. Fla., Case No. 4:19-cv-00212-MW-MAF); *G.H. v. Tamayo* (N.D. Fla. Case No. 4:19-cv-431-RH-MJF); *SPLC v. DHS* (D.D.C., Case No. 1:18-cv-00760-CKK), *AFSCME v. Scott* (S.D. Fla., Case No. 11-cv-21976-UU), *Lebron v. Wilkins* (M.D. Fla., Case No. 6:11-cv-01473-Orl-35DAB), *Antonio v. SSA Security, Inc.* (D. Md., Case No. 8:2005-cv-02982), *Overlook Mutual Homes v. Spencer* (S.D. Ohio, Case No. 3:07-cv-398). I served as class counsel in three of these: *Frailhat v. ICE* (representing ICE detainees nationwide challenging conditions of confinement in immigration detention), *G.H. v. Tamayo* (representing plaintiff children held in juvenile detention facilities statewide challenging widespread use of solitary confinement), and *Lebron v. Wilkins* (representing welfare applicants statewide challenging suspicionless drug testing requirement).

7. Kenneth Parreno, the other member of Protect Democracy who is representing plaintiffs and the putative class in this litigation, has also represented plaintiffs in civil rights and class action cases. He has been an active member of the Texas Bar since 2022 and of the Massachusetts Bar since 2019. He received a Juris Doctorate from Harvard University School of Law in 2019. Before Protect Democracy, he was a Skadden Fellow and Staff Attorney at the Mexican American Legal Defense and Educational Fund (2021-2024). He also served as a judicial law clerk to the Honorable Debra H. Lehrmann of the Supreme Court of Texas and the Honorable Edgardo Ramos of the United States District Court for the Southern District of New York.

8. Prior to filing the instant litigation, Protect Democracy along with its co-counsel at the American Civil Liberties Foundation, the ACLU of Northern California, Center for Science in the Public Interest, and the Jacobson Lawyers Group, diligently and thoroughly investigated the Plaintiffs' claims both legally and factually.

1 I declare under penalty of perjury that the foregoing is true and correct, and that this declaration
2 was executed at Washington, DC this 25th day of September 2026.

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6 Shalini Goel Agarwal
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**DECLARATION OF DANIEL F.
JACOBSON IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION**

* Application for *Pro Hac Vice* Admission Forthcoming

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* Application for *Pro Hac Vice* Admission Forthcoming

1 I, Daniel F. Jacobson, declare:

2 1. I am the Founding Partner of Jacobson Lawyers Group PLLC and co-counsel of record
3 for Plaintiffs in this action. I submit this declaration in support of Plaintiffs' motion to certify the
4 proposed Termination Class and Policy Class and to appoint Plaintiffs' counsel as class counsel under
5 Federal Rule of Civil Procedure 23(g). I make this declaration based on my personal knowledge.

6 2. Jacobson Lawyers Group is a boutique law firm with substantial focus on, and experience
7 in, litigation against the federal government, government agencies, and government officials. We
8 represent nonprofits, researchers, businesses, unions, individuals, and local governments challenging
9 unlawful government action. Our attorneys have substantial experience with federal funding,
10 administrative law, and constitutional litigation, including challenges to grant terminations, unlawful
11 funding conditions, and the withholding of congressionally appropriated funds.

12 3. The Jacobson Lawyers Group attorneys working on this case are Daniel F. Jacobson,
13 Lynn D. Eisenberg, and Stephen K. Wirth. We serve as co-counsel with the American Civil Liberties
14 Union Foundation, the American Civil Liberties Union Foundation of Northern California, Protect
15 Democracy Project, and the Center for Science in the Public Interest.

16 4. I founded Jacobson Lawyers Group in February 2025. From 2022 to 2025, I served as
17 General Counsel of the Office of Management and Budget, where I was the lead Executive Branch
18 attorney on federal appropriations and funding. In that role, I oversaw revisions to the Uniform Grants
19 Guidance, including the provisions governing grant terminations, and led a team that reviewed
20 significant agency regulations for compliance with the Administrative Procedure Act. I previously
21 served as General Counsel of the White House Office of Administration in the Biden administration, and
22 as Associate White House Counsel in the Obama administration. My government service gives me
23 extensive knowledge of the statutory and regulatory framework governing federal grants and federal
24 funding issues.

25 5. Before founding the firm, I also spent more than five years in private practice at Arnold
26 & Porter handling trial and appellate litigation, including class actions. I clerked for Judge A. Wallace
27 Tashima of the Ninth Circuit and Judge Naomi Reice Buchwald of the Southern District of New York. I
28

1 graduated magna cum laude from Harvard Law School and Yale College. I am admitted to practice in
2 the District of Columbia and New York, as well as numerous federal trial and appellate courts.

3 6. Lynn D. Eisenberg is also a Partner at Jacobson Lawyers Group PLLC. She received her
4 J.D., magna cum laude, from New York University School of Law in 2012 and her undergraduate
5 degree from Washington University in St. Louis. She is a member of the bars of New York and the
6 District of Columbia and is admitted to the U.S. District Courts for the District of Columbia and the
7 District of Maryland.

8 7. From June 2022 to September 2024, Ms. Eisenberg served as Principal Deputy General
9 Counsel of the U.S. Department of Education, where she helped oversee legal issues involving grants,
10 contracts, rulemaking, discrimination, and the First Amendment. She served as General Counsel of the
11 Office of Personnel Management from January 2021 to June 2022 and as Associate White House
12 Counsel and Deputy Associate White House Counsel from December 2014 to January 2017. She also
13 practiced four five years at WilmerHale in Washington, D.C. Her work in government and private
14 practice has included substantial experience with administrative law and federal funding, including
15 several of the cases described below.

16 8. Stephen K. Wirth is Chair of Appellate Litigation at Jacobson Lawyers Group. Before
17 joining the firm, he spent nearly a decade in the Supreme Court and Appellate practice at the law firm
18 Arnold & Porter. He has served as lead counsel in trial and appellate litigation involving the
19 Administrative Procedure Act, separation of powers, sovereign immunity, and the First, Fourth, and
20 Fifth Amendments, and his work includes five merits-stage Supreme Court victories. He clerked for
21 Judge Carlos T. Bea of the Ninth Circuit and Judge Paul A. Crotty of the Southern District of New York.
22 He graduated magna cum laude from Cornell Law School and Yale College and is admitted to practice
23 in the District of Columbia and New York, as well as numerous federal trial and appellate courts.

24 9. Immediately prior to joining Jacobson Lawyers Group, Mr. Wirth led emergency
25 litigation challenging the freeze of foreign-assistance funding, securing relief that resulted in hundreds
26 of millions of dollars being released to his clients. That litigation included the Supreme Court's denial of
27 the government's application to vacate an order requiring payment for completed work. *Dep't of State v.*
28 *AIDS Vaccine Advoc. Coal.*, No. 24A831, slip op. at 1 (U.S. Mar. 5, 2025).

1 10. Our firm’s litigation on federal funding and federal grants has addressed many of the
2 same issues presented here: reasons why the Tucker Act does not preclude district court jurisdiction over
3 grant-related claims, constitutional limits on the government’s selection of grants for termination,
4 viewpoint discrimination against grantees’ speech, judicial review under the Administrative Procedure
5 Act, and relief necessary to prevent disruption of research and other federally supported work. The
6 following matters illustrate that experience.

7 11. In *American Council of Learned Societies v. McDonald*, we represented three national
8 humanities organizations challenging the mass termination of National Endowment for the Humanities
9 grants. We obtained summary judgment on constitutional and ultra vires grounds. The court held that the
10 terminations violated the First Amendment in terminating grants because of grantees’ perceived support
11 for “DEI,” violated equal protection in terminating grants solely on the basis of race, gender, or other
12 protected characteristics, and were ultra vires because DOGE officials carried out the terminations
13 without legal authority. Following extensive discovery, the court permanently enjoined enforcement of
14 the mass termination and required the termination notices to be treated as without legal effect. *Am.*
15 *Council of Learned Soc’y v. Nat’l Endowment for the Humans.*, No. 25-cv-3657, 2026 WL 1256545
16 (S.D.N.Y. May 7, 2026). As a result, grantees have had their terminated awards reinstated.

17 12. In *City of Saint Paul v. Wright*, we represented grantees, subgrantees, and beneficiaries
18 challenging the Department of Energy’s termination of awards based on their location in states that
19 voted for the Democratic presidential candidate in 2024. The court entered judgment for the plaintiffs on
20 their equal-protection claim and vacated the termination notices for all seven awards at issue. *City of*
21 *Saint Paul v. Wright*, No. 25-cv-3899, 2026 WL 88193 (D.D.C. Jan. 12, 2026). The Department
22 subsequently reinstated the awards, allowing our clients’ projects to proceed.

23 13. In *Child Trends, Inc. v. United States Department of Education*, we represented two
24 educational research organizations challenging, among other things, the elimination of the two statutory
25 educational research programs and the withholding of appropriations for the programs. We obtained
26 summary judgment on the claims seeking restoration of those statutorily required programs. *Child*
27 *Trends, Inc. v. U.S. Dep’t of Educ.*, 795 F. Supp. 3d 700 (D. Md. 2025). The resulting relief required the
28 Department to restore the programs and spend roughly \$200 million in appropriated funds before they

1 expired. The Department complied with the order by restoring the terminated grants and contracts and
2 did not appeal.

3 14. In *National Center for Learning Disabilities v. Office of Management and Budget*, we
4 represent applicants for educational research funding and organizations that benefit from that funding,
5 challenging, among other things OMB's restricting the Department of Education from using certain
6 appropriations on purported DEI activities. Just last week, the district court granted summary judgment
7 to plaintiffs on this claim, holding that OMB lacks statutory authority to impose this restriction and that
8 the imposition of this restriction was arbitrary and capricious. *Nat'l Ctr. for Learning Disabilities v.*
9 *OMB*, No. 26-CV-13019-ADB, 2026 WL 2754447, at *14–15 (D. Mass. Sept. 17, 2026)

10 15. We have also obtained relief against unlawful grant conditions. In *Rhode Island Coalition*
11 *Against Domestic Violence v. Bondi*, we obtained a nationwide preliminary stay under 5 U.S.C. § 705 of
12 new conditions on Office on Violence Against Women grants, including conditions concerning
13 diversity, equity, inclusion, and gender identity. *R.I. Coal. Against Domestic Violence v. Bondi*, No. 25-
14 cv-279, 2025 WL 2271867 (D.R.I. Aug. 8, 2025). In a related challenge to HHS and HUD grant
15 conditions, we obtained a preliminary injunction and relief under § 705. *R.I. Coal. Against Domestic*
16 *Violence v. Kennedy*, No. 25-cv-342, slip op. at 30-39 (D.R.I. Oct. 10, 2025), ECF No. 72. These cases
17 required addressing the constitutional and statutory limits on conditioning federal support on grantees'
18 speech and activities.

19 16. In *Global Health Council v. Trump*, our firm represents contractors and grantees
20 challenging the withholding of foreign-assistance appropriations. On September 3, 2025, we obtained a
21 preliminary injunction requiring the obligation of expiring appropriations. *Glob. Health Council v.*
22 *Trump*, No. 25-cv-402, slip op. at 41–43 (D.D.C. Sept. 3, 2025), ECF No. 139. The Supreme Court later
23 stayed the injunction as to approximately \$4 billion that the President had proposed for rescission under
24 the Impoundment Control Act, but the injunction remained in effect for approximately \$6.5 billion,
25 which the government obligated pursuant to the injunction before the funds expired. *Dep't of State v.*
26 *AIDS Vaccine Advoc. Coal.*, No. 25A269 (U.S. Sept. 26, 2025).

27 17. In this action, our firm has devoted substantial time to investigating and developing
28 Plaintiffs' claims. Working with co-counsel, we have reviewed the challenged NIH policies and

1 directives, the statutes and regulations governing NIH funding, and evidence of their effects on
2 researchers; researched the constitutional, administrative law, and jurisdictional issues; and assisted in
3 preparing the complaint and the request for preliminary relief. This work has familiarized us with the
4 claims of both proposed classes and the relief they seek.

5 18. Jacobson Lawyers Group is committed to representing both proposed classes throughout
6 this litigation. Our firm, together with co-counsel, has sufficient attorney time and other resources to
7 prosecute the action vigorously, including through discovery, dispositive motions, trial if necessary, and
8 appellate proceedings. We will commit the resources necessary to represent the proposed classes fairly
9 and adequately.

10 19. Through our work together in this case, I am familiar with our co-counsel's abilities and
11 experience. They are skilled attorneys with experience relevant to the constitutional, administrative-law,
12 and class-action issues in this litigation. We are working together to coordinate our efforts and provide
13 effective representation to Plaintiffs and the proposed classes.

14 20. I am aware of no conflict of interest between myself or Jacobson Lawyers Group and any
15 member of either proposed class that would impair our ability to provide fair and adequate
16 representation. We will represent the interests of both classes throughout this litigation.

17 I declare under penalty of perjury that the foregoing is true and correct, and that this declaration
18 was executed in the City of Washington in the District of Columbia on this 25th day of September 2026.

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21 Daniel F. Jacobson
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