No. 24A

In the Supreme Court of the United States

UNITED STATES DEPARTMENT OF EDUCATION, ET AL., APPLICANTS

v.

STATE OF CALIFORNIA, ET AL.

APPLICATION TO VACATE THE ORDER ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY

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PARTIES TO THE PROCEEDING

Applicants (defendants-appellants below) are the United States Department of Education; Linda McMahon, Secretary of Education; and Denise Carter, Chief Operating Officer for Federal Student Aid in the Department of Education.

Respondents (plaintiffs-appellees below) are the States of California, Massachusetts, New Jersey, Colorado, Illinois, Maryland, New York, and Wisconsin.

RELATED PROCEEDINGS

United States District Court (D. Mass.):

California v. *United States Department of Education*, No. 25-cv-10548 (Mar. 10, 2025)

United States Court of Appeals (1st Cir.):

California v. *United States Department of Education*, No. 25-1244 (Mar. 21, 2025)

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Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Acting Solicitor General—on behalf of applicants the United States Department of Education, et al.—respectfully files this application to vacate the March 10, 2025 order issued by the United States District Court for the District of Massachusetts (App., *infra*, 1a-10a), as extended on March 24. In addition, the Acting Solicitor General respectfully requests an administrative stay of the district court's order, which requires the government to immediately reinstate millions of dollars in federal grants that had been lawfully terminated, pending the Court's consideration of this application.

This case exemplifies a flood of recent suits that raise the question: "Does a single district-court judge who likely lacks jurisdiction have the unchecked power to compel the Government of the United States to pay out (and probably lose forever)" millions in taxpayer dollars? *Department of State* v. *AIDS Vaccine Advocacy Coal.*, 145 S. Ct. 753, 753 (2025) (Alito, J., dissenting from denial of application to vacate

order).[1] Unless and until this Court addresses that question, federal district courts will continue exceeding their jurisdiction by ordering the Executive Branch to restore lawfully terminated grants across the government, keep paying for programs that the Executive Branch views as inconsistent with the interests of the United States, and send out the door taxpayer money that may never be clawed back. This Court should put a swift end to federal district courts' unconstitutional reign as self-appointed managers of Executive Branch funding and grant-disbursement decisions.

This case presents an ideal candidate for this Court to impose restraint, for it follows a familiar pattern. Between February 7 and 12, the Department of Education canceled a host of discretionary grants after individually reviewing them and determining that they were inconsistent with the new Administration's policies and priorities. Respondents, eight States whose instrumentalities receive grants or in which

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[1] See *RFE/RL, Inc.* v. *Lake*, No. 25-cv-799, 2025 WL 900481, at *1 (D.D.C. Mar. 25, 2025) (challenge to termination of global-media grants); *American Ass'n of Colls. for Teacher Educ.* v. *McMahon*, No. 25-cv-702, 2025 WL 863319, at *1 (D. Md. Mar. 19, 2025) (termination of education grants), appeal docketed, No. 25-1281 (4th Cir. Mar. 24, 2025); *Climate United Fund* v. *Citibank, N.A.*, No. 25-cv-698, 2025 WL 842360, at *1 (D.D.C. Mar. 18, 2025) (termination of more than $10 billion in environmental grants); *AIDS Vaccine Advocacy Coal.* v. *United States Dep't of State*, No. 25-400, 2025 WL 752378, at *1, *15 (D.D.C. Mar. 10, 2025) (order requiring payment of $2 billion in foreign aid by date certain); *Massachusetts* v. *National Insts. of Health*, No. 25-cv-10338, 2025 WL 702163, at *1 (D. Mass. Mar. 5, 2025) (cuts in biomedical-research grants "totaling billions of dollars"); *Pacito* v. *Trump*, No. 25-cv-255, 2025 WL 655075, at *5-*6, *16-*17 (W.D. Wash. Feb. 28, 2025) (suspension of refugee funding), appeal pending, No. 25-1313 (9th Cir. Mar. 3, 2025), injunction stayed in part (Mar. 25, 2025). Other recently filed cases have invited district courts to follow the same path. See, *e.g.*, *Massachusetts Fair Hous. Ctr.* v. *Department of Hous. & Urban Dev.*, No. 25-cv-30041 (D. Mass. Mar. 13, 2025) (termination of millions of dollars in fair-housing grants); *National Urban League* v. *Trump*, No. 25-cv-471 (D.D.C. Feb. 19, 2025) (termination of DEI-related grants). Meanwhile, one district court has correctly declined to issue injunctive relief and held that the Court of Federal Claims has jurisdiction; that ruling is now before the D.C. Circuit. See *United States Conference of Catholic Bishops* v. *United States Dep't of State*, 25-cv-465, 2025 WL 763738, at *2 (D.D.C. Mar. 11, 2025) (suspension of grants worth $65 million total in refugee funding), appeal pending, No. 25-5066 (D.C. Cir. Mar. 14, 2025).

grantees are located, waited a month to demand a temporary restraining order (TRO) from the United States District Court for the District of Massachusetts. Nonetheless, the court issued a TRO within two business days, after a short hearing—but without awaiting briefing from the government or correctly assuring itself of its jurisdiction. And this week, the court extended the TRO for up to two more weeks, until it decides respondents' motion for a preliminary injunction. D. Ct. Doc. 79 (Mar. 24, 2025).

That order is forcing the government to continue paying millions of dollars in grant money. Respondents "want[] the Government to keep paying up"—"to cancel the termination[s], pay money due, and reinstate the [grants]." *United States Conference of Catholic Bishops* v. *United States Dep't of State*, 25-cv-465, 2025 WL 763738, at *5-*6 (D.D.C. Mar. 11, 2025), appeal pending, No. 25-5066 (D.C. Cir. Mar. 14, 2025). That is what the order does here. But the Court of Federal Claims, not a federal district court, has jurisdiction over such claims to make the government pay out on contracts. See *AIDS Vaccine*, 145 S. Ct. at 754 (Alito, J., dissenting from denial of application to vacate order). District-court judges in a handful of forums across the country are now pervasively reimagining contract and grant-termination claims as Administrative Procedure Act (APA) suits, vesting themselves with jurisdiction that Congress has withheld from them. The aim is clear: to stop the Executive Branch in its tracks and prevent the Administration from changing direction on hundreds of billions of dollars of government largesse that the Executive Branch considers contrary to the United States' interests and fiscal health.

The First Circuit's decision—which took a full week after the completion of briefing on the government's emergency motion for a stay pending appeal—assumed *arguendo* that the district court's order was appealable, but saw no problem with letting federal district courts resolve heartland contract and grant-termination claims.

App., *infra*, 20a-36a. Under the First Circuit's reasoning, so long as plaintiffs challenge grant or contract terminations with "arguments derived from the [APA]" and invoke regulatory and statutory provisions channeling an agency's discretion, they can proceed in federal district court. *Id.* at 26a; see *id.* at 26a-29a. That is plainly wrong: plaintiffs cannot circumvent federal sovereign immunity and obtain orders opening federal funding spigots just by dressing up their contract or grant-termination claims as assertions of "arbitrary and capricious" decisionmaking. The same D.C. Circuit precedent that the First Circuit purported to apply makes that clear. See *Megapulse, Inc.* v. *Lewis*, 672 F.2d 959, 967-968 (D.C. Cir. 1982). The First Circuit's legally and factually flawed APA analysis compounds the problem. This case thus presents another opportunity to "[c]larif[y] * * * the standards for distinguishing between a TRO and a preliminary injunction" and "the scope of the APA's waiver of sovereign immunity"—"matter[s] that deserve[] this Court's attention at the present time." *AIDS Vaccine*, 145 S. Ct. at 755 n.* (Alito, J., dissenting from denial of application to vacate order).

Meanwhile, the district court's order is predictably impeding the Executive Branch's constitutional functions. The Administration made a judgment to terminate diversity, equity, and inclusion (DEI)-related grants. Yet the district court's order is enabling many of those grantees to request payments on their grants, which grantees now have an incentive to do quickly. Nor will there be a reliable means of recovering the funds that are being disbursed under the court's order. So long as there is no prompt appellate review of these orders, there is no end in sight for district-court fiscal micromanagement. Only this Court can right the ship—and the time to do so is now.

STATEMENT

1. Congress granted the Department of Education broad authority to operate the two grant programs at issue here, which relate to the preparation and professional development of schoolteachers. First, the Teacher Quality Partnership (TQP) program provides that "the Secretary is authorized to award grants, on a competitive basis, to eligible partnerships, to enable the eligible partnerships to carry out" certain activities, including "a program for the preparation of teachers," a "teaching residency program," and "a leadership development program." 20 U.S.C. 1022a(a) and (c); see 20 U.S.C. 1022a(b) (requiring applications to be submitted "to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require"). Second, the Supporting Effective Educator Development (SEED) program generally directs the Secretary to "award grants, on a competitive basis, to eligible entities for" five broad "purposes," such as "providing evidence-based professional development activities" or "making freely available services and learning opportunities to local educational agencies." 20 U.S.C. 6672(a). The grants are paid out of funds appropriated by Congress to the Department and "reserved by the Secretary." *Ibid.*; see 20 U.S.C. 6621(4), 6671(1).

On February 5, 2025, the Acting Secretary of Education directed "an internal review of all new grant awards, grants that have not yet been awarded to specific individuals or entities (e.g., notices of funding opportunities), and issued grants," so as to "ensur[e] that Department grants do not fund discriminatory practices—including in the form of DEI—that are either contrary to law or to the Department's policy objectives, as well as to ensure that all grants are free from fraud, abuse, and duplication." App., *infra*, 12a (alteration omitted). In a multistep process involving seven personnel over the course of a week, the Department reviewed each existing TQP and

SEED grant individually—examining grant applications, grant agreement terms and conditions, and publicly available information about funded programs—and found objectionable DEI material in many of them. *Id.* at 12a-13a.

One grant, for example, "funded a project that involved a 'racial and ethnic autobiography' that asked whether individuals ever 'felt threatened? marginalized? privileged?' and how they would 'seek to challenge power imbalances.'" App., *infra*, 13a. Another grant project sought to ensure that teachers were "purposeful in implementing cultural and SEL [social-emotional learning]/DEI practices with fidelity." *Ibid.* The Department ultimately concluded that 104 grants should be terminated as contrary to law or the Department's policy objectives; five grants remained in place. *Id.* at 13a-14a.

For each terminated grant, the Department issued a letter stating that the funded programs "promote or take part in DEI initiatives or other initiatives that unlawfully discriminate on the basis of race, color, religion, sex, national origin, or another protected characteristic"; " violate either the letter or purpose of Federal civil rights law"; "conflict with the Department's policy of prioritizing merit, fairness, and excellence in education"; "are not free from fraud, abuse, or duplication"; "or * * * otherwise fail to serve the best interests of the United States." App., *infra*, 14a. Each terminated grant, the letters explained, was therefore "inconsistent with, and no longer effectuate[s], Department priorities." *Ibid.* The letters invoked the Department's regulatory authority to terminate grants that "no longer effectuate[] the program goals or agency priorities," 2 C.F.R. 200.340(a)(4), an authority that was also incorporated into the terms and conditions of the original grant awards, see App., *infra*, 12a.

2. a. On Thursday, March 6, 2025—about a month after the TQP and

SEED grants were canceled—respondents filed a civil action and sought a temporary restraining order against the Department of Education, the Secretary of Education, and the former Acting Secretary of Education in the United States District Court for the District of Massachusetts. D. Ct. Docs. 1 and 2. Respondents stated that "various organizations" operating in their States (public and private universities as well as nonprofit organizations) received TQP and SEED grants from the Department, although respondents identified only examples and not all relevant grantees. D. Ct. Doc. 1, at 17; see *id.* at 17-26. Respondents claimed that the grant terminations violated the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, 701 *et seq.*, and invoked the APA as the basis for the court's jurisdiction. They claimed the grant terminations to be arbitrary and capricious and an abuse of discretion, 5 U.S.C. 706(2)(A), based on the objection that the Department did not, among other things, "provide a transparent and reasonable explanation for the termination of the grants." D. Ct. Doc. 1, at 47; see *id.* at 46-49. They further claimed that the Department was "not authorized by applicable regulations to terminate federal grant awards on the grounds asserted." *Id.* at 50. Rather than giving the government a deadline to respond, the court held a hearing with the parties on Monday, March 10, 2025.

Later that day, the district court issued an order labeled as a 14-day TRO. "[E]ffective immediately," the court ordered the government to undo the termination of TQP or SEED grants for all "recipients *in* [the] Plaintiff States." App., *infra*, 9a (emphasis added). It "temporarily enjoined" the government from implementing or reinstating those terminations or "terminating any individual TQP and SEED grant for recipients in [the] Plaintiff States, except" as "consistent with the Congressional authorization and appropriations, relevant federal statute, including the requirements of the APA, the requirements of the relevant implementing regulations, the

grant terms and conditions, and th[e district court's] order." *Id.* at 10a. The court further ordered the government to provide notice of the TRO to all Department employees and all TQP and SEED grantees "in Plaintiff States" within 24 hours. *Ibid.*

The district court rejected the government's contention that the court lacked jurisdiction over the case, given the exclusive jurisdiction in the Court of Federal Claims for certain contract claims, because "the source of the plaintiffs' rights was in federal statute and regulations and because the relief was injunctive in nature." App., *infra*, 2a. The court equated the standards for issuing TROs and preliminary injunctions, *id.* at 3a, and concluded that respondents had satisfied that standard.

Starting with their likelihood of success on the merits, the court found that respondents were likely to succeed on their arbitrary-and-capricious APA claim. It expressed a belief that "there was no individualized analysis of any of the [grant] programs"; to the court, it "appear[ed] that *all* TQP and SEED grants were simply terminated." App., *infra*, 4a. The court also observed that each terminated program received the same termination letter, and it concluded that the letter lacked any reasoned explanation for the Department's action because it did not spell out in detail reasoning specific to each grant. *Id.* at 4a-5a. The court found further fault with the Department's explanation because the Department had significantly changed its policies since the grant awards were first authorized. *Id.* at 6a. The court did not address respondents' other claims. *Id.* at 6a n.3.

The district court also quickly found that respondents satisfied the other requirements for relief. It concluded that respondents had shown irreparable harm based on the cessation of funding that allegedly required the cancellation of certain programs. App., *infra*, 7a-8a. And the court found that the only harm to the government would be that it "merely would have to disburse funds that Congress has ap-

propriated to the States and others." *Id.* at 9a (citation omitted).

b. The government promptly began working to "restore[] access to funds and lift[] payment restrictions for grantees who received a grant termination letter." App., *infra*, 14a. Two days later, on March 12, the government moved the district court for a stay of the TRO pending appeal. D. Ct. Doc. 54 and 55. The government explained that the key factual premise underlying the TRO—"that the terminations at issue were determined without individualized consideration"—was incorrect because the grants were individually reviewed, which "resulted in termination of most—but not all—of the current grants under the relevant programs." D. Ct. Doc. 55, at 1; see *id.* at 3-4; App., *infra*, 12a. The government also highlighted the significant, irremediable consequences of the TRO: the order requires the disbursement of up to $65 million in funds remaining on the newly reinstated grants. Grantees, knowing that the Department plans to terminate the grants, now have every "incentive to draw down and spend * * * as quickly as possible" even as the government would "lack[] reliable ways to recoup" released funds. D. Ct. Doc. 55, at 7; see App., *infra*, 14a-15a. Rather than engaging with these arguments, the district court denied the stay motion the next day, March 13, in a two-page order. App., *infra*, 16a-17a.

3. Also on March 12, the government appealed to the United States Court of Appeals for the First Circuit and moved that court for a stay pending appeal and for an immediate administrative stay of the district court's order. The court of appeals denied immediate relief the same day, ordered further briefing, and expressed its intention to decide "on the broader request for stay relief as soon as practicable" after the completion of briefing on March 14. App., *infra*, 18a.

But the First Circuit ruled only on March 21, denying the government's stay motion entirely. App., *infra*, 20a-36a. The court of appeals assumed it had appellate

jurisdiction despite the order's TRO label. *Id.* at 24a. Turning to likelihood of success, the court rejected the government's jurisdictional argument on the theory that respondents' framing of their case as an APA action made it cognizable under the APA. See *id.* at 25a-27a. The court elaborated that respondents' claim did not have the nature of a non-APA suit for compensation for past-due sums, *id.* at 26a, yet later expressed the view that relevant grant "recipients submit reimbursement requests" to the Department "for expenses already incurred," *id.* at 33a. The court further deemed respondents' claims cognizable under the APA by virtue of statutory and regulatory provisions that it viewed as "cabin[ing] the Department's discretion as to when it can terminate existing grants." *Id.* at 28a.

On the merits, the court of appeals agreed with the district court that the grant terminations were likely arbitrary and capricious. App., *infra*, 29a-33a. The court went on to dismiss the government's irreparable-harm concerns as "speculation and hyperbole," even as it acknowledged "the Department may incur some irreparable harm if it cannot recoup th[e] money" being disbursed by order of the district court. *Id.* at 33a-34a. The court further found it "premature to address the adequacy of the district court's explanation" for ordering relief to nonparty entities. *Id.* at 36a. On the next business day after the court of appeals' decision, the district court extended the TRO for up to two weeks (*i.e.*, up to April 7), "until the date of [its] decision" on respondents' pending motion for a preliminary injunction. D. Ct. Doc. 79.

4. Meanwhile, on March 17, 2025, the United States District Court for the District of Maryland, in connection with a different lawsuit brought by three associations, also ordered the Department to reinstate within five days the terminated TQP and SEED grants, as well as grants under another Department program, for the members of those associations. *American Ass'n of Colls. for Teacher Educ.* v.

McMahon, No. 25-cv-702, 2025 WL 833917, appeal docketed, No. 25-1281 (4th Cir. Mar. 24, 2025). That order was issued as a preliminary injunction after briefing and argument by the parties, and concluded, among other things, that the plaintiffs were likely to succeed on the merits of their APA claims. See *id.* at *1, *16-*22. The potential overlap between these two orders thus creates even more troubling incentives for grantees. The district court here granted relief for all grant recipients in respondents' States, whereas the Maryland preliminary injunction covers grantee members of three particular teacher-education organizations. Grantees covered by the putative TRO—but not the preliminary injunction—thus face different incentives as to when to draw down funds.

ARGUMENT

Under Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Court may vacate a district order's interlocutory order granting emergency relief. See, *e.g.*, *Trump* v. *International Refugee Assistance Project*, 582 U.S. 571 (2017) (per curiam); *Brewer* v. *Landrigan*, 562 U.S. 996 (2010); *Brunner* v. *Ohio Republican Party*, 555 U.S. 5, 6 (2008) (per curiam). An applicant must show (1) a likelihood of success on the merits, (2) a reasonable probability of obtaining certiorari, and (3) a likelihood of irreparable harm. See *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam). In "close cases," "the Court will balance the equities and weigh the relative harms." *Ibid.* Those factors strongly support relief here.

A. The Government Is Likely To Succeed On The Merits

This application should not present a close call. The district court lacked jurisdiction to entertain these claims under the APA in the first place: this is essentially a contract suit that belongs in the Court of Federal Claims, not a district court. That error alone "deserves this Court's attention at the present time," *AIDS Vaccine*,

supra, 145 S. Ct. at 755 n.* (Alito, J., dissenting from denial of application to vacate order), particularly because the lower courts' jurisdictional analysis conflicts with precedent of the D.C. Circuit. Other errors in the district court's analysis on the road to forcing the government to reinstate and pay out grants against its interests further corroborate the need for review. Far from violating the APA, the grant terminations at issue are not subject to arbitrary-and-capricious APA review at all due to the discretionary nature of the TQP and SEED grant programs. The order is also plainly overbroad: it grants interim relief to nonparties and grants relief that exceeds the scope of the legal problem that the court asserted.

1. The district court lacked jurisdiction to compel payments

The district court lacked jurisdiction entirely to order the government to turn back on grant disbursements and pay out millions of dollars to grantees. That recurring and important issue calls out for this Court's intervention. See *AIDS Vaccine*, 145 S. Ct. at 755-756 (Alito, J., dissenting from denial of application to vacate order); see also p. 2 n.1, *supra* (citing other pending cases raising the same issue).

a. Federal courts generally lack jurisdiction to order the federal government to pay money unless Congress "unequivocally" waives the government's sovereign immunity. *Lane* v. *Pena*, 518 U.S. 187, 192 (1996). The APA provides a limited waiver of sovereign immunity for claims "seeking relief other than money damages." 5 U.S.C. 702. But the APA's waiver "comes with an important carve-out": it does not apply "'if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.'" *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians* v. *Patchak*, 567 U.S. 209, 215 (2012) (quoting 5 U.S.C. 702). That carve-out "prevents plaintiffs from exploiting the APA's waiver to evade limitations on suit contained in other statutes." *Ibid.*

Thus, parties that seek to access funds that the government is purportedly obligated to pay under contracts or grants must typically proceed under the Tucker Act, not the APA. The Tucker Act provides that the "United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded" on "any express or implied contract with the United States." 28 U.S.C. 1491(a); see 28 U.S.C. 1346(a)(2) ("the district courts shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States"). The D.C. Circuit has therefore "held that the Tucker Act 'impliedly forbids'" the bringing of "contract actions" against "the government in a federal district court" under the APA. *Albrecht* v. *Committee on Emp. Benefits of the Fed. Reserve Emp. Benefits Sys.*, 357 F.3d 62, 67-68 (2004) (citation omitted). And that jurisdictional barrier matters. It ensures that contract claims against the government are channeled into the court that has "unique expertise" in that area, *Ingersoll-Rand Co.* v. *United States*, 780 F.2d 74, 78 (D.C. Cir. 1985), and which Congress has generally not empowered to grant injunctive relief, see *James* v. *Caldera*, 159 F.3d 573, 580 (Fed. Cir. 1998).

The D.C. Circuit carefully considers whether "an action is in 'its essence' contractual," *Perry Capital LLC* v. *Mnuchin*, 864 F.3d 591, 618-619 (2017) (citation omitted), cert. denied, 583 U.S. 1115 (2018), which "depends both on the source of the rights upon which the plaintiff bases its claims, and upon the type of relief sought." *Megapulse*, *supra*, 672 F.2d at 968. When a plaintiff's claim is premised on a contract with the government, depends on the government's having breached that contract, and seeks to compel the government to pay sums due under the contract, that is a Tucker Act claim, not an APA claim. See *id.* at 967-971.

b. Those black-letter rules should have precluded the district court in this

case from exercising jurisdiction under the APA. First, respondents have never disputed that their TQP and SEED grant awards have the essential characteristics of contracts. See Resp. C.A. Opp. 17. When the government implements grants by "employ[ing] contracts to set the terms of and receive commitments from recipients," the grants are properly treated as contracts for purposes of jurisdiction in the Claims Court. *Boaz Housing Auth.* v. *United States*, 994 F.3d 1359, 1368 (Fed. Cir. 2021); see, *e.g.*, *Henke* v. *United States Dep't of Commerce*, 83 F.3d 1445, 1450-1451 (D.C. Cir. 1996) (federal grant had the "essential elements of a contract"). And those grant agreements are plainly "the source of the rights upon which" respondents base their claims. *Megapulse*, 672 F.2d at 968. Respondents, after all, demand that grantees receive funds they claim should be disbursed under grant agreements with the government. Respondents allege that the government terminated the grants and withheld funds improperly and in violation of the grant instruments' terms and conditions. See D. Ct. Doc. 1, at 4-5. They would have no claim at all without having alleged a breach of the grant agreements by the government.

Second, rather than challenging some regulatory action with monetary implications—the kind of claim that does not necessarily entail any contractual breach—respondents at bottom seek what they view as sums owed to them by the government. *Great-West Life & Annuity Ins. Co.* v. *Knudson*, 534 U.S. 204, 212 (2002); see *Maine Community Health Options* v. *United States*, 590 U.S. 296, 326-327 (2020); cf. *Bowen* v. *Massachusetts*, 487 U.S. 879 (1988). APA suits do not "claim a breach of contract" and "seek[] no monetary damages against the United States"; such claims instead rest on statutory or constitutional theories independent of the contract terms. *Megapulse*, 672 F.2d at 969. But here, the payment of money, far from being merely incidental to or "hint[ed] at" by respondents' request for relief, is the entire object of re-

spondents' suit. *Crowley Gov't Servs., Inc.* v. *General Servs. Admin.*, 38 F.4th 1099, 1112 (D.C. Cir. 2022) (citation omitted). The appropriate vehicle for a claim seeking sums allegedly wrongfully withheld by the government is a "Tucker Act [suit] in the Claims Court," not an APA action. *Bowen*, 487 U.S. at 890 n.13 (quoting *Massachusetts* v. *Secretary of Health & Human Servs.*, 816 F.2d 796, 800 (1st Cir. 1987)); see *Crowley*, 38 F.4th at 1107. Indeed, insofar as the relevant grantees receive their funding as reimbursements "for expenses already incurred," App., *infra*, 33a; see Resp. C.A. Opp. 2, respondents' suit presents a particularly clear case. Suits seeking "compensat[ion] for completed labors" belong in the Claims Court. *Maine Community*, 590 U.S. at 327.

c. In holding otherwise, the First Circuit gave lip service to D.C. Circuit precedent while breaking entirely from the D.C. Circuit's actual approach. See App., *infra*, 25a-27a. The decision below deemed the "'essence'" of respondents' claims as "not contractual" because they "challenge the Department's actions as insufficiently explained, insufficiently reasoned, and otherwise contrary to law—arguments derived from the [APA], 5 U.S.C. § 706(2)(A)." *Id.* at 25a-26a (quoting *Megapulse*, 672 F.2d at 968). The district court reasoned similarly. *Id.* at 3a. By that logic, however, plaintiffs could bring virtually any paradigmatic contract suit under the APA by simply incanting the language of the APA's judicial-review provisions—the very open-ended, plead-around approach that the D.C. Circuit has long rejected. "It is hard to conceive of a claim falling no matter how squarely within the Tucker Act which could not be urged to involve as well agency error subject to review under the APA." *Megapulse*, 672 F.2d at 967 n.34 (brackets and citation omitted); see *Catholic Bishops*, 2025 WL 763738, at *7 ("Sure, the [plaintiff] seeks to set aside agency action. But the agency action that it asks the Court to reverse is the Government's decision to

cease a financial relationship with the [plaintiff].").

Nor does it matter, as the First Circuit supposed, App., *infra*, 26a, that respondents claim the government "acted in violation of federal law" in terminating the grants. As the D.C. Circuit explained in *Ingersoll-Rand*, 780 F.2d 74, "merely * * * alleging violations of regulatory or statutory provisions rather than breach of contract" does not deprive a suit of its contractual essence for these jurisdictional purposes. *Id.* at 77; see *id.* at 78 (collecting cases). Just because respondents invoke statutes and regulations that "might impose procedural requirements on the government having some impact on the contract" does not mean that those provisions "create[] the substantive right to the remedy [they] seek[]." *Spectrum Leasing Corp.* v. *United States*, 764 F.2d 891, 894 (D.C. Cir. 1985). The ultimate source of the grantees' asserted right to payment is the grant awards, not the grantmaking statutes or grant-termination regulations that respondents claim the government violated. See *Catholic Bishops*, 2025 WL 763738, at *5-*6 (applying *Ingersoll-Rand* and *Spectrum*).

The district court barely engaged with this fatal jurisdictional defect "before plowing ahead" with its order. *AIDS Vaccine*, 145 S. Ct. at 756 (Alito, J., dissenting from denial of application to vacate order). The principal authority for the court's jurisdictional determination was a days-old, distinguishable district-court decision that involved a challenge to a single agency policy, rather than individual funding terminations. App., *infra*, 2a; see *Massachusetts* v. *National Insts. of Health*, No. 25-cv-10338, 2025 WL 702163, at *1 (D. Mass. Mar. 5, 2025) (granting a "nationwide preliminary injunction" against a new agency policy governing "indirect cost rates" for biomedical-research grants). Just a day later, in a case highly similar to this one (now pending before the D.C. Circuit), a district court reached the opposite conclusion. See *Catholic Bishops*, 2025 WL 763738.

When claims like respondents' are "[s]tripped of [their] equitable flair," the "requested relief seeks one thing: * * * the Court to order the Government to stop withholding the money due" under the TQP and SEED grants. *Catholic Bishops*, 2025 WL 763738, at *5. "In even plainer English: [they] want[] the Government to keep paying up." *Ibid.* Such a claim for "the classic contractual remedy of specific performance" "must be resolved by the Claims Court." *Ibid.* (citations omitted). The district court's order and the court of appeals' decision blatantly override those basic principles, undermining the United States' sovereign immunity and Congress's carefully designed jurisdictional scheme.

2. Other defects in the district court's overbroad order independently warrant review

The district court's order is rife with other errors that would warrant this Court's intervention—errors that should have precluded plainly overbroad relief for flawed APA claims.

a. **APA Preclusion for Discretionary Decisions.** Even were respondents' claims reviewable under the APA, not the Tucker Act, the APA itself would have precluded arbitrary-and-capricious review of the grant terminations. Such terminations are quintessential agency actions "committed to agency discretion by law," for which the APA does not provide an avenue for review. 5 U.S.C. 701(a)(2). An agency's determination of how to allot appropriated funds among competing priorities and recipients is classic discretionary agency action that is not susceptible to arbitrary-and-capricious APA review. See *Lincoln* v. *Vigil*, 508 U.S. 182, 193 (1993).

In *Lincoln*, for instance, this Court held that the Indian Health Service's decision to discontinue a program it had previously funded and to instead reallocate those funds to other programs was committed to agency discretion by law and thus not

reviewable under the APA. See 508 U.S. at 185-188, 193. The Court explained that the "allocation of funds from a lump-sum appropriation" is an "administrative decision traditionally regarded as committed to agency discretion," because the "very point of a lump-sum appropriation is to give an agency the capacity to adapt to changing circumstances and meet its statutory responsibilities in what it sees as the most effective or desirable way." *Id.* at 192. "[A]n agency's allocation of funds from a lump-sum appropriation requires 'a complicated balancing of a number of factors which are peculiarly within its expertise': whether its 'resources are best spent' on one program or another; whether it 'is likely to succeed' in fulfilling its statutory mandate; whether a particular program 'best fits the agency's overall policies'; and, 'indeed, whether the agency has enough resources' to fund a program 'at all.'" *Id.* at 193 (quoting *Heckler* v. *Chaney*, 470 U.S. 821, 831 (1985)). "Of course," such discretion is not unbounded, because "an agency is not free simply to disregard statutory responsibilities: Congress may always circumscribe agency discretion to allocate resources by putting restrictions in the operative statutes." *Ibid.* But as long as the agency abides by the relevant statutes (and whatever self-imposed obligations may arise from regulations or grant instruments), the APA "gives the courts no leave to intrude" via arbitrary-and-capricious review. *Ibid.*

Although *Lincoln* involved lump-sum appropriations, its logic extends to funding programs that leave to the agency "the decision about how the moneys" for a particular program "could best be distributed consistent with" the governing statute. *Milk Train, Inc.* v. *Veneman*, 310 F.3d 747, 751 (D.C. Cir. 2002). Such decisions—like decisions regarding how best to allocate lump-sum appropriations—"clearly require[] 'a complicated balancing of a number of factors which are peculiarly within [the agency's] expertise.'" *Id.* at 752 (citation omitted); see *Policy & Research, LLC*

v. *United States Dep't of Health & Human Servs.*, 313 F. Supp. 3d 62, 75-76 (D.D.C. 2018) (Jackson, J.).

That discretion-laden calculus applies to the grant programs at issue in this case. Congress has charged the Department of Education with deciding how best to allocate appropriated funds across grant applicants. For TQP grants, the statute provides simply that "the Secretary is *authorized* to award grants, on a competitive basis, to eligible partnerships, to enable the eligible partnerships to carry out" certain activities, including "a program for the preparation of teachers," a "teaching residency program," and "a leadership development program." 20 U.S.C. 1022a(a) and (c)(1) (emphasis added). That is a paradigmatic grant of discretion to the agency. See *Heckler* v. *Chaney*, 470 U.S. at 835 (statute "framed in the permissive" did not enable arbitrary-and-capricious review). Similarly, the SEED grant statute directs the Secretary to award grants ("shall award"), but gives the Secretary extensive discretion to decide which grants to award for myriad alternative "purposes," such as "providing evidence-based professional development activities" or "making freely available services and learning opportunities to local educational agencies." 20 U.S.C. 6672(a); see *Southern Research Inst.* v. *Griffin Corp.*, 938 F.2d 1249, 1254 (11th Cir. 1991) (statute establishing "general directives" about allocating benefits does not enable arbitrary-and-capricious review) (citation omitted). Under both programs, there is no meaningful standard for a court to apply in reviewing the Secretary's exercise of her broad discretion within the outer bounds of those "permissible statutory objectives." *Lincoln*, 508 U.S. at 193.

Neither of the lower courts grappled with that problem, even though both reached only respondents' arbitrary-and-capricious claim. App., *infra*, 4a-6a & n.3, 29a-33a. The district court paid no attention to this established limit on the APA's

scope, and the court of appeals offered little more. That court simply cited the statutes discussed above (as well as a regulation broadly authorizing grant terminations for inconsistency with agency priorities, 2 C.F.R. 200.340) and described them, without explanation, as working to "cabin the Department's discretion as to when it can terminate existing grants." App., *infra*, 28a-29a. That was error. Far from undermining the Department's discretion to terminate grants, those provisions exude deference to the Department. And even supposing they did appreciably cabin the agency's discretion, neither the district court nor the court of appeals based its decision on violations of those provisions—the courts found only that the grant terminations were likely arbitrary and capricious. App., *infra*, 4a-6a & n.3, 29a-33a. Any minimal statutory or regulatory constraints on the Department's grant decisions do not provide a basis to subject those decisions to the APA's reasoned-decisionmaking requirements. See *Lincoln*, 508 U.S. at 193.

b. **Overbroad Relief.** Even setting aside the district court's lack of jurisdiction to enter the TRO and its errors on the merits, this Court could vacate much of the TRO for a threshold reason: the TRO grants relief to all TQP and SEED grantees in respondents' States, not simply to respondents themselves. See *AIDS Vaccine*, 145 S. Ct. at 756 n.* (Alito, J., dissenting from denial of application to vacate order). The district court improperly extended relief to all "[grant] recipients in Plaintiff States," App., *infra*, 9a-10a, rather than limiting relief to the grants received by the actual plaintiffs—*i.e.*, the States or their instrumentalities. Respondents' complaint appears to identify several grant recipients that are *located* within the plaintiff States but are merely "affiliated" or "associated" with the State or that are local school districts, not clear state instrumentalities. D. Ct. Doc. 1, at 18-19, 23-24. Yet the district court simply granted relief to all of those grantees. Cf. App., *infra*, 3a n.2. Further,

the court's order extends to *all* grantees within the plaintiff States, even private-school grantees who simply operate there.

The district court's order thus plainly violates the constitutional and equitable principle that relief must be limited to redressing the specific plaintiff's injury. See *Gill* v. *Whitford*, 585 U.S. 48, 66 (2018); *Califano* v. *Yamasaki*, 442 U.S. 682, 702 (1979). As Members of this Court have recognized, such broad remedies exceed "the power of Article III courts," conflict with "longstanding limits on equitable relief," and impose a severe "toll on the federal court system." *Trump* v. *Hawaii*, 585 U.S. 667, 713 (2018) (Thomas, J., concurring); see *DHS* v. *New York*, 140 S. Ct. 599, 599-601 (2020) (Gorsuch, J., concurring in the grant of stay). But the court of appeals blithely brushed such concerns aside, simply deeming it "premature to address the adequacy of the district court's explanation" for the scope of its order. App., *infra*, 36a.

Compounding the problem, the district court ordered relief beyond redressing the specific harm it had identified. "[A] court must tailor equitable relief to redress the [plaintiffs'] alleged injuries without burdening the defendant more than necessary." *Department of Educ.* v. *Louisiana*, 603 U.S. 866, 873 (2024) (Sotomayor, J., dissenting in part from denial of applications for stays) (citing *Madsen* v. *Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994), and *Yamasaki*, 442 U.S. at 702). Here, the only legal violation the court identified was that the termination letters purportedly lacked adequate explanation. If so, the proper remedy would, at most, prevent the Department from relying on those termination letters absent further explanation. Cf. *DHS* v. *Regents of the Univ. of Cal.*, 591 U.S. 1, 20 (2020) (court may remand to agency for fuller explanation).

Here again, the court of appeals side-stepped the problem, noting that the government had not "claim[ed] that it plans" to reinstate grant terminations before the

forthcoming March 28 preliminary-injunction hearing. App., *infra*, 36a. Yet the district court expressly *enjoined* the government from "reinstating under a different name the termination" of the covered awards, *id.* at 9a—while also confusingly stating that the government may "terminat[e] any individual" grants if those terminations are "consistent with the Congressional authorization and appropriations, relevant federal statute, including the requirements of the APA, the requirements of the relevant implementing regulations, the grant terms and conditions, and this Court's Order," *id.* at 10a. Nothing about the district court's merits analysis can justify that relief. Cf. *AIDS Vaccine Advocacy Coal.* v. *United States Dep't of State*, No. 25-cv-400, 2025 WL 752378, at *11-*13 (D.D.C. Mar. 10, 2025) (rejecting an argument that an agency had improperly acted by individually terminating contracts and grants after the court had enjoined the agency's original categorical freeze). At a minimum, therefore, the government is likely to succeed on its challenge to the district court's order in substantial part.[2]

B. The District Court's Order Is Appealable

The order's styling as a "TRO" does not preclude the government from seeking appellate relief. See *AIDS Vaccine*, 145 S. Ct. at 754 (Alito, J., dissenting from denial of application to vacate order). For all its opinion's faults, the court of appeals did not disagree; although it merely "assume[d]" appealability here, App., *infra*, 24a, it issued a full opinion on the government's stay motion, addressing the merits and equities. The First Circuit's assumption was correct.

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[2] The courts below aggravated their errors by concluding that the Department's grant terminations were likely unlawful under the APA's deferential arbitrary-and-capricious standard. App., *infra*, 4a-6a, 29a-32a; see 5 U.S.C. 706(2)(A). Although this Court need not address that issue at this stage, and we do not press the point for purposes of this application, the lower courts' reasoning was incorrect. See Gov't C.A. Stay Mot. 15-17.

1. The courts of appeals have jurisdiction over appeals from district-court orders granting "injunctions." 28 U.S.C. 1292(a)(1); see also 28 U.S.C. 1254(1) (granting this Court jurisdiction over "[c]ases in the court of appeals"). The fact that the district court labeled its March 10 order as a TRO rather than a preliminary injunction should not preclude the government from obtaining relief. The "label attached to an order is not dispositive." *Abbott* v. *Perez*, 585 U.S. 579, 594 (2018). Instead, "where an order has the 'practical effect' of granting or denying an injunction, it should be treated as such for purposes of appellate jurisdiction." *Ibid.* (citation omitted). Otherwise, a district court could "shield its orders from appellate review merely by designating them as temporary restraining orders, rather than as preliminary injunctions," and thereby "would have virtually unlimited authority over the parties in an injunctive proceeding." *Sampson* v. *Murray*, 415 U.S. 61, 86-87 (1974).

Even as the district court labeled its order as a TRO, the court openly equated the two forms of relief. App., *infra*, 3a, 8a & n.4. Rather than maintain the status quo—under which the relevant TQP and SEED grants had already been terminated for about a month before respondents' suit was filed—the court's order directed the government to reactivate the grants and make funds available "effective immediately." *Id.* at 10a; see *ibid.* (barring the government from "implementing, giving effect to, maintaining, or reinstating" the terminations, including through "suspension or withholding of any funds approved and obligated for the grants"). It would be especially anomalous not to treat the order at issue as an appealable injunction when, as here, "an adversary hearing has been held, and the court's basis for issuing the order strongly challenged." *Sampson*, 415 U.S. at 87.

2. Even if the district court's order were not directly appealable, the government asked the court of appeals, in the alternative, to treat its appeal and stay

motion as a petition for a writ of mandamus. Gov't C.A. Stay Mot. 8-9. The district court's extraordinary order—requiring immediate compliance, misapplying the APA in multiple respects, and sweeping more broadly than necessary—readily satisfies the mandamus standard. See *Cheney* v. *United States Dist. Ct. for D.C.*, 542 U.S. 367, 380-381 (2004). If the government could not directly challenge the district court's order, it would have "no other adequate means to attain the relief [it] desires." *Id.* at 380 (citation omitted). The government's right to relief is also "clear and indisputable" in light of the district court's multiple errors on jurisdictional and merits questions. *Id.* at 381 (citation omitted). And mandamus is "appropriate under the circumstances" because the district court's actions "threaten the separation of powers" by usurping lawful Executive Branch prerogatives. *Ibid.*

C. The Other Stay Factors Support Vacating the Order

The emergency-relief calculus also includes whether the underlying issues warrant this Court's review, whether the applicant likely faces irreparable harm, and, in close cases, the balance of equities. See *Hollingsworth*, 558 U.S. at 190. Here too, each factor overwhelmingly supports relief.

1. This Court would likely grant certiorari

For starters, the issues presented in this case are worthy of this Court's review under its traditional certiorari criteria. See *John Does 1-3* v. *Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring in denial of application for injunctive relief); Sup. Ct. R. 10. The district court directed a federal agency and its leadership to immediately make available millions of dollars to fund programs that, the agency has determined, are inconsistent with the government's objectives. The court did so in an order that masqueraded as an unappealable TRO and failed to heed the limits on the APA's waiver of the government's sovereign immunity.

That is a remarkable intrusion on the operations of the Executive Branch, and the kind of judicial action that this Court has routinely decided to review. See, *e.g.*, *Heckler* v. *Lopez*, 463 U.S. 1328, 1329 (1983) (Rehnquist, J., in chambers) (granting stay of district court order requiring Secretary of Health and Human Services "immediately to reinstate benefits to the applicants" and mandating that the Secretary then make certain showings "before terminating benefits"); cf. *Trump* v. *Sierra Club*, 140 S. Ct. 1 (2019) (granting stay of district court order enjoining the Department of Defense from undertaking any border-wall construction using funding the Acting Secretary transferred pursuant to statutory authority); *INS* v. *Legalization Assistance Project*, 510 U.S. 1301, 1305-1306 (1993) (O'Connor, J., in chambers) (granting stay of district court order requiring INS to engage in certain immigration procedures, as "an improper intrusion by a federal court into the workings of a coordinate branch of the Government"). In particular, as discussed above, the court of appeals' analysis of the APA jurisdictional issue conflicts with a series of decisions of the D.C. Circuit dating back decades.

Indeed, four Members of this Court recently observed that both "[c]larification of the standards for distinguishing between a TRO and a preliminary injunction" and "the scope of the APA's waiver of sovereign immunity" are matters "that deserve[] this Court's attention at the present time." *AIDS Vaccine*, 145 S. Ct. at 755 n.* (Alito, J., dissenting from denial of application to vacate order). This case squarely presents both issues and is worthy of certiorari by the same token.

2. This order irreparably harms the Executive Branch

The government is being significantly and irreparably harmed by the district court's order. Above and beyond the obvious harms to the President's ability to execute core Executive Branch policies, the order to open the funding spigots irreparably

harms the public fisc. The order required the government to reinstate the access of grantees (even nonplaintiff grantees) to TQP and SEED funds effective "immediately" and "enjoined" the government from re-terminating those grants in any way, despite the Department's determination that the terminated grants promote harmful DEI practices. App., *infra*, 9a. Under the court's order, grantees in the plaintiff States are free (and are "strongly incentivized") to draw from "the $65 million still outstanding under their awards." *Id.* at 14a; see *id.* at 14a-15a. The government has a strong interest in safeguarding the public fisc, see *Mathews* v. *Eldridge*, 424 U.S. 319, 348 (1976), as well as "a fundamental, overriding interest in eradicating racial discrimination in education," *Bob Jones Univ.* v. *United States*, 461 U.S. 574, 604 (1983), an interest that can be thwarted by DEI programs, see *Students for Fair Admissions, Inc.* v. *President & Fellows of Harvard Coll.*, 600 U.S. 181, 261 (2023) (Thomas, J., concurring). Every day that the district court's order is in effect, those important governmental interests are being palpably frustrated.

Even as it dismissed the government's concerns in this regard as "speculation and hyperbole," the court of appeals admitted that the government "may incur some irreparable harm if it cannot recoup this money." App., *infra*, 33a-34a. But it insisted that the government "ha[d] not yet shown that recoupment is implausible." *Id.* at 34a. As the government informed the district court, however, through the affidavit of the Department's chief of staff, "[o]nce funds leave the Department and go to grantees, the Department has limited ability to recover those disbursed funds." *Id.* at 15a. "Nor has any grantee promised to return withdrawn funds should its grant termination be reinstated—exacerbating the significant risk that substantial taxpayer dollars will be lost forever due to the Court's order absent emergency relief." *Ibid.* The court of appeals did not explain why it is better positioned than the Department itself

to assess these risks of harm. And the loss of likely unrecoverable funds is a classic injury supporting interim relief for the government. See *Turner*, 468 U.S. at 1307-1308 (Rehnquist, J., in chambers) (prospect of the government being forced to make $1.3 million in improper payments per month supported a stay); see also *AIDS Vaccine*, 145 S. Ct. at 757 (Alito, J., dissenting from denial of application to vacate order).

The district court dismissed those harms on the theory that its TRO would merely compel the government "to disburse funds that Congress has appropriated to the States and others." App., *infra*, 9a (citation omitted). But Congress appropriated the funds at issue here to the *Secretary*, for her to award as grants to eligible entities as authorized by statute. See 22 U.S.C. 1022a(a), 1022h, 6672(a). The court's theory was revealing for its elision of the Executive Branch's lawful discretion over the disbursement of the TQP and SEED grant funds.

The court of appeals also downplayed the risks of harm by stating that TQP and SEED grant recipients "submit reimbursement requests for expenses already incurred." App., *infra*, 33a. But lost money is lost money; the disbursement of *any* such funds injures the government, since respondents and the other covered grantees have no entitlement to those funds at all once the grants are terminated. Furthermore, applicable regulations generally entitle grantees to "be paid in advance," provided the payments are made "as close as is administratively feasible to the actual disbursements by the [recipient]." 2 C.F.R. 200.305(b)(1). Respondents have insisted that the regulations prevent unnecessarily large drawdowns, but respondents are States, not the actual grantees that will be making drawdown requests in light of their experience with the regulations' operation. At the very least, the district court should have clarified the government's ability to invoke those protective measures—but has refused to do so. See App., *infra*, 9a (enjoining the government from "suspension or

withholding of any funds approved and obligated for the grants").

3. Vacatur would not irreparably harm respondents

Respondents, by contrast, would not be irreparably harmed by vacatur of the district court's order. They have no cognizable interest in receiving federal funds to which they are not legally entitled or on a timeline that is not legally compelled. The district court largely overlooked that respondents' claimed harms are monetary and that, if they ultimately prevail, they will receive the funds to the extent required by law. See *Turner*, 468 U.S. at 1308 (Rehnquist, J., in chambers); *Dennis Melancon, Inc.* v. *City of New Orleans*, 703 F.3d 262, 279 (5th Cir. 2012) (the "possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm") (brackets and citation omitted), cert. denied, 569 U.S. 994 (2013). In the meantime, respondents have never claimed that they lack the ability to front the money for the training programs covered by the grants. Indeed, they have suggested the opposite—stating that "the [p]laintiff States' own institutions would be required to expend public funds to conduct that training" in the meantime. Resp. C.A. Opp. 20.

Furthermore, respondents' own "delay * * * vitiates much of the force of their allegations of irreparable harm." *Beame* v. *Friends of the Earth*, 434 U.S. 1310, 1313 (1977) (Marshall, J., in chambers). Respondents waited nearly a month after the grant terminations to file suit and seek a TRO from the district court. Their only defense of that delay is a generalized reference to a need to "gather facts" and "investigat[e]" before filing suit, Resp. C.A. Opp. 9, 23, which hardly supports a need for relief so immediate that the district court must order the government to release funds within a matter of days.

D. This Court Should Grant An Administrative Stay

At a minimum, the Acting Solicitor General respectfully requests that this Court grant an administrative stay while it considers the government's submission. The government has been complying with the district court's flawed order. But, by complying, the government has perversely incentivized TQP and SEED grantees to draw upon federal grants to which they are not entitled, which the government has attempted to terminate, and which these grantees have every incentive to draw down swiftly. With scant explanation, the district court denied the government's motion for a stay pending appeal. The court of appeals has done the same, after taking seven days to issue its ruling. And now the district court has extended its TRO for up to two weeks. In these circumstances, an administrative stay is warranted while this Court assesses the government's entitlement to vacatur.

CONCLUSION

This Court should vacate the district court's order of March 10, 2025, granting respondents' motion for a temporary restraining order, as extended by that court on March 24. In addition, the Acting Solicitor General respectfully requests an immediate administrative stay of the district court's order pending the Court's consideration of this application.

Respectfully submitted.

SARAH M. HARRIS
Acting Solicitor General

MARCH 2025

APPENDIX

District court memorandum and order granting temporary restraining order (D. Mass. Mar. 10, 2025) 1a

Declaration of Rachel Oglesby (D. Mass. Mar. 12, 2015) 11a

District court order denying emergency motion to stay (D. Mass. Mar. 13, 2025) 16a

Court of appeals order (1st Cir. Mar. 12, 2025) 18a

Court of appeals opinion (1st Cir. Mar. 21, 2025) 20a

Court of appeals order (1st Cir. Mar. 21, 2025) 37a

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

STATE OF CALIFORNIA; COMMONWEALTH OF MASSACHUSETTS; STATE OF NEW JERSEY; STATE OF COLORADO; STATE OF ILLINOIS; STATE OF MARYLAND; STATE OF NEW YORK; and STATE OF WISCONSIN, Plaintiffs, v. U.S. DEPARTMENT OF EDUCATION; DENISE CARTER, in her official capacity as former Acting Secretary of Education and current acting Chief Operating Officer, Federal Student Aid; LINDA MCMAHON, in her official capacity as Secretary of Education, Defendants.	)	Civil Action No. 25-10548-MJJ

MEMORANDUM AND ORDER ON PLAINTIFF STATES' MOTION FOR TEMPORARY RESTRAINING ORDER

March 10, 2025

JOUN, D.J.

On March 6, 2025, the states of California, Massachusetts, New Jersey, Colorado, Illinois, Maryland, New York, and Wisconsin (collectively, "Plaintiff States") filed suit against defendants Secretary of Education Linda McMahon and former Acting Secretary of Education Denise Carter, in their official capacities, and the United States Department of Education ("Department"; collectively, "Defendants"). Plaintiff States allege that, starting on February 7, 2025, the Department arbitrarily terminated all grants previously awarded under the Teacher

Quality Partnership ("TQP") Program and the Supporting Effective Educator Development ("SEED") Grant Program in violation of the Administrative Procedures Act ("APA").[1]

Plaintiff States filed a Motion for Temporary Restraining Order, [Doc. No. 2], and a hearing was held this afternoon at 2:30 P.M. Upon consideration of Plaintiff States' briefs and supporting evidence, the parties' oral argument, and for the reasons explained below, I GRANT Plaintiff States' Motion and enter a temporary restraining order ("TRO") against Defendants pursuant to the terms outlined at the end of this Order.

I. DISTRICT COURT JURISDICTION

Defendants argue the waiver of sovereign immunity in the APA, 5 U.S.C § 702, does not extend to actions of contract which are within the exclusive jurisdiction of the Court of Federal Claims under the Tucker Act, 28 U.S.C. § 1491. Plaintiff States disagree, arguing waiver of sovereign immunity allows for suit in this Court.

Very recently, another session in this District examined this precise issue in a substantially similar case to this one. *Massachusetts v. Nat'l Institutes of Health,* No. 25-cv-10338, 2025 WL 702163 (D. Mass. Mar. 5, 2025). In that case, in a thoughtful analysis, Judge Angel Kelley determined that the "essence" of the action was not contractual in nature since the source of the plaintiffs' rights was in federal statute and regulations and because the relief was injunctive in nature. *See id.* at *8. I agree with, and adopt, Judge Kelley's reasoning and conclusion. Here, similarly, Plaintiff States seek equitable relief in the form of reinstatement of the TQP and SEED grants. Plaintiff States also seek to enjoin Defendants from implementing, giving effect to, maintaining, or reinstating under a different name the termination of any

[1] The parties do not dispute that the termination of SEED and TQP grants constituted final agency action.

previously awarded TQP and SEED grants. In other words, Plaintiff States seek to preserve the previous status quo to alleviate corresponding harm; they are not alleging claims for past pecuniary harms. Plaintiff States have also sufficiently shown that the dispute does not hinge on the terms of a contract between the parties, but rather "federal statute and regulations put in place by Congress and the [Department]." *See id.* at *6. This Court retains jurisdiction.[2]

II. TEMPORARY RESTRAINING ORDER

The standard for issuing a TRO—an "extraordinary and drastic remedy"—is "the same as for a preliminary injunction." *Orkin v. Albert*, 557 F. Supp. 3d 252, 256 (D. Mass. 2021) (cleaned up). Plaintiff States must show that weighing the following four interests favors granting a TRO:

> (i) the likelihood that the movant will succeed on the merits; (ii) the possibility that, without an injunction, the movant will suffer irreparable harm; (iii) the balance of relevant hardships as between the parties; and (iv) the effect of the court's ruling on the public interest.

Coquico, Inc. v. Rodriguez-Miranda, 562 F.3d 62, 66 (1st Cir. 2009).

A. Likelihood of Success

I begin with the likelihood of success on the merits, which is considered the most important of the four elements and the "sine qua non" of the calculus. *Ryan v. U.S. Immigr. & Customs Enf't*, 974 F.3d 9, 18 (1st Cir. 2020). Plaintiff States allege that Defendants committed substantive violations of the APA by taking an agency action that is (1) arbitrary and capricious and an abuse of discretion, and (2) not in accordance with law. Based on the evidence before me now, I find that Plaintiff States are likely to succeed on the merits of their claims.

[2] For purposes of the TRO, Plaintiff States have established their recipient institutions of higher education and local educational agencies are public instrumentalities of Plaintiff States, which have standing to bring suit on their behalf.

The APA requires that a court "hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, [or] an abuse of discretion." 5 U.S.C. § 706(2)(A). An agency action is arbitrary and capricious if the agency has "relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). "[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Id.* (cleaned up); *see also Amerijet Int'l, Inc. v. Pistole*, 753 F.3d 1343, 1350 (D.C. Cir. 2014) ("[A] fundamental requirement of administrative law is that an agency set forth its reasons for decision; an agency's failure to do so constitutes arbitrary and capricious agency action." (cleaned up)). That "reasoned explanation requirement . . . is meant to ensure that agencies offer genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public." *Dep't of Commerce v. New York*, 588 U.S. 752, 785 (2019).

The record reflects that there was no individualized analysis of any of the programs; rather, it appears that all TQP and SEED grants were simply terminated. See Doc. 8-13 at 60. And all the programs received the same standardized form letter notifying them of the grant terminations ("Termination Letter"), which states as follows:

> It is a priority of the Department of Education to eliminate discrimination in all forms of education throughout the United States. The Acting Secretary of Education has determined that, per the Department's obligations to the constitutional and statutory law of the United States, this priority includes ensuring that the Department's grants do not support programs or organizations that promote or take part in diversity, equity, and inclusion ("DEI") initiatives or any other initiatives that unlawfully discriminate on the basis of race, color, religion, sex, national origin, or another protected characteristic. . . . In addition to complying

> with the civil rights laws, it is vital that the Department assess whether all grant payments are free from fraud, abuse, and duplication, as well as to assess whether current grants are in the best interests of the United States.
>
> The grant specified above provides funding for programs that promote or take part in DEI initiatives or other initiatives that unlawfully discriminate on the basis of race, color, religion, sex, national origin, or another protected characteristic; that violate either the letter or purpose of Federal civil rights law; that conflict with the Department's policy of prioritizing merit, fairness, and excellence in education; that are not free from fraud, abuse, or duplication; or that otherwise fail to serve the best interests of the United States. The grant is therefore inconsistent with, and no longer effectuates, Department priorities.

[Doc. No. 1-1 at 2].

I see no reasoned explanation articulated for the Department's action here. First, the Termination Letter lists several theoretical bases for the grant terminations—stating the grants fund programs that, for example, "promote or take part in DEI initiatives" *or* "are not free from fraud, abuse, or duplication" *or* "otherwise fail to serve the best interests of the United States"—but fails to identify which of these bases applies here. This does not reach the level of a reasoned explanation; indeed it amounts to no explanation at all. Second, even accepting any one of these bases as justification for the agency action, such as discrimination related to DEI initiatives, the Termination Letter is arbitrary and capricious because its statements are only conclusory. "[C]onclusory statements will not do; an agency's statement must be one of *reasoning.*" *Amerijet*, 753 F.3d at 1350 (cleaned up); *see also Nat'l Institutes of Health*, 2025 WL 702163, at *18 ("[The agency's] proffered 'reasons' fail to grapple with the relevant factors or pertinent aspects of the problem and fails to demonstrate a rational connection between the facts and choice that was made."). There is no indication that the Department "examine[d] the relevant data," *Motor Vehicle Mfrs.*, 463 U.S. at 29; to the contrary, the record reflects a lack of the individualized reasoning and analysis required. To the extent that Defendants claim that it is sufficient explanation for the Department to baldly assert that the grants "no longer effectuate[]

Department policies," such an assertion cannot stand. In the absence of any reasoning, rationale, or justification for the termination of the grants, the Department's action is arbitrary and capricious.

The Department's failure to provide a reasoned explanation is "even more egregious in light of the drastic change" from the existing policies under which the grant awards had been authorized. *Nat'l Institutes of Health*, 2025 WL 702163, at *18. "Although a change in policy does not result in a heightened standard of review, if an agency's 'new policy rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests' an agency's failure to consider such factors 'would be arbitrary or capricious.'" *Id.* (quoting *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)). In such cases, "a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy." *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016). As described, the Termination Letter failed to provide any reasoned explanation, let alone one that considered the facts and circumstances underlying the prior policy.

For these reasons, Plaintiff States are likely to succeed in their claims that the Department's action in terminating the grants is arbitrary and capricious.[3]

B. Irreparable Harm

Plaintiff States have adequately shown that they would be irreparably harmed if temporary relief were not granted. An "irreparable injury" for the purposes of preliminary relief is "an injury that cannot adequately be compensated for either by a later-issued permanent

[3] This suffices for purpose of the present TRO and I need not, at this time, reach the argument in Count II that there exists a separate ground for a substantive violation of the APA, i.e., an action not in accordance with the law.

injunction, after a full adjudication on the merits, or by a later-issued damages remedy." *Rio Grande Cmty. Health Ctr., Inc. v. Rullan*, 397 F.3d 56, 76 (1st Cir. 2005). "The necessary concomitant of irreparable harm is the inadequacy of traditional legal remedies. The two are flip sides of the same coin: if money damages will fully alleviate harm, then the harm cannot be said to be irreparable." *K-Mart Corp. v. Oriental Plaza, Inc.*, 875 F.2d 907, 914 (1st Cir. 1989). Here, there is ample evidence that the Department's termination of all previously awarded TQP and SEED grants has already harmed, and will continue to harm, the programs and employees of those programs that rely on these grants. *See* [Doc. No. 8; Doc. Nos. 8-1 to 8-21].

The termination of funding for a program at the California State University with the objective of training and developing "highly qualified community-centered teachers who could staff and support high-need or high-poverty urban K-12 schools and students, particularly with regard in the areas of special education," has resulted in the loss of mentoring, training, and vital support for 26 students, and the loss of financial stipends for about 50 incoming students who need these stipends to participate in classroom teaching. [Doc. No. 8-3 at ¶¶ 7, 16, 22]. In New Jersey, The College of New Jersey was forced to cancel the remainder of its urban teacher residency program due to the loss of its TQP grant. [Doc. No. 8-9 at ¶ 21]. Here in Massachusetts, where Boston Public Schools had relied on their TQP grant to support their teacher pipeline programming designed to address the need and shortage of multilingual educators, [Doc. No. 8-2 at ¶ 8], the abrupt termination of this grant has resulted in the loss of three-full time employees who were being funded by the grant. [*Id.* at ¶ 28]. Thus, it is apparent that the harms which have already resulted, and which will continue to result, from the grant terminations are irreparable.

Moreover, I agree with Plaintiff States that a later-issued permanent injunction or damages remedy cannot compensate for such loss of federal funding. [*See* Doc. No. 7 at 24]. Plaintiff States have sufficiently established that the loss of this funding "threatens the very existence" of the teacher pipeline programs implemented by Plaintiff States, and there is no traditional remedy that can compensate Plaintiff States for the disruptions and discord resulting from the abrupt terminations of these grants. *Packard Elevator v. I.C.C.*, 782 F.2d 112, 115 (8th Cir. 1986); *see also Texas Children's Hosp. v. Burwell*, 76 F. Supp. 3d 224, 242 (D.D.C. 2014) (unrecoverable funds can constitute irreparable harm). The record shows how the terminations have "upended months, if not years" of work required to implement programs that rely on these grants, and how terminations have impacted "budgets for staff, coursework, partner organizations, school districts, and student populations" and existing projects or projects already in progress. [Doc. No. 7 at 25]; *see, e.g.*, [Doc. No. 8-1 at ¶¶ 20-22 (loss of grant hindered a program at University of Massachusetts Amherst that was one and a half years into a five-year project with significant deliverables already scheduled); [Doc. No. 8-12 at ¶ 18 (grant termination interrupted recruitment and retention activities)].

For these reasons, Plaintiff States have established irreparable harm. *See K–Mart,* 875 F.2d at 915 ("District courts have broad discretion to evaluate the irreparability of alleged harm and to make determinations regarding the propriety of injunctive relief") (cleaned up).

C. Balance of Hardships/Effect on Public Interest

Finally, upon consideration of the last two factors, the balance of the equities weighs heavily in favor of granting Plaintiff States' TRO, and a TRO would serve the public interest.[4]

[4] The last two factors "merge when the Government is the party opposing the [TRO]." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

The record shows that if I were to deny the TRO, dozens of programs upon which public schools, public universities, students, teachers, and faculty rely will be gutted. On the other hand, if I were to grant the TRO, as another court has put it, Defendants "merely would have to disburse funds that Congress has appropriated to the States and others." *New York v. Trump*, 25-cv-39, 2025 WL 357368, at *4 (D.R.I. Jan. 31, 2025) (cleaned up). I find that, "absent such an order, there is a substantial risk that the States and its citizens will face a significant disruption in health, education, and other public services that are integral to their daily lives due to this pause in federal funding." *Id.* Further, "[t]he fact that [Plaintiff States] have shown a likelihood of success on the merits strongly suggests that a TRO would serve the public interest." *Id.* Accordingly, the last two factors weigh in favor of granting Plaintiff States' TRO.

III. CONCLUSION

For the reasons stated above, Plaintiff States' Motion for Temporary Restraining Order, [Doc. No. 2], is GRANTED. It is therefore ORDERED that, until further order is issued by this Court:

1. Defendants shall immediately restore Plaintiff States to the pre-existing status quo prior to the termination under all previously awarded TQP or SEED grants for recipients in Plaintiff States;

2. Defendants are temporarily enjoined from implementing, giving effect to, maintaining, or reinstating under a different name the termination of any previously awarded TQP or SEED grants for recipients in Plaintiff States, including but not limited to through the Termination Letter, Termination GAN, and any other agency actions implementing such terminations, such as suspension or withholding of any funds approved and obligated for the grants;

3. Defendants are temporarily enjoined from terminating any individual TQP and SEED grant for recipients in Plaintiff States, except to the extent the final agency action is consistent with the Congressional authorization and appropriations, relevant federal statute, including the requirements of the APA, the requirements of the relevant implementing regulations, the grant terms and conditions, and this Court's Order;

4. Within 24 hours of entry of this Order, Defendants shall provide notice of the TRO to their employees and anyone acting in concert with them, and to all TQP and SEED grantees in Plaintiff States;

5. Defendants shall file a status report with the Court, within 24 hours of entry of this Order, confirming their compliance with the Court's TRO;

6. This TRO shall become effective immediately upon entry by this Court. The TRO shall remain in effect for 14 days; and

7. By March 11, 2025 at 5 P.M., the parties shall jointly propose a briefing schedule regarding Plaintiff States' request for preliminary injunction.

SO ORDERED.

/s/ Myong J. Joun
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STATE OF CALIFORNIA; COMMONWEALTH OF MASSACHUSETTS; STATE OF NEW JERSEY; STATE OF COLORADO; STATE OF ILLINOIS; STATE OF MARYLAND; STATE OF NEW YORK; AND STATE OF WISCONSIN, Plaintiffs, v. U.S. DEPARTMENT OF EDUCATION; DENISE CARTER, IN HER OFFICIAL CAPACITY AS FORMER ACTING SECRETARY OF EDUCATION AND CURRENT ACTING CHIEF OPERATING OFFICER, FEDERAL STUDENT AID; LINDA MCMAHON, IN HER OFFICIAL CAPACITY AS SECRETARY OF EDUCATION, Defendants.	No. 1:25-cv-10548-MJJ

DECLARATION OF RACHEL OGLESBY

1. My name is Rachel Oglesby. The following is based on my personal knowledge or information provided to me in the course of performing my duties at the United States Department of Education ("Department").

2. I am currently employed at the Department as Chief of Staff. I began my service at the Department on January 20, 2025.

3. Before joining the Department, I worked at America First Policy Institute as the Chief State Action Officer and Director of the Center for the American Worker.

4. In my role at the Department, I have the following responsibilities:

a. I assist the Secretary of Education with all of her responsibilities running the Department.

b. I advise the Secretary on significant matters within and affecting the Department.

c. I performed the same functions for the Acting Secretary of Education.

5. On February 5, 2025, Denise Carter, Acting Secretary of Education, issued a Directive on Department Grant Priorities. According to that Directive, "Department personnel shall conduct an internal review of all new grant awards, grants that have not yet been awarded to specific individuals or entities (e.g., notices of funding opportunities), and issued grants. Such review shall be limited to ensuring that Department grants do not fund discriminatory practices—including in the form of [diversity, equity, and inclusion ("DEI")]—that are either contrary to law or to the Department's policy objectives, as well as to ensure that all grants are free from fraud, abuse, and duplication."

6. The Department implemented that Directive by individually reviewing every grant issued under the Teacher Quality Partnership ("TQP") Program and the Supporting Effective Educator Development ("SEED") Program. The review process involved seven personnel over one week.

7. As part of this individualized review process, the Department reviewed the language of each grant application, including the grant applications at issue here. The Department also reviewed publicly available information about what the grantees used federal funds to teach. Finally, the Department reviewed the terms and conditions of each grant agreement.

8. All of the grants at issue were awarded before October 1, 2024. The invitations for all of these grants, which were published in the Federal Register, are considered part of the "terms and conditions" of the Department's grant awards. Those invitations permitted the Department to "[t]erminat[e] agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340)."

9. The Department did not merely terminate any program that mentioned "diversity." Rather, the Department reviewed applications to determine whether they included objectionable material associated with DEI, such as cultural responsiveness, systemic privilege, racial justice, social justice, and anti-racism.

10. Based on that initial review, the Department compiled a database of all projects in TQP and SEED flagged as incorporating DEI. The database connected specific grant applications to DEI language in the grant applications and to publicly available material that indicated the projects taught DEI.

11. For example, one grant funded a project that involved a "racial and ethnic autobiography" that asked whether individuals ever "felt threatened? marginalized? privileged?" and how they would "seek to challenge power imbalances and ensure all individuals and communities, particularly those that experienced marginalization are included." That grant was flagged as funding DEI contrary to the Secretary's directive.

12. Another grant funded a project that proposed to address "equity and culturally responsive practices and [would] cover the following possible topics: Building Cultural Competence, Dismantling Racial Bias, Centering Equity in the Classroom, Family and Community in the Classroom, and Culturally Inclusive Teaching." That grant was likewise flagged.

13. Another project promised to prepare "JEDI teachers focused on justice, equity, diversity, and inclusion." That grant was likewise flagged.

14. Another grant funded a project "centered around social-emotional learning (SEL) and diversity, equity, and inclusion (DEI) practices, embedded throughout the teacher preparation curricula and foundational courses. The result will be educators who are purposeful in implementing cultural and SEL/DEI practices with fidelity." That grant was likewise flagged.

15. Another grant funded a project to "develop informational sessions for entering prospective residents[,] teachers[,] and university supervisors to include bias training and social emotional learning and social justice curriculum." That grant was also flagged.

16. Still another grant was flagged that funded a project about "anchoring programs and practices in culturally responsive-sustaining pedagogies, enacting anti-racist pedagogies, and modeling inclusive practices."

17. Using the database, the Department confirmed on a grant-by-grant basis that termination was permitted under the terms and conditions of the grant agreement.

18. The Department's senior leadership, including those appointed by the President and Secretary, reviewed every entry in the database and, pursuant to the Acting Secretary's Directive, confirmed each Department grant "fund[ed] discriminatory practices—including in the form of DEI—that are either contrary to law or to the Department's policy objectives."

19. The Department determined that the programs at issue here incorporated DEI, reviewed the terms and conditions of the grants at issue to ensure they permitted termination, and concluded that funding for these grants must cease based on the Acting Secretary's Directive.

20. Department leadership then ordered responsible officials to terminate grants—including the grants at issue here—that incorporated DEI in violation of the Acting Secretary's Directive.

21. Accordingly, the Department's Deputy Assistant Secretary for the Office of Management and Planning signed termination letters notifying grantees that their awards had been terminated, effective between February 7 and February 12, 2025.

22. The letters were individually addressed to each recipient and identified the individual federal award number.

23. The letters explained that "[i]llegal DEI policies and practices can violate both the letter and purpose of Federal civil rights law and conflict with the Department's policy of prioritizing merit, fairness, and excellence in education." In addition, the letters stated "it is vital that the Department assess whether all grant payments are free from fraud, abuse, and duplication, as well as to assess whether current grants are in the best interests of the United States."

24. The letters reasoned that the funded programs "promote or take part in DEI initiatives or other initiatives that unlawfully discriminate on the basis of race, color, religion, sex, national origin, or another protected characteristic; … violate either the letter or purpose of Federal civil rights law; that conflict with the Department's policy of prioritizing merit, fairness, and excellence in education; … are not free from fraud, abuse, or duplication; or … otherwise fail to serve the best interests of the United States."

25. Because the grants were "inconsistent with, and no longer effectuate[], Department priorities," they were canceled "pursuant to, among other authorities, 2 C.F.R. § 200.339-43, 34 C.F.R. § 75.253, and the termination provisions in" the awards.

26. The termination letters informed grantees of their ability to take an administrative appeal to the Acting Assistant Secretary for the Office of Elementary and Secondary Education.

27. The Department terminated 104 grants awarded under the TQP and SEED programs. Five grants remain in place.

28. To comply with the district court's Order issued in the above-captioned action on March 10, 2025, the Department has restored access to funds and lifted payment restrictions for grantees who received a grant termination letter.

29. While the Order is in effect, grantees could, and will be strongly incentivized to, quickly draw down the $65 million still outstanding under their awards.

30. Payments go out from the Department to grantees within one to three days.

31. In general, grantees can draw money from their accounts with no internal checks or corroboration. Grantees typically draw funds on a regular schedule that matches the lifecycle of the grant, but that schedule is customary rather than mandatory. Indeed, the Department must permit grantees to submit payment requests as often as they like. And there are only limited safeguards against early withdrawals.

32. Grantees have every incentive to quickly draw down the remaining funds here. Under the Order, grantees have a minimum of 14 days—and potentially much longer under any preliminary injunction—to pull down every dollar they can get.

33. Absent emergency relief, there is a significant risk of grantees attempting to withdraw tens of millions of dollars on canceled grants.

34. No grantees have provided assurances to the Department that they will refrain from attempting large withdrawals that deplete most or all of the remaining grant funds.

35. On the contrary, since the district court entered the Order, multiple grantees have initiated payment requests on their canceled grants.

36. Grantees have little to lose by rapidly drawing down funds. Once funds leave the Department and go to grantees, the Department has limited ability to recover those disbursed funds. Nor has any grantee promised to return withdrawn funds should its grant termination be reinstated—exacerbating the significant risk that substantial taxpayer dollars will be lost forever due to the Court's order absent emergency relief.

***

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Washington, DC this 12th day of March.

Rachel Oglesby
Rachel Oglesby

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

STATE OF CALIFORNIA; COMMONWEALTH OF MASSACHUSETTS; STATE OF NEW JERSEY; STATE OF COLORADO; STATE OF ILLINOIS; STATE OF MARYLAND; STATE OF NEW YORK; and STATE OF WISCONSIN, Plaintiffs, v. U.S. DEPARTMENT OF EDUCATION; DENISE CARTER, in her official capacity as former Acting Secretary of Education and current acting Chief Operating Officer, Federal Student Aid; LINDA MCMAHON, in her official capacity as Secretary of Education, Defendants.	)	Civil Action No. 25-10548-MJJ

DECISION ON DEFENDANTS' EMERGENCY MOTION TO STAY

March 13, 2025

JOUN, D.J.

"[T]he grant of a TRO generally is not appealable." *Almeida-Leon v. WM Cap. Mgmt., Inc.*, No. 20-2089, 2024 WL 2904077, at *4 (1st Cir. June 10, 2024); *see also Calvary Chapel of Bangor v. Mills*, 984 F.3d 21, 26-27 (1st Cir. 2020). This is not a case where a TRO is "an injunction masquerading as a TRO." *Almeida-Leon*, 2024 WL 2904077, at *4. The TRO was issued three days ago, an expedited briefing schedule on Plaintiff States' motion for preliminary injunction has been set, and the motion will be heard on March 28, 2025. This TRO is a "temporary and short" order, *id.* at *4—imposed to preserve the status quo and prevent

irreparable harm to Plaintiff States—while a request for preliminary relief is briefed, argued, and decided. There is no basis to grant a stay here. Accordingly, I decline to address Defendants' arguments on the merits at this time. The parties will have the opportunity to fully brief these issues, and I will address them in due course.

Turning to the bond issue, I decline to impose one. Pursuant to Federal Rules of Civil Procedure 65(c), a "court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." However, "[t]he First Circuit has recognized an exception to the bond requirement in suits to enforce important federal rights or public interests." *Westfield High Sch. L.I.F.E. Club v. City of Westfield*, 249 F. Supp. 2d 98, 129 (D. Mass. 2003) (cleaned up). This is such a case. Additionally, Defendants are not at risk of financial loss given that there is a mechanism for recouping allocated funds. *See* 2 C.F.R. § 200.346 ("Any Federal funds paid to the recipient or subrecipient in excess of the amount that the recipient or subrecipient is determined to be entitled to under the Federal award constitute a debt to the Federal Government."). Accordingly, no security is necessary under Rule 65(c). *See Nat'l Ass'n of Diversity Officers in Higher Educ. v. Trump*, No. 25-cv-00333, 2025 WL 573764, at *30 (D. Md. Feb. 21, 2025) (cleaned up) (imposing nominal bond of zero dollars where bond would "essentially forestall Plaintiffs' access to judicial review").

For the reasons stated above, Defendants' Motion for Stay Pending Appeal, [Doc. No. 54], is DENIED.

/s/ Myong J. Joun
United States District Judge

United States Court of Appeals
For the First Circuit

No. 25-1244

STATE OF CALIFORNIA; COMMONWEALTH OF MASSACHUSETTS; STATE OF NEW JERSEY; STATE OF COLORADO; STATE OF ILLINOIS; STATE OF MARYLAND; STATE OF NEW YORK; STATE OF WISCONSIN,

Plaintiffs - Appellees,

v.

US DEPARTMENT OF EDUCATION; LINDA MARIE MCMAHON, in their official capacity as Secretary of Education; DENISE CARTER, in their official capacity as former Acting Secretary of Education and current acting Chief Operating Officer, Federal Student Aid,

Defendants - Appellants.

Before

Gelpí, Kayatta and Montecalvo,
Circuit Judges.

ORDER OF COURT

Entered: March 12, 2025

This matter is before the court on defendants-appellants' "Emergency Motion for Stay Pending Appeal and Immediate Administrative Stay." The requests for immediate relief and relief by tomorrow are **DENIED**. The court intends to rule on the broader request for stay relief as soon as practicable once the motion has been briefed. Plaintiffs-appellees should respond to the stay motion by 5:00 p.m. on Thursday, March 13, 2025. Any reply should be filed by 5:00 p.m. on Friday, March 14, 2025. The court then will address the stay request as soon as practicable.

When responding to the motion, plaintiffs-appellees should address fully defendants-appellants' contentions that "if recipients in the plaintiff States are given access to the funds, nothing prevents them from drawing down the funds," that "there is a significant risk of grantees attempting to withdraw tens of millions of dollars on canceled grants," and that there would be "limited ability to recover those disbursed funds." Stay Mot. at 18 (internal quotation marks omitted).

By the Court:

Anastasia Dubrovsky, Clerk

cc:
Laura Faer
Christopher David Hu
Alexis Piazza
Heidi Joya
Garrett Lindsey
Maureen Onyeagbako
David C. Kravitz
Megan Barriger
Adelaide H. Pagano
Matthew G. Lindberg
Chris Pappavaselio
Yael Shavit
Elizabeth R. Walsh
Amanda I. Morejon
Jessica L. Palmer
Lauren Elizabeth Van Driesen
David Moskowitz
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Virginia A. Williamson
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Alex Finkelstein
Kathryn Meyer
Monica Hanna
Wil S. Handley
Aaron Bibb
Mark R. Freeman
Daniel Tenny
Michael L. Fitzgerald
Brian James Springer
Sean Janda

United States Court of Appeals
For the First Circuit

No. 25-1244

STATE OF CALIFORNIA; COMMONWEALTH OF MASSACHUSETTS; STATE OF NEW JERSEY; STATE OF COLORADO; STATE OF ILLINOIS; STATE OF MARYLAND; STATE OF NEW YORK; STATE OF WISCONSIN,

Plaintiffs, Appellees,

v.

U.S. DEPARTMENT OF EDUCATION; LINDA MCMAHON, in her official capacity as Secretary of Education; DENISE CARTER, in her official capacity as Acting Chief Operating Officer for Student Aid,

Defendants, Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Myong J. Joun, U.S. District Judge]

Before

Gelpí, Kayatta, and Montecalvo,
Circuit Judges.

Yaakov M. Roth, Acting Assistant Attorney General, Leah B. Foley, U.S. Attorney, Eric D. McArthur, Deputy Assistant Attorney General, Mark R. Freeman, Daniel Tenny, Sean R. Janda, and Brian J. Springer, Attorneys, Appellate Staff, U.S. Department of Justice, on brief for appellants.

Rob Bonta, Attorney General of California, Michael J. Mongan, Solicitor General, Helen H. Hong, Principal Deputy Solicitor General, Christopher D. Hu, Joshua Patashnik, Deputy Solicitors General, Michael Newman, Senior Assistant Attorney General, Laura L. Faer, Supervising Deputy Attorney General, Alexis Piazza, Heidi

Joya, Garrett Lindsey, Deputy Attorneys General, Andrea Joy Campbell, Attorney General of Massachusetts, Megan Barriger, Senior Trial Counsel, Adelaide Pagano, Assistant Attorney General, Yael Shavit, Chief of Consumer Protection Division, David Kravitz, State Solicitor, Chris Pappavaselio, Matthew Lindberg, Assistant Attorneys General, Matthew J. Platkin, Attorney General of New Jersey, Lauren E. Van Driesen, Elizabeth R. Walsh, Deputy Attorneys General, Stephen Ehrlich, Deputy Solicitor General, Philip J. Weiser, Attorney General of Colorado, David Moskowitz, Deputy Solicitor General, Kwame Raoul, Attorney General of Illinois, Darren Kinkead, Public Interest Counsel, Sarah A. Hunger, Deputy Solicitor General, Anthony G. Brown, Attorney General of Maryland, Virginia A. Williamson, Assistant Attorney General, Joshua L. Kaul, Attorney General of Wisconsin, Aaron J. Bibb, Assistant Attorney General, on brief for appellees.

March 21, 2025

KAYATTA, Circuit Judge. Concerned that there are too few qualified teachers and principals in various communities, Congress directed the Secretary of Education (the "Secretary") to use certain funds to make grants to entities providing, among other things, for the recruitment and training of teachers and school leaders for traditionally underserved local educational agencies. 20 U.S.C. §§ 1022, 1022a, 6671(1), 6672(a). After conducting a competitive application process, the Secretary awarded, as relevant here, 109 grants for Teacher Quality Partnership (TQP) and Supporting Effective Educator Development (SEED) programs, which in large part were up and running until the agency action that gave rise to this litigation.

On February 7, 2025, or shortly thereafter, 104 of those 109 programs received boilerplate letters from the U.S. Department of Education (collectively with other appellants, the "Department") purporting to terminate their grants midstream. The letters stated in pertinent part:

> The grant specified above provides funding for programs that promote or take part in [diversity, equity, and inclusion (DEI)] initiatives or other initiatives that unlawfully discriminate on the basis of race, color, religion, sex, national origin, or another protected characteristic; that violate either the letter or purpose of Federal civil rights law; that conflict with the Department's policy of prioritizing merit, fairness, and excellence in education; that are not free from fraud, abuse, or duplication; or that otherwise fail to serve

> the best interests of the United States. The grant is therefore inconsistent with, and no longer effectuates, Department priorities.

As the careful reader will note, the letters do not specify why any given program is no longer "[]consistent with" and no longer "effectuates[] Department priorities." Rather, the letters list in the disjunctive five possible reasons.

Presented with a complaint by eight states (the "States") within which operate numerous affected grant recipients, the district court issued a temporary restraining order (TRO) requiring the Department to, among other things, restore the status quo as it stood prior to the purported terminations. The Department has since appealed the TRO. It also now asks us to stay the district court's order pending the resolution of this appeal. This opinion concerns only that motion for a stay pending appeal. We deny that motion for the following reasons.

I.

As a preliminary matter, the States claim that we lack appellate jurisdiction to review a TRO. See 28 U.S.C. § 1291 (confining federal appellate jurisdiction largely to the review of lower courts' final decisions); Calvary Chapel of Bangor v. Mills, 984 F.3d 21, 27 (1st Cir. 2020) (stating that appellants carry the burden of demonstrating TRO reviewability). "[T]he denial of a [TRO] does not normally fall within the compass of [§] 1292(a)(1)" and so generally is not immediately reviewable. Calvary Chapel,

984 F.3d at 27. Nevertheless, in this instance the district court orally heard the Department on at least some of the central issues prior to issuing the TRO. See Sampson v. Murray, 415 U.S. 61, 87–88 (1974) (treating a purported TRO as a preliminary injunction for reviewability purposes in part because "an adversary hearing ha[d] been held"). In any event, our precedent allows us to assume statutory jurisdiction when the party asserting it will not obtain its requested relief even were there jurisdiction. See United States v. Pedró-Vidal, 991 F.3d 1, 4 (1st Cir. 2021). We therefore opt to sidestep the arguable statutory jurisdictional defect at least for the purposes of addressing the motion to stay pending appeal.

II.

In assessing the merits of the motion to stay pending appeal, we consider four factors: "(1) whether the stay applicant has made a strong showing that [it] is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." Nken v. Holder, 556 U.S. 418, 426 (2009) (citation omitted). "The first two factors . . . are the most critical." Id. at 434.

A.

As to the first factor, our discussion at this point assesses only the likelihood of success on the merits as the record now stands and does not constitute a holding on the merits.

We begin with two challenges by the Department to the district court's ability to review the termination of the grants.

1.

First, the Department claims that the district court itself lacked jurisdiction to entertain this lawsuit, which the Department argues belongs in the Court of Federal Claims. See 28 U.S.C. § 1491(a)(1) (granting jurisdiction to the Court of Federal Claims for any action against the government "upon any express or implied contract with the United States"). The Department points to the fact that each grant award takes the form of a contract between the recipient and the government. "But the mere fact that a court may have to rule on a contract issue does not, by triggering some mystical metamorphosis, automatically transform an action . . . into one on the contract and deprive the court of jurisdiction it might otherwise have." Megapulse, Inc. v. Lewis, 672 F.2d 959, 968 (D.C. Cir. 1982). Here, although the terms and conditions of each individual grant award are at issue, the "essence," id., of the claims is not contractual. Rather, the States challenge the Department's actions as insufficiently explained, insufficiently reasoned, and otherwise contrary to

law -- arguments derived from the Administrative Procedure Act (APA), 5 U.S.C. § 706(2)(A). The States' claims are, at their core, assertions that the Department acted in violation of federal law -- not its contracts. Simply put, if the Department breached any contract, it did so by violating the APA. And if the Department did not violate the APA, then it breached no contract. In the words of the Tenth Circuit, "when a party asserts that the government's breach of contract is contrary to federal regulations, statutes, or the Constitution, and when the party seeks relief other than money damages, the APA's waiver of sovereign immunity applies and the Tucker Act does not preclude a federal district court from taking jurisdiction." Normandy Apts., Ltd. v. HUD, 554 F.3d 1290, 1300 (10th Cir. 2009); see also Megapulse, 672 F.2d at 968, 970 (upholding a district court's jurisdiction where "[a]ppellant's position is ultimately based, not on breach of contract, but on an alleged governmental infringement of property rights and violation of the Trade Secrets Act").

Nor do the States seek damages owed on a contract or compensation for past wrongs. See Megapulse, 672 F.2d at 968–70 (considering, in a Tucker Act analysis, "the type of relief sought (or appropriate)"). Rather, they want the Department to once again make available already-appropriated federal funds for existing grant recipients. And as the Supreme Court has made

clear, "[t]he fact that a judicial remedy may require one party to pay money to another is not a sufficient reason to characterize the relief as 'money damages.'" Bowen v. Massachusetts, 487 U.S. 879, 893 (1988). As a result, we see no jurisdictional bar to the district court's TRO on this basis. See id. at 900–01 (holding that a district court could hear a claim for an injunction requiring the government to pay certain Medicaid reimbursements because it was "a suit seeking to enforce the statutory mandate itself, which happens to be one for the payment of money," and "not a suit seeking money in compensation for the damage sustained by the failure of the Federal Government to pay"); Megapulse, 672 F.2d at 970–71 (explaining, in a Tucker Act case, that "the mere fact that an injunction would require the same governmental restraint that specific (non)performance might require in a contract setting is an insufficient basis to deny a district court the jurisdiction otherwise available").

2.

The Department also contends that these terminations are part of the "narrow[]" class of agency actions that are unreviewable in federal court. Dep't of Comm. v. New York, 588 U.S. 752, 772 (2019) (citation omitted); see 5 U.S.C. § 701(a)(2) (exempting from judicial review agency action "committed to agency discretion by law"); see, e.g., Lincoln v. Vigil, 508 U.S. 182, 185, 190–94 (1993) (labeling "unreviewable" the Indian Service's

decision to stop funding a program for handicapped children where Congress left the decision about how to "expend . . . money[] . . . for the benefit, care, and assistance of the Indians" up to the agency's discretion).

But here, applicable regulations cabin the Department's discretion as to when it can terminate existing grants. See 2 C.F.R. § 200.340(a) (2025) (enumerating four ways federal awards may be terminated); id. § 3474.1 (adopting § 200.340 for the Department of Education); see Pol'y & Rsch., LLC v. HHS, 313 F. Supp. 3d 62, 75–78 (D.D.C. 2018) (opinion of K.B. Jackson, J.) (holding that the agency's sudden and otherwise-presumptively unreviewable decision to halt funding to an agency program was reviewable under the APA because applicable regulations cabined its termination authority and therefore provided a standard by which the court could review the agency's decision). Nor are these regulations the only limits placed on the Department. The statutes establishing the TQP and SEED programs set forth the purposes of the grants, including, for example, the "recruit[ment] of highly qualified . . . minorities . . . into the teaching force," 20 U.S.C. § 1022(4), and the provision of "pathways [for teachers] to serve in traditionally underserved local educational agencies," id. § 6672(a)(1). So too has Congress instructed recipients to "provide assurances to the Secretary," including, for example, that participants "receive training in providing

instruction to diverse populations." Id. § 1022e(b). Certainly, given these statutory mandates, the Department could not terminate a grant merely because a recipient program attempts to prepare participating school leaders to serve in traditionally underserved communities; nor could it treat assurances that a program provides training in the instruction of "diverse populations" as a reason to terminate an award. These regulatory and statutory limits on the Department's discretion thus create "meaningful standard[s] by which to judge the [agency]'s action." Dep't of Comm., 588 U.S. at 772.

B.

We now turn to the core of the merits: a review of some of the Department's actions under the basics of administrative law as developed under the APA. Like the district court, we focus our analysis on the States' arbitrary-and-capricious claim. "The APA's arbitrary-and-capricious standard requires that agency action be reasonable and reasonably explained." FCC v. Prometheus Radio Project, 592 U.S. 414, 423 (2021). This means that the agency's reasons "must be set forth with such clarity as to be understandable." SEC v. Chenery Corp. (Chenery II), 332 U.S. 194, 196 (1947). And although judicial review of agency action is "narrow" in scope, we must still determine if the agency "examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a 'rational connection

between the facts found and the choice made.'" Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) (quotation marks and citation omitted).

The Department challenges the district court's conclusion that its termination letters lacked reasoned explanation. But, as we have already described, the termination letters list up to five disjunctive reasons why the supposedly offending programs are now "inconsistent with . . . Department priorities." This leaves grant recipients, not to mention a reviewing court, to "guess at the theory underlying the agency's action." Chenery II, 332 U.S. at 196–97.

This lack of proper explanation from the Department likely "will not do," because "a court [cannot] be expected to chisel that which must be precise from what the agency has left vague and indecisive." Id. Adding to the uncertainty, the Department has yet to file what it claims to be an administrative record, even while seeking our expedited attention and equitable relief. See Fed. R. App. P. 17. And without a statement of the reason or reasons for the terminations, a court cannot say whether the Department properly considered all "relevant data." State Farm, 463 U.S. at 43. For example, it does not appear that the Department properly considered the reliance interests of grant recipients and program participants or that it accounted for all relevant impacts of cutting off funding to programs already in

place. See DHS v. Regents of the Univ. of Cal., 591 U.S. 1, 30–31 (2020) (holding the Department of Homeland Security's attempted recission of the Deferred Action for Childhood Arrivals (DACA) program arbitrary and capricious in part based on its failure to consider recipients' reliance interests); State Farm, 463 U.S. at 43 (holding that an agency cannot "entirely fail[] to consider an important aspect of the problem" before it).

Nor can we say that "the agency has [not] relied on factors which Congress [did] not intend[] it to consider" in disfavoring programs that feature DEI principles. State Farm, 463 U.S. at 43; see, e.g., 20 U.S.C. § 1022(4) (stating a statutory purpose of "recruit[ing] highly qualified individuals, including minorities and individuals from other occupations, into the teaching force"); id. § 1022e(b) (requiring grant recipients to provide assurances that, among other things, "general education teachers receive training in providing instruction to diverse populations").

In its briefs to us and in an affidavit from its Chief of Staff, the Department seeks to provide further specificity -- stating that its actual reason for terminating the grants was each program's use of those funds to teach DEI principles. But that supposed specificity is nowhere to be found in the termination letters, which state in the disjunctive five possible grounds for termination. Indeed, this newfound claim of

clarity approaches the sort of "post hoc rationalization" that we cannot allow. See Citizens to Pres. Overton Park, Inc. v. Volpe, 401 U.S. 402, 419–20 (1971) (holding that judicial review is inappropriate when it would rely on explanations found in the agency's litigation affidavits).

Finally, we are at this point not persuaded by the Department's contention that the district court was "incorrect" in rejecting the Department's attempts to invoke new priorities as grounds for the terminations. See FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515 (2009). For one, this argument fails to address Fox Television's directive that an agency must show "good reasons for the new policy" and account for "serious reliance interests" engendered by the old one. Id. Moreover, this argument entirely fails to rebut the States' credible assertions below that the Department's priorities must, per federal regulation, be established through formal rulemaking, which the Department did not do. See 34 C.F.R. § 75.105(b) (2024).

The States claim other failings in the Department's termination of the ongoing grants. For example, they argue that applicable regulations preclude the Department from terminating grants solely for failure to effectuate agency priorities, and therefore that the terminations were "not in accordance with law." 5 U.S.C. § 706(2)(A). But given the apparent defects to which we point above, the outcome of this motion does not turn on the merits

of those additional arguments. Moreover, we choose to say less rather than more precisely because the record and the parties' arguments are still developing in the district court. The Department's insistence that we decide its motion with haste cautions against venturing further than is reasonably necessary to balance the parties' equitable positions while not yet being in a position to adjudicate finally the underlying dispute.

c.

Advancing speculation and hyperbole, the Department asserts that it faces irreparable harm because the TRO allows grant recipients to request up to the entirety of their award monies and, indeed, creates the incentive for them to do so within the fourteen days the order is in effect -- with limited ability for the Department to recoup the funds should it prevail on the merits. The States convincingly explain that this is simply not the case, in part because recipients submit reimbursement requests for expenses already incurred. And, in fact, the Department has not pointed to any evidence of any attempt at any such a withdrawal by any recipient. Nor does the Department rebut the contention that it could stop such an attempted withdrawal.

Of course, the district court's order does require the Department to continue making payments that would otherwise be due but for the terminations. As a result, some smaller, incremental disbursements will no doubt occur while the TRO is in effect.

Hence, the Department may incur some irreparable harm if it cannot recoup this money. But the Department has not yet shown that recoupment is implausible. See Nken, 556 U.S. at 434–35 ("[S]imply showing some possibility of irreparable injury fails to satisfy the second factor." (cleaned up)); Common Cause R.I. v. Gorbea, 970 F.3d 11, 15 (1st Cir. 2020) (per curiam) (noting that claims of irreparable harm must not only be "correct as a matter of theory" but also "as a matter of fact and reality"). And, at bottom, the funds will go to programs Congress intended to fund -- in amounts that in total do not exceed Congress's direction -- consistent with priorities previously published by the Department in accordance with applicable regulations. See, e.g., Final Priorities -- Effective Educator Development Division, 86 Fed. Reg. 36217 (July 9, 2021).

In short, any irreparable harm arguably caused by the TRO is not of a type and magnitude that grabs equities' emergency attention when compared to the harm that the recipients could well suffer if the TRO is stayed. The States provided detailed evidence below of the practical impacts of cutting off grants -- some which have already begun to occur and which cannot be fully remedied with late-arriving funds -- including staff layoffs, program disruptions, and the halting of stipends to currently enrolled teachers. The States also described below how these immediate effects will weaken the very teacher pipelines in their

jurisdictions that Congress intended to strengthen through the TQP and SEED programs. The Department provides no compelling rebuttal and therefore does not convince us that the second or third Nken factors tip in favor of a stay. See 556 U.S. at 426.

Additionally, given our conclusions about the Department's failure to show a likelihood of success on the merits, its assertion that the public interest aligns with its interests in a stay are unavailing. See League of Women Voters of U.S. v. Newby, 838 F.3d 1, 12 (D.C. Cir. 2016) ("[T]here is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations." (quotation marks and citation omitted)).

D.

Lastly, the Department claims that the TRO is overbroad for two reasons. First, the Department calls attention to the fact that the TRO applies to several grant recipients "that are located within the [] States but that are only 'affiliated with' the State or that are local school districts rather than clearly State instrumentalities." The district court did not, according to the Department, "meaningfully explain its understanding that each recipient is in fact an instrumentality of a plaintiff." But the parties have not yet briefed the relationship between the States, their school districts, and nonprofit entities "affiliated" with the States. Given that a hearing on a motion

for an actual preliminary injunction is scheduled to be held shortly, we think it premature to address the adequacy of the district court's explanation on this point now.

Second, the Department contends that the TRO does not allow the Department to reinstate the terminations if and when the Department corrects the deficiencies upon which the district court justified the TRO. But the Department does not claim that it plans to take any such corrective action before the hearing on the States' motion for a preliminary injunction, at which point the district court will consider validly raised arguments by all parties that it has not yet addressed. We therefore see no need to address this issue now.

III.

For the foregoing reasons, the motion for a stay pending appeal is **denied**. An expedited briefing schedule on the Department's appeal will be set by the clerk forthwith.

United States Court of Appeals
For the First Circuit

No. 25-1244

STATE OF CALIFORNIA; COMMONWEALTH OF MASSACHUSETTS; STATE OF NEW JERSEY; STATE OF COLORADO; STATE OF ILLINOIS; STATE OF MARYLAND; STATE OF NEW YORK; STATE OF WISCONSIN,

Plaintiffs, Appellees,

v.

U.S. DEPARTMENT OF EDUCATION; LINDA MCMAHON, in her official capacity as Secretary of Education; DENISE CARTER, in her official capacity as Acting Chief Operating Officer for Student Aid,

Defendants, Appellants.

Before

Gelpí, Kayatta, Montecalvo,
Circuit Judges.

ORDER OF COURT
Entered: March 21, 2025

Consistent with the opinion issued this day, the motion for a stay pending appeal is denied. An expedited briefing schedule on the appeal will be set by the clerk forthwith.

By the Court:

Anastasia Dubrovsky, Clerk

cc: Hon. Myong J. Joun, Robert Farrell, Clerk, United States District Court for the District of Massachusetts, Laura Faer, Christopher David Hu, Joshua Patashnik, Alexis Piazza, Heidi Joya, Garrett Lindsey, Maureen Onyeagbako, David C. Kravitz, Megan Barriger, Adelaide H. Pagano, Matthew G. Lindberg, Chris Pappavaselio, Yael Shavit, Elizabeth R. Walsh, Amanda I. Morejon, Jessica L. Palmer, Lauren Elizabeth Van Driesen, David Moskowitz, Darren Bernens Kinkead, Virginia A. Williamson, Sandra S. Park, Rabia Muqaddam, Alex Finkelstein, Kathryn Meyer, Monica Hanna, Wil S. Handley, Aaron Bibb, Mark R. Freeman, Daniel Tenny, Michael L. Fitzgerald, Brian James Springer, Sean Janda