No. 24A910

In the Supreme Court of the United States

U.S. DEPARTMENT OF EDUCATION, *et al.*,
Applicants,

v.

STATE OF CALIFORNIA, *et al.*,
Respondents.

OPPOSITION TO APPLICATION

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March 28, 2025

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INTRODUCTION

This case involves two competitive-grant programs that Congress created in response to a shortage of qualified teachers. Congress intended these grant programs to (among other things) help recruit "individuals from under[-]represented populations," 20 U.S.C. § 1022a(d)(5)(A), "who reflect the communities in which they will teach," *id.* § 1022a(e)(2)(A)(vi)(II), and are prepared "to serve in traditionally underserved" communities, *id.* § 6672(a)(1); *see also id.* § 1022e(b)(4) (requiring "training in providing instruction to diverse populations"). Grants are awarded for multi-year periods up to five years. Recipients generally draw down the awarded funds over the duration of the grant as they carry out grant activities. And draw-down activities are subject to federal regulatory safeguards, including monitoring, audits, and remedial measures for improper withdrawals.

On February 5, 2025, the Acting Secretary of Education issued an internal directive calling for the termination of any grants that fund practices "in the form of [diversity, equity, and inclusion ('DEI')]." App'x 12a. Two days later, some recipients of grants from the two programs at issue here began receiving boilerplate termination letters, which recited a disjunctive list of purported rationales for the termination. Other recipients received no notice. Some recipients inquired into the status of their grants and were told by the Department in late February that "[a]ll the grants have been terminated."

D. Ct. Dkt. 8-13 at 6, 60.[1] After gathering the facts necessary to assure themselves of standing and develop their claims, the eight plaintiff States filed this lawsuit alleging that the Department's termination of the grants violated the Administrative Procedure Act and sought narrow provisional relief.

The district court entered a temporary restraining order to preserve the status quo—only for recipients of these two grant programs within the eight plaintiff States—while it expeditiously adjudicates a motion for preliminary injunction. That motion is fully briefed and the hearing was held today (March 28). The temporary restraining order will expire as soon as the district court rules on the motion, and no later than April 7. Despite those ongoing proceedings and defendants' acknowledgment that "the dissolution of the [temporary restraining] order" is imminent, C.A. Mot. to Hold Briefing Schedule in Abeyance at 2 (Mar. 27, 2025), they filed an emergency application in this Court on March 26. They ask the Court not only to stay the temporary restraining order, but also to summarily vacate it.

To obtain that extraordinary relief, defendants first need to make a strong showing that they are likely to succeed on the merits of their appeal *and* that this Court is likely to grant certiorari. They cannot do so. Defendants concede that this appeal "will likely" become "moot" in the next few days, when the

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[1] The Department later asserted, in litigation, that it only terminated 104 of 109 outstanding grants issued under the two grant programs. *See* Appl. 6.

district court rules on the preliminary-injunction motion. C.A. Mot. to Hold Briefing Schedule in Abeyance at 2. In any event, the appellate courts lack jurisdiction here because of the brief duration and narrow scope of the temporary restraining order. Defendants offer no substantive response (*see* Appl. 22 n.2) to the lower courts' ruling that their action likely violated the APA's arbitrary-and-capricious standard, or to the States' alternative argument that the action was contrary to law. They instead argue that the Tucker Act deprived the district court of jurisdiction (*id.* at 12-17) and that "there is no meaningful standard for a court to apply" here (*id.* at 19). But those arguments fail in light of the States' specific claims and the relief they seek, as well as the particular statutory and regulatory provisions governing these two grant programs. And the circumstances of this case would make it an unusually poor vehicle for certiorari review of the legal issues defendants raise.

Nor have defendants established the kind of irreparable injury that might warrant a stay or summary vacatur. Their stated concern is that the temporary restraining order creates "every incentive" for "swift[]" (Appl. 29) and "unnecessarily large drawdowns" of grant funds that are "likely unrecoverable" (*id.* at 27). But the order has been in place for 18 days and "the Department has not pointed to any evidence of any attempt at any such withdrawal by any recipient"—or "rebut[ted] the contention that it could stop such an attempted withdrawal" or recover the funds. App'x 33a. Moreover, the dispute here is

not over "hundreds of billions of dollars" (Appl. 3) but only the small fraction of the $65 million in total remaining grant funds—spread across a subset of 109 multiyear grants—that would be paid out in the few days remaining on the temporary restraining order.

It appears that defendants' real concern is not with this case or the courts below; it is with other cases in other "forums across the country" where courts are grappling with a raft of legal disputes arising out of recent actions by the Executive Branch. Appl. 3; *see id.* at 2 n.1. Those concerns are properly litigated in the context of those other cases. They provide no basis for this Court to grant emergency relief here, where the district court appropriately granted a narrow and time-limited restraining order to preserve the status quo while it adjudicates the preliminary-injunction motion that was argued earlier today.

STATEMENT

A. Legal and Factual Background

In 2008, Congress created the Teacher Quality Partnership (TQP) grant program, which supports teacher preparation programs at institutions of higher education. 20 U.S.C. § 1022. One of its purposes is to "recruit highly qualified individuals, including minorities and individuals from other occupations, into the teaching force." *Id.* § 1022(4). Congress authorized the Secretary of Education to award grants to "eligible partnerships"—between high-need local educational agencies and institutions of higher education—to carry out programs for teacher preparation, teacher residency, and school-

leader preparation. *Id.* §§ 1021(6); 1022a(a), (c).

TQP grant recipients must develop effective mechanisms for recruiting teachers, which may include an emphasis on recruiting "individuals from under[-]represented populations." 20 U.S.C. § 1022a(d)(5)(A). In addition, Congress directed that admissions goals for teacher residency programs funded under TQP "may include consideration of applicants who reflect the communities in which they will teach as well as consideration of individuals from underrepresented populations in the teaching profession." *Id.* § 1022a(e)(2)(A)(vi)(II). Any institution of higher education that receives a TQP grant must provide assurances to the Secretary that teachers will "receive training in providing instruction to diverse populations, including children with disabilities, limited English proficient students, and children from low-income families." *Id.* § 1022e(b)(4). Congress directed that TQP grants "shall be awarded for a period of five years." *Id.* § 1022b(a)(1).

In 2015, Congress established the Supporting Effective Educator Development (SEED) grant program to provide professional development resources to teachers, principals, and other school leaders. 20 U.S.C. § 6672(a). Grants must be awarded on a competitive basis for five purposes, one of which is encouraging teachers and administrators "to serve in traditionally underserved local educational agencies." *Id.* § 6672(a)(1). Congress also required the Secretary to "ensure that, to the extent practicable, grants are

distributed among eligible entities that will serve geographically diverse areas, including urban, suburban, and rural areas." *Id.* § 6672(b)(3). It directed that SEED grants must be initially awarded for a period of not more than three years, but authorized the Secretary to renew grants for an additional two-year period. *Id.* § 6672(b)(1)-(2).

The priorities for both grant programs must be set by Congress in the authorizing statutes or by the Department through a valid notice-and-comment rulemaking process. *See* 20 U.S.C. § 1232; 34 C.F.R. § 75.105. Consistent with these requirements, the Department has regularly published notices of final priorities for the TQP and SEED programs. *See, e.g.*, 86 Fed. Reg. 36,217-36,220 (July 9, 2021); 86 Fed. Reg. 34,664-34,674 (June 30, 2021); 85 Fed. Reg. 13,640-13,644 (Mar. 9, 2020). Grant recipients relied on those priorities in crafting their applications, and the Department relied on them in making competitive selections. *See, e.g.*, 90 Fed. Reg. 5845 (Jan. 17, 2025).

The Secretary has awarded a number of multi-year TQP and SEED grants to public universities and other recipients in the eight States that are the plaintiffs in this lawsuit. For example, the University of Massachusetts-Amherst received a five-year TQP grant to train paraeducators to become fully licensed early-childhood educators in two districts that struggle to recruit and retain teachers. *See* D. Ct. Dkt. 8-1. California State University, Chico received a three-year SEED grant in 2022 to address a chronic shortage of

qualified teachers in rural northeastern California. *See* D. Ct. Dkt. 8-5. And Montclair State University in New Jersey created a teacher residency, funded by two TQP grants, which recruited and trained 140 highly qualified educators to serve in urban school districts. *See* D. Ct. Dkt. No. 8-10; *see id.* at 6 (describing current grant).

As a general matter, TQP and SEED grantees receive funds spread over the multi-year period of their grants. They generally submit periodic draw-down requests for expenses they have already incurred. *See, e.g.*, D. Ct. Dkt. 8-9 at 7 (explaining process, which usually occurs on a "monthly basis"). For instance, payments for the five-year TQP grant at Montclair are usually provided on a monthly basis; the total budget for the current grant year is approximately $630,000, or about $52,500 per month. D. Ct. Dkt. 8-10 at 9, 80. The TQP grant at the University of Massachusetts-Amherst will also be distributed over five years, with roughly $235,000 allocated for the current grant year, or an average of under $20,000 per month. D. Ct. Dkt. 8-1 at 5. Advance withdrawals of grants are generally subject to restrictions, including the requirement that the recipient minimize the duration between transfer of funds from the federal government and payments for program purposes. 2 C.F.R. § 200.305(b).

The Department is authorized to monitor draw-down activity for all grants. *See, e.g.*, U.S. Dep't of Educ., Discretionary Grantmaking at ED, at 36,

available at https://tinyurl.com/3kvfx8cn. Certain grant recipients, including States or institutions of higher education, are subject to an annual audit if they expend $1 million or more in federal awards during a fiscal year. *Id.* at 37. If the Department's monitoring or audit activities reveal that costs are "unallowable," it may impose various remedies, including ordering repayment, withholding future funds, or suspending an award. *Id.* at 38; *see also* 20 U.S.C. §§ 1234a, 1234c; 2 C.F.R. § 200.346.

B. The Termination of TQP and SEED Grants

On February 5, 2025, an internal directive from the Acting Secretary of Education ordered a review of the Department's grant awards, focused on "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." App'x 12a. Two days later, the Department began sending boilerplate letters to many TQP and SEED grant recipients, customized only for the address, grant award number, and termination date. Those letters informed recipients that their grants had been terminated and recited a disjunctive list of nonspecific potential reasons for termination, without saying which (if any) purportedly applied to a particular grant recipient:

> 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*. See 2 C.F.R. § 200.340(a)(4); see also 34 C.F.R. § 75.253. Therefore, pursuant to, among other authorities, 2 C.F.R. § 200.339-43, 34 C.F.R. § 75.253, and the termination provisions in your grant award, the Department hereby terminates grant No. [grant award number] in its entirety effective [date of letter].

E.g., D. Ct. Dkt. 8-1 at 118 (emphasis added); *see also* App'x 22a-23a. The letters did not explain how the grant-funded programs engaged in any of the purportedly disqualifying activities.

While the termination letter briefly mentioned an objection process and instituted a 30-day timeline to submit objections and challenges to the terminations, it did not describe the Department's procedures for processing objections or challenges. *E.g.*, D. Ct. Dkt. 8-1 at 119. Nor did it suggest the availability of any interim relief. Grant recipients who wrote to the Department to object to the terminations received no response. D. Ct. Dkt. 8-4 at 8; 8-5 at 9; 8-14 at 10; 8-17 at 12-13.

The Department also distributed to most grant recipients a revised Grant Award Notification (GAN) modifying the budget period for the current fiscal year to end in February 2025, on the same date as the termination letter or the GAN was received. *E.g.*, D. Ct. Dkt. 8-1 at 123. Like the letter, the GAN stated: "The grant is deemed to be inconsistent with, and no longer effectuates,

Department priorities." *Id.* at 124. The GAN appears to modify the authorized funding to a prorated amount for the current fiscal year. *See id.* at 123.

On February 21, a Department official informed one grant recipient that "[a]ll the grants have been terminated," D. Ct. Dkt. 8-13 at 60, but some recipients "have not received the letter," *id.* at 59; *see id.* at 6. After this lawsuit was filed, another official declared that the Department terminated 104 out of 109 awarded grants. App'x 14a.

C. Procedural Background

A group of eight States filed this suit in early March 2025, asserting two claims under the APA. D. Ct. Dkt. 1. The complaint first alleges that the mass termination of TQP and SEED grants was arbitrary and capricious because, among other things, the Department failed to offer a reasoned explanation, to account for reliance interests, or to grapple with the federal statutes expressly contemplating that grant recipients promote diversity among the teaching workforce and support students from diverse backgrounds. *Id.* at 46-49. It also alleges that the termination was contrary to law. *Id.* at 49-51. The States moved for a temporary restraining order to preserve the pre-existing status quo for grant recipients in their States while the parties litigated the States' request for a preliminary injunction. *See* D. Ct. Dkt. 2.

On March 10, the district court heard oral argument on the motion for a temporary restraining order. D. Ct. Dkt. 38. Later that day, it issued a 14-

day temporary restraining order. App'x 9a-10a. The court concluded that it has jurisdiction to hear the States' APA claims, *id.* at 2a-3a; that the States are likely to succeed on the merits of their arbitrary-and-capricious claim, *id.* at 3a-6a; that they established irreparable harm, *id.* at 6a-8a; and that the balance of hardships and public interest weigh in favor of a temporary restraining order, *id.* at 8a-9a. The court ordered defendants to "immediately restore Plaintiff States to the pre-existing status quo," and it temporarily barred defendants from terminating any previously awarded TQP or SEED grants for recipients within those eight States unless the termination is consistent with governing statutes and regulations, grant terms and conditions, and the court's order. *Id.* at 9a-10a. Thereafter, the district court denied defendants' request for a stay pending appeal. *Id.* at 16a-17a.

Defendants filed a notice of appeal with respect to the temporary restraining order and asked the court of appeals to stay it pending appeal. App'x 23a. After expedited briefing, the court of appeals denied the motion in a reasoned opinion. It emphasized that the "opinion concerns only th[e] motion for a stay pending appeal," *id.*, and recognized that the court was "not yet . . . in a position to adjudicate finally the underlying dispute," *id.* at 33a. Given the early stage of the litigation—and the "Department's insistence that we decide its motion with haste"—the court elected "to say less rather than more" and opted "against venturing further than is reasonably necessary." *Id.*

Although the court of appeals recognized that a temporary restraining order "generally is not immediately reviewable," it chose to assume jurisdiction and "sidestep the arguable statutory jurisdictional defect" for purposes of deciding the motion. App'x 23a-24a. It rejected defendants' argument, based on the Tucker Act, that this lawsuit is a contract action for money damages over which the district court lacks jurisdiction. *Id.* at 25a-27a. On the merits, the court agreed with the district court that the States are likely to prevail on their arbitrary-and-capricious claim, and likewise found it unnecessary to address the States' contention that the termination was contrary to law. *Id.* at 27a-33a. In addressing the other stay factors, the court of appeals faulted defendants for failing to "point[] to any evidence" substantiating their concerns that grant recipients would improperly withdraw their remaining award balances if the temporary restraining order remained in place, or that the Department would be unable to "stop such an attempted withdrawal." *Id.* at 33a. The court also emphasized the States' showing that a stay would harm them by "weaken[ing] the very teacher pipelines in their jurisdictions that Congress intended to strengthen through the TQP and SEED programs." *Id.* at 34a-35a. Five days after the court of appeals denied their stay motion, defendants filed this emergency application.

Meanwhile, the district court has set an expedited schedule on the pending motion for a preliminary injunction. D. Ct. Dkt. 52. That schedule

confirms the court's "intent that the TRO be temporary and short." D. Ct. Dkt. at 79. On March 24, the district court extended the temporary restraining order "until the date of [its] decision on the preliminary injunction, not to exceed April 7, 2025." *Id.* The preliminary-injunction motion is now fully briefed, and a hearing on the motion occurred on March 28, shortly before the States filed this response. D. Ct. Dkt. 80.

ARGUMENT

Defendants ask this Court both to stay the temporary restraining order and to vacate it. Appl. 1. But they cannot satisfy the demanding standards governing the requested relief. A stay pending appeal "is an 'intrusion into the ordinary processes of administration and judicial review.'" *Nken v. Holder*, 556 U.S. 418, 427 (2009). "The party requesting a stay bears the burden of showing that the circumstances justify" that extraordinary relief. *Id.* at 434-435. It must (1) make "a strong showing that [it] is likely to succeed on the merits" and (2) establish that it "will be irreparably injured absent a stay." *Id.* at 434. If it satisfies those requirements, the court will consider (3) "the harm to the opposing party" that would result from a stay and (4) where the "public interest" lies. *Id.* at 435; *see id.* (third and fourth "factors merge when the Government is the opposing party").

Parties seeking a stay pending appeal in this Court, after the court of appeals has already "denied [a] motion for a stay," have "an especially heavy

burden." *Packwood v. Senate Select Comm. on Ethics*, 510 U.S. 1319, 1320 (1994) (Rehnquist, C.J., in chambers). This Court will grant that relief "only upon the weightiest considerations." *Id.* (internal quotation marks omitted). On top of the standard four factors, an applicant must establish "a reasonable probability" that this Court will eventually grant certiorari and rule in its favor. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam); *see also Doe 1-3 v. Mills*, 142 S. Ct. 17, 18 (2021) (Barrett., J., concurring in the denial of application for injunctive relief). Without that additional requirement, "applicants could use the emergency docket to force the Court to give a merits preview in cases that it would be unlikely to take—and to do so on a short fuse without the benefit of full briefing and oral argument." *Doe 1-3*, 142 S. Ct. at 18 (Barrett., J., concurring in the denial of application for injunctive relief).

To justify its request that this Court summarily vacate the temporary restraining order, defendants must make an even weightier showing. Summary disposition is "bitter medicine," *Spears v. United States*, 555 U.S. 261, 268 (2009) (Roberts, C.J., dissenting), which "is usually reserved for cases where the 'law is settled and stable, the facts are not in dispute, and the decision below is clearly in error.'" *Pavan v. Smith*, 582 U.S. 563, 567-568 (2017) (Gorsuch, J., dissenting).

I. DEFENDANTS ARE NOT ENTITLED TO A STAY PENDING APPEAL OR TO SUMMARY VACATUR

Defendants cannot establish that they are entitled to either a stay pending their appeal of the temporary restraining order or summary vacatur of that order. There is no serious prospect that this appeal will succeed nor a reasonable possibility that this Court would grant certiorari in this posture. Because the district court acted responsibly—entering a narrow and time-limited restraining order to preserve the status quo while moving rapidly to adjudicate the preliminary-injunction motion—there was never appellate jurisdiction and defendants now concede that their appeal will likely be moot on or before April 7. Even setting those problems aside, defendants are unlikely to prevail on their argument that district court review of the States' APA claims is barred by the Tucker Act or 5 U.S.C. § 701(a)(2). Their application does not even attempt to argue why they should prevail on the underlying merits of those APA claims. Their stated concern that they will be irreparably harmed by improper draw-downs of grant funds in the brief period before the temporary restraining order expires depends entirely on unsubstantiated speculation. And the remaining equitable factors overwhelmingly favor denying the application and preserving the status quo while the district court adjudicates the preliminary-injunction motion.

A. Defendants Have Not Established That They Are Likely to Succeed on the Merits or That This Court is Likely to Grant Certiorari

1. The temporary restraining order at issue here is not appealable

Defendants recently acknowledged that their appeal of the temporary restraining order "will likely" become "moot" in the next few days—and no later than April 7—when the district court rules on the preliminary-injunction motion. C.A. Mot. to Hold Briefing Schedule in Abeyance at 2. Even if that were not so, defendants' appeal would fail at the threshold because of a lack of appellate jurisdiction. And because this Court lacks jurisdiction over the appeal, it "necessarily" lacks "authority to grant [the] stay" they request. *Off. of Personnel Mgmt. v. Am. Fed'n of Gov't Emps., AFL-CIO*, 473 U.S. 1301, 1306 (1985) (Burger, C.J., in chambers).

As a general rule, a temporary restraining order is "not appealable under [28 U.S.C.] § 1292(a)(1)." *Abbott v. Perez*, 585 U.S. 579, 595 (2018); *accord, e.g.*, *Am. Fed'n of Gov't Emps.*, 473 U.S. at 1303-1304 (noting the "established rule . . . that denials of temporary restraining orders are ordinarily not appealable"). The "underlying purpose" of a temporary restraining order is to "preserv[e] the status quo and prevent[] irreparable harm just so long as is necessary" to adjudicate a preliminary-injunction motion or similar proceeding with adversarial briefing. *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974); *see also Am. Fed'n*

of Gov't Emps., 473 U.S. at 1305. In this case, the temporary restraining order did exactly that. The court entered it on March 10 and scheduled it to expire after 14 days, while ordering expedited briefing and argument on the preliminary-injunction motion. That motion is fully briefed and was argued today. Earlier this week, the district court extended the temporary restraining order until the date of its decision on the preliminary-injunction motion, not to exceed April 7—28 days from when the court issued the order. D. Ct. Dkt. 79.

Defendants invoke (Appl. 23) an exception to the general rule, under which "an order labeled a temporary restraining order . . . should be treated as a 'preliminary injunction' (which is appealable)" if "the order ha[s] the same practical effect as a preliminary injunction." *Abbott*, 585 U.S. at 595 (citing *Sampson v. Murray*, 415 U.S. 61, 86-88 (1974)). But the considerations that lead courts to treat an order as appealable in cases like *Sampson* (*see* Appl. 23) are absent here. The order at issue in *Sampson*, for example, was functionally equivalent to a preliminary injunction because it was "in no way limited in time." 415 U.S. at 85; *see also id.* at 87 (noting the "potentially unlimited" nature of the order). That is a far cry from the 28-day duration (at most) of the temporary restraining order in this case. *Cf.* Fed. R. Civ. P. 65(b)(2) (authorizing 14-day temporary restraining orders that may be extended, "for good cause, . . . for a like period").

Defendants' discussion of other features of the proceedings below (Appl. 23) fails to establish that the district court's order "had the same practical effect as a preliminary injunction." *Abbott*, 585 U.S. at 595. Defendants note that they received notice of the motion for a temporary restraining order on March 6 and the court held an "adversary hearing" on March 10. Appl. 23; *see id.* at 6-7. But that kind of abbreviated proceeding is appropriate for a time-limited restraining order and does not "substitute for the more thorough notice" and adversarial briefing necessary "to obtain a preliminary injunction of . . . unlimited duration." *Granny Goose Foods*, 415 U.S. at 432 n.7. The district court has now provided the parties those thorough procedures and is poised to decide whether to grant a true preliminary injunction.

Nor do the circumstances support defendants' contention that the temporary restraining order does not "maintain the status quo." Appl. 23. The order expressly restores "the pre-existing status quo prior to" the challenged agency action—the Department's abrupt termination of substantially all TQP and SEED grants. App'x 9a. The short period between that action and the States' lawsuit (*see* Appl. 3) was within the timeframe defendants provided for grant recipients to object to or challenge the termination (*see* D. Ct. Dkt. 1 at 30), and resulted in large part because defendants informed grant recipients of the terminations in a vague and inconsistent fashion across the first three weeks of February. *See* D. Ct. Dkt. 8-13 at 6, 59-60; *supra* pp. 8-10. There is no basis

for treating that period as the "status quo" (Appl. 23) for purposes of determining whether the temporary restraining order is appealable.

The Court's recent denial (Appl. 22) of an emergency application in *Department of State v. AIDS Vaccine Advocacy Coalition*, 145 S. Ct. 753 (2025), does not support defendants' jurisdictional arguments here or their assertion that this Court is likely to grant certiorari on the jurisdictional question in this appeal. The attributes of the unusual district court "enforcement order" in *AIDS Vaccine* led four Justices to conclude that it "should be construed as an appealable preliminary injunction, not a mere TRO." *Id.* at 754 (Alito, J., dissenting). The district court in that case first "issued a temporary restraining order (TRO) requiring the Government to halt its funding pause" of certain "foreign-assistance funds." *Id.* at 753-754. It then "grew frustrated with the pace at which funds were being disbursed" and "issued a second order requiring the Government to pay out approximately $2 billion." *Id.* at 754. The dissenters concluded that the *second* order was appealable because (among other things) it "commanded the payment of a vast sum that in all likelihood can never be fully recovered" and did not "merely 'restrain' the Government's challenged action in order to 'preserve the status quo.'" *Id.* The order at issue here is not remotely analogous: It does not command the payment of any particular sum (let alone $2 billion). It merely preserves the status quo under which pre-

viously awarded grants continue to be available—subject to the same restrictions on withdrawals—while the district court resolves the preliminary-injunction motion.

Finally, if the temporary restraining order is "not directly appealable," Appl. 23, defendants alternatively contend that this Court should construe it as a petition for a writ of mandamus, *id.* at 24. Only "exceptional circumstances amounting to a judicial usurpation of power, or a clear abuse of discretion, will justify the invocation of this extraordinary remedy." *Cheney v. U.S. District Court*, 542 U.S. 367, 380 (2004) (internal quotation marks and citations omitted). Defendants make no serious attempt to show that this exacting standard is met here, and no stay or vacatur is warranted based on their gesture at this alternative route to review.

2. The district court has jurisdiction over the States' APA claims

The lower courts correctly rejected defendants' argument (Appl. 12-17) that the district court lacks jurisdiction. Congress authorized judicial review by district courts under the APA in suits challenging agency actions that seek "relief other than money damages." 5 U.S.C. § 702. When a plaintiff sues the federal government for breach of contract and seeks money damages, that claim thus "falls outside of § 702's waiver of sovereign immunity." *Dep't of Army v. Blue Fox, Inc.*, 525 U.S. 255, 263 (1999). Such an action should instead be filed under the Tucker Act, which vests jurisdiction in the Court of Federal

Claims for certain lawsuits based on an "express or implied contract with the United States." 28 U.S.C. § 1491(a)(1); *see Maine Cmty. Health Options v. United States*, 590 U.S. 296, 327 (2020).

But the "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). This Court has "long recognized the distinction between an action at law for damages—which are intended to provide a victim with monetary compensation for an injury to his person, property, or reputation—and an equitable action for specific relief." *Id.*; *see, e.g.*, *id.* ("[I]nsofar as the complaints sought declaratory and injunctive relief, they were certainly not actions for money damages."). "Although the Tucker Act is not expressly limited to claims for money damages, it 'has long been construed as authorizing only actions for money judgments and not suits for equitable relief[.]'" *Id.* at 914 (Scalia, J., dissenting).

To determine whether a claim "falls within the exclusive jurisdiction of the Claims Court pursuant to the Tucker Act," *Crowley Gov't Servs., Inc. v. Gen. Servs. Admin.*, 38 F.4th 1099, 1106 (D.C. Cir. 2022), courts ask whether it "is at its essence a contract claim." *Megapulse, Inc. v. Lewis*, 672 F.2d 959, 967 (D.C. Cir. 1982). That inquiry turns "both on the source of the rights upon which the plaintiff bases its claims, and upon the type of relief sought (or appropriate)." *Id.* at 968. The court of appeals adhered to that settled standard.

See App'x 25a-27a. Defendants agree with the standard but argue that the court of appeals misapplied it. *See* Appl. 15-16. They are incorrect.

First, as to the source of the rights, the States' claims are "derived from" statutes and regulations, not contracts. App'x 26a. The States challenge a programmatic decision to terminate all (or substantially all) TQP and SEED grants because the termination is contrary to the Department's regulations and arbitrary and capricious when viewed in light of the statutes authorizing those grants. *See* D. Ct. Dkt. 1 at 3-5, 12-15, 26-30, 33-39, 46-51 (discussing 20 U.S.C. §§ 1021, 1022a-c, 1022e, 1022h, 6672, 7906a; 2 C.F.R. §§ 200.208, 200.339-343; 34 C.F.R. § 75.253).[2] Defendants respond that their "regulatory authority to terminate grants that 'no longer effectuate[] the program goals or agency priorities,' 2 C.F.R. 200.340(a)(4)," Appl. 6, allows them to "chang[e] direction" and "terminate diversity, equity, and inclusion (DEI)-related grants" midstream, *id.* at 3, 4. The controversy thus centers around federal statutes and regulations. It is not a contract dispute, even if it were true that the underlying "TQP and SEED grant awards have the essential characteristics of contracts." Appl. 14. What is more, the statutory and regulatory questions at

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[2] Defendants now suggest that their action was a series of "individual funding terminations" rather than "a single agency policy." Appl. 16. That assertion relies on a declaration submitted after this litigation commenced, *see* App'x 11a-15a, and is inconsistent with prior statements from Department officials, *see* D. Ct. Dkt. 8-13 at 6, 60. Regardless, the APA is the appropriate mechanism for challenging the Department's unlawful actions.

issue here hardly fall within the "unique expertise" of the Court of Federal Claims. *Id.* at 13.

Defendants note that the complaint at times refers to "the grant instruments' terms and conditions." Appl. 14 (citing D. Ct. Dkt. 1 at 4-5). But that discussion is responsive to defendants' regulation-based arguments. As noted, the regulation defendants invoke authorizes termination of a grant award "pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities." 2 C.F.R. § 200.340(a)(4); *see id.* § 200.340(b) (agency must "clearly and unambiguously specify all termination provisions in the terms and conditions of the Federal award"); *see also* 20 U.S.C. § 1232(d); 34 C.F.R. § 75.105. And defendants have not identified any term or condition of any TQP or SEED award that would authorize termination on the grounds they have asserted. Even if the grants could be considered contracts, the "mere fact that a court" may address "a contract issue does not" convert "an action . . . into one on the contract and deprive the court of jurisdiction it might otherwise have." *Megapulse*, 672 F.2d at 968; *see also Spectrum Leasing Corp. v. United States*, 764 F.2d 891, 893 (D.C. Cir. 1985) ("A court will not find that a particular claim is one contractually based merely because resolution of that claim requires *some* reference to a contract.").

Defendants also argue that it "does [not] matter" that the complaint alleges "the government 'acted in violation of federal law' in terminating the grants." Appl. 16 (citing *Ingersoll-Rand Co. v. United States*, 780 F.2d 74, 78 (D.C. Cir. 1985) and *Spectrum Leasing*, 764 F.3d at 894). But the cases they cite do not support that sweeping proposition. In *Ingersoll-Rand*, the court emphasized that the government "invoked" a contractual "clause in its decision to terminate the original contract and solicit new bids" and that the dispute was "entirely contained within the terms of the contract." 780 F.2d at 78. In *Spectrum Leasing*, the court explained that the rights asserted were "created in the first instance by the contract," and observed that no statute or regulation "creates the substantive right to the remedy Spectrum seeks." 764 F.2d at 894. In contrast, defendants here invoke "regulatory authority" to terminate the grants (Appl. 6), and the States have pointed to specific statutes and regulations as the source of their rights.

Second, as to the type of relief, the States do not "seek specific sums already calculated, past due, and designed to compensate for completed labors." *Maine Cmty. Health Options*, 590 U.S. at 327; *see* App'x 26a. At Congress's invitation, the States and other grant recipients have created programs to address teacher shortages and improve teacher quality that are funded by multi-year grant awards. As Congress envisioned, the TQP and SEED grants provide a continuing stream of funds to support those programs over the life of the

awards, some of which extend to 2029. *E.g.*, D. Ct. Dkt. 8-4 at 4. Defendants' abrupt termination of virtually all of those grants harms the eight respondent States by eliminating that future funding stream and imperiling vital programs for coming years. *See* D. Ct. Dkt. 1 at 40-46. Indeed, some grant recipients were already forced to halt their programs. *Id.* at 42. The relief sought by the States—vacatur, declaratory relief, and an injunction against further unlawful terminations, *see id.* at 51-52—would restore the status quo and allow those programs to continue their work in the remaining years of the grants. That kind of "prospective, nonmonetary relief to clarify future obligations" characterizes an action that "belong[s] in district court." *Maine Cmty. Health Options*, 590 U.S. at 327.

By contrast, the Court of Federal Claims "does not have the general equitable powers of a district court to grant prospective relief." *Bowen*, 487 U.S. at 905. The primary remedy available in a Tucker Act action—"a naked money judgment against the United States," *id.*—would not undo the irreparable harm the States now face from the threatened closure of their teacher preparation programs. *See generally id.* at 904 n.39 (unlike the Tucker Act, "[t]he APA is tailored" to litigation that involves "[m]anaging the relationships between States and the Federal Government that occur over time"). And while the equitable relief sought by the States would allow them to continue to draw

down TQP and SEED grant funds—on a regular schedule and subject to regulatory restrictions—district courts do not lose jurisdiction to decide APA claims just because the relief requested would lead to a flow of funds as "by-product of th[e] court's primary function of reviewing [an agency's] interpretation of federal law." *Id.* at 910.[3]

Finally, the dissent in *AIDS Vaccine Advocacy Coalition* does not support defendants' position—or establish any likelihood that this Court would grant certiorari on the Tucker Act question in this appeal. *See* Appl. 4. That case involved an enforcement "order requiring the Government to pay out approximately $2 billion . . . within 36 hours." *AIDS Vaccine Advocacy Coalition*, 145 S. Ct. at 754 (Alito, J., dissenting). In the dissenters' view, the specific features of that order "more closely resemble[d] a compensatory money judgment rather than an order for specific relief that might have been available in equity." *Id.* Whatever the jurisdictional implications of that sui generis order for the *AIDS*

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[3] Defendants posit that the States could bring a contract claim under the Tucker Act for certain grant-related expenses already incurred but not yet reimbursed. *See* Appl. 14-15. Even if the States could have sued defendants in the Court of Federal Claims on a breach of contract theory for certain past-owed sums, however, it does not follow that the claims seeking prospective relief would be jurisdictionally barred in district court. *See Bowen*, 487 U.S. at 910 & n.48 (district court had jurisdiction notwithstanding "the possibility that a purely monetary judgment" could have been entered in the Court of Federal Claims).

Vaccine case, it is not comparable to the prospective equitable and APA relief sought by the States here.

3. The States' APA claims are meritorious

Both the district court and the court of appeals recognized that the States are likely to succeed on their claim that the terminations are arbitrary and capricious in violation of the APA. App'x 3a-6a, 29a-33a. Defendants disagree, but do not even attempt to address the substance of that claim, *see* Appl. 22 n.2, or the States' alternative claim that defendants acted contrary to law. Defendants instead contend only that the decision whether to terminate TQP and SEED grants falls under 5 U.S.C. § 701(a)(2), the APA's exception for actions committed to agency discretion by law. Appl. 17-20. That is wrong. Both APA claims are likely to succeed.

a. The agency action is subject to judicial review under the arbitrary-and-capricious standard

Section 701(a)(2) applies only in the "rare circumstances" in which a court would have "no meaningful standard against which to" review an agency's discretionary action. *Dep't of Com. v. New York*, 588 U.S. 752, 772 (2019). That approach accords with this Court's "strong presumption favoring judicial review of administrative action." *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 586 U.S. 9, 23 (2018). The grant termination does not fall into the "'narrow[]' class of agency actions that are unreviewable in federal court." App'x 27a (quoting *Dep't of Com.*, 588 U.S. at 772).

The Department's administration of TQP and SEED grants is governed by statutory and regulatory constraints that provide meaningful standards for judicial review. App'x 28a-29a. The Department has adopted OMB's Uniform Guidance for Federal Financial Assistance, which provides enumerated grounds on which an agency may terminate a grant award. *See* 2 C.F.R. § 200.340(a); *id.*, § 3474.1. And the statutes establishing the TQP and SEED programs detail the purposes of those programs, including providing "pathways" for teachers "to serve in traditionally underserved" communities, 20 U.S.C. § 6672(a)(1), and opportunities for teachers to "receive training in providing instruction to diverse populations," *id.* § 1022e(b). Those "statutory mandates," along with other provisions, provide judicially enforceable standards for evaluating the challenged action. App'x 29a.

Defendants principally rely on *Lincoln v. Vigil*, 508 U.S. 182 (1993), which "involved lump-sum appropriations," not competitive grants. Appl. 18. The "allocation of funds from a lump-sum appropriation" is one of the "few cases" in which "the § 701(a)(2) exception" applies. *Weyerhaeuser*, 586 U.S. at 23. Defendants' assertion that *Lincoln*'s "logic extends" to the decisions about terminating extant TQP and SEED grants (Appl. 18) reflects a misunderstanding of the Court's analysis. The Court invoked the "fundamental principle of appropriations law" that "where 'Congress merely appropriates lump-sum amounts without statutorily restricting what can be

done with those funds, a clear inference arises that it does not intend to impose legally binding restrictions.'" 508 U.S. at 192. But "Congress may always circumscribe agency discretion to allocate resources by putting restrictions in the operative statutes," *id.* at 193—which it frequently does outside the context of lump-sum appropriations. Courts applying *Lincoln* have thus reviewed grant-related decisions where Congress—or the implementing agency—cabined the agency's "discretionary funding determinations." *E.g.*, *Pol'y & Rsch., LLC v. U.S. Dep't of Health & Human Servs.*, 313 F. Supp. 3d 62, 76-84 (D.D.C. 2018) (Jackson, J.) (grant termination reviewable where agency's regulations limited its discretion to terminate); *King County v. Azar*, 320 F. Supp. 3d 1167, 1175 (W.D. Wash. 2018) (similar).

None of the other authority invoked by defendants establishes that Section 701(a)(2) bars review here. In *Milk Train, Inc. v. Veneman*, 310 F.3d 747 (D.C. Cir. 2002), for instance, Congress appropriated funds "to be used 'to provide assistance directly to . . . dairy producers, in a manner determined appropriate by the Secretary.'" *Id.* at 751. The portion of the statute at issue provided no judicially manageable standards to determine "the manner for providing assistance to dairy farmers," because there was "no relevant statutory reference point for the court other than the decisionmaker's own views of what is an 'appropriate' manner of distribution." *Id.* at 751. Here, in contrast, numerous statutory and regulatory provisions cabin defendants'

discretion to terminate the grants. *Supra* p. 22. And while Congress may have established a "discretion-laden calculus" for awarding TQP and SEED grants, Appl. 19, the fact that a statute "confers broad authority" on an agency does not mean that the agency's "discretion [is] unbounded," *Dep't of Com.*, 588 U.S. at 771, 772, or that courts are unable to assess whether an agency has impermissibly terminated a grant in violation of the regulatory framework or based on a rationale at odds with statutory purposes.

Indeed, defendants acknowledge that the challenged "decision may be subject to review . . . for compliance with the governing statutes, regulations, and funding instruments." C.A. Stay Reply 5; *cf.* Appl. 20. They principally object to the lower courts' consideration of the States' APA claim because "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." Appl. 20. But that is a common feature of APA review. In *Department of Commerce*, for example, this Court pointed to Census Act limitations regarding the use of "statistical sampling" and the agency's authority "to collect information through direct inquiries when administrative records are available" to establish reviewability. 588 U.S. at 772-773. But the Court did not ultimately set aside the agency's action based on these modest constraints. It instead held that the action was arbitrary and capricious. *Id.* at 773, 780-785.

b. The terminations were arbitrary and capricious and contrary to law

In this Court, defendants chose to present no argument on the underlying merits of the States' APA claims. Appl. 22 n.2. Even if they had, they could not establish a likelihood of defeating those claims.

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, [or] 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 v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Defendants fail that standard. Their boilerplate termination letters list various "disjunctive reasons" for the grant terminations, App'x 30a, including that the grants fund programs that "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," *id.* at 22a-23a. But the letters do not specify which of the broad and unrelated rationales applies to each grant. "This leaves grant recipients, not to mention a reviewing court, to 'guess at the theory underlying the agency's action.'" *Id.* at 30a (quoting *SEC v. Chenery Corp.*, 332 U.S. 194, 196-197 (1947)). Courts cannot "be expected to chisel that which must be precise from what the agency has left vague and indecisive." *Chenery*, 332 U.S. at 197.

In this litigation, defendants attempted to rectify that defect by asserting that their "actual reason for terminating the grants was each program's use of those funds to teach DEI principles." App'x 31a. As the court of appeals reasoned, however, "that supposed specificity is nowhere to be found in the termination letters, which state in the disjunctive five possible grounds for termination," only one of which pertains to DEI. *Id.* "[T]his newfound claim of clarity approaches the sort of 'post hoc rationalization'" that courts "cannot allow." *Id.* at 31a-32a (citing *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 419-20 (1971)); *see also Dep't of Homeland Sec. v. Regents of Univ. of Cal.*, 591 U.S. 1, 21 (2020) (agency's subsequent explanation "'must be viewed critically' to ensure" that agency action "is not upheld on the basis of impermissible '*post hoc* rationalization'"). And even if the termination letters had identified DEI as the reason for each termination, that would still be insufficient because of the amorphous meaning of that term and the failure to explain how the grantees' activities "promote or take part in DEI initiatives." App'x 5a.[4]

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[4] Defendants argued below that a reasoned explanation for the termination need only "appear in the administrative record." C.A. Stay Reply 7. But that argument cannot be a basis for staying (or vacating) provisional relief where, as here, defendants have not produced the administrative record, the States had no realistic means of obtaining it on the timeline necessary to secure provisional relief, and defendants provided the district court with no evidence suggesting that the administrative record would reflect an adequate consideration of reliance interests. *See infra* pp. 33-34.

The court of appeals further explained (App'x 30a-31a, 32a) that defendants failed to take the steps necessary when agencies make an abrupt change in a prior policy that has "'engendered serious reliance interests.'" *Regents*, 591 U.S. at 30 (quoting *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016)). TQP and SEED grants engendered significant reliance interests on the part of States as well as aspiring teachers currently in or about to enter training programs. *See, e.g.*, D. Ct. Dkt. 8-10 at 9; 8-15 at 6; 8-17 at 11-13. Defendants made no effort to take those interests into consideration, much less provide a reasoned explanation for disregarding them. *See* App'x 12a-14a (declaration describing process of reviewing grants, which included no consideration of reliance interests or the impact of termination). That alone renders the terminations arbitrary and capricious. *See Regents*, 591 U.S. at 30 (no reasoned explanation where Government "does not contend" that it "considered potential reliance interests" in making policy change).

In addition, defendants "relied on factors which Congress has not intended [them] to consider." *State Farm*, 463 U.S. at 43; *see* App'x 31a. Even taking at face value defendants' belated assertion that they terminated all the grants for funding programs "that feature DEI principles," App'x 31a, Congress did not intend for TQP or SEED grants to be terminated on that basis. As discussed above, Congress sought to recruit "individuals from under[-]represented populations" into teaching. 20 U.S.C. § 1022a(d)(5)(A).

Congress also specified that the programs should prepare teachers for schools in "traditionally underserved" communities, *id.* § 6672(a)(1); that teachers should "reflect the communities in which they will teach," *id.* § 1022a(e)(2)(A)(vi)(II); and that funding should train instructors for "diverse populations, including children with disabilities, limited English proficient students, and children from low-income families," *id.* § 1022e(b)(4). While defendants are free as a policy matter to "disfavor[] programs that feature DEI principles," App'x 31a, they are not free to ignore statutory provisions enacted by Congress.

The courts below saw no need to reach the States' separate APA claim that the terminations were not in accordance with law, *see* App'x 32a-33a, which provides an independent basis for the temporary restraining order. Among other things, defendants' termination letters invoked 2 C.F.R. § 200.340(a)(4). *See, e.g.*, D. Ct. Dkt. 8-1 at 118. That regulation states that an agency may, "pursuant to the terms and conditions" of a grant and "to the extent authorized by law," terminate a grant award that "no longer effectuates the program goals or agency priorities." 2 C.F.R. § 200.340(a)(4). But it does not authorize defendants to *change* program goals or agency priorities mid-grant. As the court of appeals noted (App'x 32a), defendants' regulations specify that "annual priorities" for grant awards must be set through notice-and-

comment rulemaking. 34 C.F.R. § 75.105(b). Section 200.340(a)(4) allows defendants to terminate a grant, pursuant to the grant terms and conditions, "if additional evidence reveals that a specific award objective is ineffective at achieving program goals," such as when a particular grantee's performance is unsatisfactory. 85 Fed. Reg. 49,506, 49,507 (Aug. 13, 2020); *see also* 89 Fed. Reg. 30,046, 30,089 (Apr. 22, 2024). Defendants have never claimed that the grants it sought to terminate are "ineffective at achieving program goals"; rather, defendants are seeking to change the grant priorities without going through the required process.

4. The scope of the order is appropriate

Defendants also criticize (Appl. 20-22) the scope of the temporary restraining order, but those arguments do not provide any basis for granting their application. The States sought and obtained targeted relief, focused on the two grant programs and limited to "recipients in" the geographic bounds of the eight plaintiff States. App'x 9a. Defendants contend that the inclusion of certain grantees that are not instrumentalities of the State "violates" the "principle that relief must be limited to redressing the specific plaintiff's injury." Appl. 21. But the temporary restraining order validates that principle by recognizing that the termination of funding to grant recipients that are providing a pipeline of qualified teachers for local schools within the eight plaintiff States directly harms those States. *See, e.g.*, D. Ct. Dkt. 8-13 at 7-8.

Defendants suggest that the temporary restraining order is overbroad because the traditional remedy for the "specific harm" identified by the district court would be an order preventing defendants from relying on the termination letters "absent further explanation." Appl. 21 (citing *Regents*, 591 U.S. at 20). But the APA empowers federal courts to "hold unlawful and set aside agency action" that is arbitrary and capricious or contrary to law. 5 U.S.C. § 706(2); *see, e.g.*, *Regents*, 591 U.S. at 9 (holding that an agency action "must be vacated" on arbitrary and capricious grounds). At this stage of the case, moreover, the district court undoubtedly retains equitable authority to grant provisional relief maintaining the status quo while it considers the merits of the APA claim. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008); *see also* 5 U.S.C. § 705.

Finally, defendants contend (Appl. 22) that the temporary restraining order broadly prevents them from terminating individual TQP or SEED grants during the course of this litigation. As they acknowledge, however, *see id.*, the order expressly allows defendants to terminate grants "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 the terms of the order. App'x 10a. There is nothing "confusing[]" (Appl. 22) or improper about that carve-out: defendants may undertake new agency action with a new and

valid rationale, *see, e.g.*, *Regents*, 591 U.S. at 21, but the action challenged here violates the APA.

B. Defendants Have Not Demonstrated Irreparable Injury

Defendants argue that the temporary restraining order "irreparably harms the public fisc," asserting that "grantees in the plaintiff States are free (and are 'strongly incentivized') to draw from 'the $65 million still outstanding under their awards'" between now and when the order expires in a few days. Appl. 25-26; *see id.* at 25 ("open the funding spigots"); *id.* at 27 ("unnecessarily large . . . drawdown requests"); *id.* ("likely unrecoverable"); *id.* at 29 ("every incentive to draw down swiftly"). The court of appeals correctly rejected that assertion as unsubstantiated "speculation and hyperbole." App'x 33a.

When defendants moved for a stay in the court of appeals, they advanced the same concern. C.A. Stay Mot. 18-19. The court of appeals took that concern seriously, directing the States to "address fully" defendants' claim of irreparable harm. App'x 18a. The States did so, explaining that the concerns are unfounded because draw-downs tend to be incremental over a period of years; there are restrictions on advance payments; and the Department has ample authority to monitor and address suspicious withdrawals. C.A. Stay Opp. 10-12 & n.3; *see also supra* pp. 7-8. Defendants then belatedly acknowledged that "normal payment-system protections" guard against "unusually large" draw-downs. C.A. Stay Reply 2; *see* Appl. 27 (acknowledging that grant recipients

typically "'submit reimbursement requests for expenses already incurred'" and that advance payments are subject to regulatory limits).

Ultimately, the court of appeals concluded that defendants failed to "rebut the contention that it could stop" an improper withdrawal. App'x 33a. And defendants also did "not point[] to any evidence of any attempt at any such withdrawal by any recipient." *Id.* The same is true in this Court. Defendants filed this application on March 26—16 days after the district court issued the temporary restraining order. Their application did not identify any evidence of an improper drawn-down during that period, let alone one that would be "unrecoverable" (Appl. 27) through normal safeguards. *See generally id.* at 26-27 (arguing that "the Department itself" is in the best "position[]" to identify "the loss of likely unrecoverable funds").

Finally, defendants fault the district court for "refus[ing]" to "clarif[y] the government's ability to invoke th[e] protective measures" that defendants now acknowledge apply to "prevent unnecessarily large drawdowns." Appl. 27. In fairness to the district court, defendants never asked for that clarification. Nor was it necessary: nothing in the temporary restraining order could reasonably be construed to override generally applicable safeguards on the disbursement of grant funds. *See* App'x 9a-10a. Nevertheless, the States would not object to this Court clarifying the continued availability of the existing safeguards in an order denying the application.

C. The Balance of Equities and Public Interest Do Not Support Defendants' Requested Relief

Defendants' failure to show a likelihood of success on the merits, a reasonable probability of obtaining certiorari, or irreparable harm, dooms their request for emergency relief. *See Nken*, 556 U.S. at 434-435. To the extent the Court proceeds to "balance the equities and weigh the relative harms," *Hollingsworth*, 558 U.S. at 190, those considerations only confirm that the application should be denied. As the court of appeals recognized, any harm that defendants might face from the temporary restraining order in the few days remaining before that order expires is far outweighed by the immediate harm the States will suffer if the order were stayed or vacated. App'x 34a-35a. To highlight just two (of many) examples, the Chicago Public Schools' successful teacher pipeline program may have to scale back or shut down due to the loss of its TQP grants. D. Ct. Dkt. 8-13 at 3-8. And a TQP program at a public university in California has already had to reduce the stipends it pays to trainee teachers, increasing the likelihood that they will withdraw from the program and end their current placements in high-need K-12 schools. D. Ct. Dkt. 8-7 at 8-11.

The short period of time between when the first termination letters were issued and the States filed suit does not "vitiate[] . . . the force" of those harms. Appl. 28. Under the circumstances, that was an entirely reasonable period for prefiling investigation, research, and preparation. *See supra* pp. 8-10. And

this case is nothing like *Beame v. Friends of the Earth*, 434 U.S. 1310, 1313 (1977) (Marshall, J., in chambers), *see* Appl. 28, which involved stay applicants who waited the full 90 days to file a petition for writ of certiorari, then weeks more before seeking a stay.

Defendants dismiss the States' harms as merely "monetary," suggesting that grant recipients might recover some funds if they "ultimately prevail." Appl. 28; *see* C.A. Stay Mot. 17-18. But defendants do nothing to rebut the States' "detailed evidence" about the "practical impacts of cutting off grants" with multi-year terms—some extending into 2029—that fund programs vital to the education of our youth. App'x 34a; *see also id.* at 6a-8a. Absent provisional relief, as a result of defendants' rash and unlawful action, "these immediate effects will weaken the very teacher pipelines" that Congress intended to support through the TQP and SEED programs. *Id.* at 34a-35a. The district court acted appropriately in granting a narrow and time-limited restraining order while it proceeds to a prompt ruling on the motion for a preliminary injunction. There is no sound basis for this Court to stay or vacate that order.

CONCLUSION

The application and the request for an administrative stay should be denied.

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