No. 26-5098

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STATE OF WASHINGTON, *et al.*,
Plaintiffs-Appellees,

v.

UNITED STATES DEPARTMENT OF EDUCATION, *et al.*,
Defendants-Appellants.

On Appeal from the United States District Court
for the Western District of Washington

EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 FOR STAY PENDING APPEAL RELIEF REQUESTED BY SEPTEMBER 4, 2026

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTRODUCTION 1

STATEMENT 3

A. Background 3

B. Procedural History 5

ARGUMENT 8

I. This Court Has Appellate Jurisdiction 9

II. The Government Is Likely to Prevail on the Merits 9

III. The Remaining Factors Support a Stay 19

CONCLUSION 22

CERTIFICATE OF COMPLIANCE

CERTIFICATE OF SERVICE

ADDENDUM

TABLE OF AUTHORITIES

Cases: **Page(s)**

Abbott v. Perez,
585 U.S. 579 (2018) 8

Bennett v. New Jersey,
470 U.S. 632 (1985) 11

Crowley Gov't Servs., Inc. v. General Servs. Admin.,
38 F.4th 1099 (D.C. Cir. 2022) 9

Dennis Melancon, Inc. v. City of New Orleans,
703 F.3d 262 (5th Cir. 2012) 20

Department of Educ. v. California,
604 U.S. 650 (2025) 8-9, 10, 14, 19

East Bay Sanctuary Covenant v. Trump,
932 F.3d 742 (9th Cir. 2018) 9

Ingersoll-Rand Co. v. United States,
780 F.2d 74 (D.C. Cir. 1985) 10

James v. Caldera,
159 F.3d 573 (Fed. Cir. 1998) 10

Los Angeles Mem'l Coliseum Comm'n v. NFL,
634 F.2d 1197 (9th Cir. 1980) 20

Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak,
567 U.S. 209 (2012) 9

Megapulse, Inc. v. Lewis,
672 F.2d 959 (D.C. Cir. 1982) 10, 14

NIH v. American Pub. Health Ass'n,
145 S. Ct. 2658 (2025) 1, 10-11, 14, 19

Nken v. Holder,
556 U.S. 418 (2009) 8, 19

Sampson v. Murray,
415 U.S. 61 (1974) 9

San Francisco Herring Ass'n v. U.S. Dep't of the Interior,
946 F.3d 564 (9th Cir. 2019) 15-16

Southern Cal. All. of Publicly Owned Treatment Works v. U.S. EPA,
8 F.4th 831 (9th Cir. 2021) 16

Thakur v. Trump,
163 F.4th 1198 (9th Cir. 2025) 6, 8, 10, 11, 14, 19

Thakur v. Trump,
176 F.4th 1187 (9th Cir. 2026) 11, 12, 13, 15, 21

Thakur v. Trump,
787 F. Supp. 3d. 955 (N.D. Cal. 2025) 11, 12

Trump v. CASA, Inc.,
606 U.S. 831 (2025) 20

United Aeronautical Corp. v. U.S. Air Force,
80 F.4th 1017 (9th Cir. 2023) 10

U.S. Army Corps of Engineers v. Hawkes Co.,
578 U.S. 590 (2016) 17

Washington v. U.S. Dep't of Educ.,
161 F.4th 1136 (9th Cir. 2025) 15

Washington v. U.S. Dep't of Educ.,
167 F.4th 1241 (9th Cir. 2026) 5

Statutes:

Pub. L. No. 117-159, div. B, tit. II, 136 Stat. 1313 (2022) 3

5 U.S.C. § 702 .... 9, 10

28 U.S.C. § 1292(a)(1) 8

28 U.S.C. § 1491(a)(1) 1, 9, 13

Regulations:

2 C.F.R. § 200.340 5

2 C.F.R. § 200.340(a) 7

2 C.F.R. § 200.340(a)(1) 4

2 C.F.R. § 200.340(a)(4) 4, 20

34 C.F.R. § 75.251 3

34 C.F.R. § 75.251(b) 3

34 C.F.R. § 75.253 4

Rules:

Fed. R. Civ. P. 54(b) 5

Fed. R. Civ. P. 65 9

Fed. R. Civ. P. 65(b)(2) 7

Other Authorities:

87 Fed. Reg. 60,137 (Oct. 4, 2022) 3

87 Fed. Reg. 60,144 (Oct. 4, 2022) 3

INTRODUCTION

In a trio of recent cases, the Supreme Court and this Court have concluded that challenges to the termination of government grants must be brought in the Court of Federal Claims. Under the Tucker Act, any claim "founded . . . upon any express or implied contract with the United States" falls within the Court of Federal Claims' exclusive jurisdiction. 28 U.S.C. § 1491(a)(1). The Supreme Court and this Court have accordingly recognized that the Tucker Act prevents district courts from adjudicating claims "designed to enforce [an] 'obligation to pay money' pursuant to . . . grants." *NIH v. American Pub. Health Ass'n*, 145 S. Ct. 2658, 2660 (2025).

Those precedents preclude district court jurisdiction over this case involving claims seeking to prevent the termination of certain Department of Education (Department) grants. When the Department indicated that it planned to terminate some or all of the grants, plaintiffs filed suit, alleging numerous Administrative Procedure Act (APA) claims and requesting sweeping relief prohibiting the terminations. After briefing and argument, the district court issued an order barring the Department from "implementing or enforcing through any means the termination plan." Add.14. Although the court described the order as a temporary restraining order (TRO), it extended the TRO beyond the time permitted by the Federal Rules of Civil Procedure, effectively converting it into a preliminary injunction.

The Department respectfully requests that the district court's order be stayed pending appeal. The court believed that the Tucker Act precludes district court jurisdiction over challenges to completed terminations but permits jurisdiction over challenges attempting to block future terminations. This Court has already recognized, however, that both types of challenges must be brought in the Court of Federal Claims. Indeed, nothing in the Tucker Act's text or Supreme Court precedent supports distinguishing between claims seeking to prevent future terminations and claims seeking to undo completed terminations. Both claims demand continued performance of a contract and thus fall squarely within the Tucker Act. Far from providing a basis for evading the statute, plaintiffs' decision to file suit before the Department terminated any grant creates a second, independent bar to their claims, as plaintiffs cannot meet their burden of identifying final agency action.

The equitable factors confirm that a stay is warranted. Both the Supreme Court and this Court have recently confronted similar circumstances—involving orders prohibiting the termination of grants supporting education or research—and concluded that stays were warranted. Absent a stay, the district court's order will effectively compel the Department to continue distributing taxpayer dollars in response to grantee payment requests. Those payments have previously averaged over $1 million a week, and it is unlikely that the government will recover those funds if it ultimately prevails in this appeal. By contrast, nothing prevents the grantees from filing suit in the Court of Federal Claims and seeking damages.

For these reasons, the Court should grant a stay pending appeal as soon as possible, and at the very latest by September 4, 2026. Plaintiffs oppose this motion and oppose the government's request for an expedited ruling.

STATEMENT

A. Background

1. The Department administers two competitive grant programs that promote mental-health services in schools: the School-Based Mental Health Services Grant Program (SBMH), which is designed to employ more mental-health services providers in schools, and the Mental Health Service Professional Demonstration Grant Program (MHSP), which is designed to train school-based mental-health service providers. *See* 87 Fed. Reg. 60,137, 60,138 (Oct. 4, 2022); 87 Fed. Reg. 60,144, 60,145 (Oct. 4, 2022). Both programs were originally funded and created by the Bipartisan Safer Communities Act, which appropriated $1 billion "for activities under section 4108 of the [Elementary and Secondary Education Act]." Pub. L. No. 117-159, div. B, tit. II, 136 Stat. 1313, 1342 (2022).

Since the recent creation of these programs, the Department has chosen to issue these grants as multi-year projects, under which the Secretary of Education (Secretary) approves a project and its proposed performance period upon the initial award, but approves budget periods in one-year increments. *See* 34 C.F.R. § 75.251. The Secretary's approval notice, in addition to funding the initial budget period, must indicate "his or her intention to make contin[u]ation awards to fund the remainder of the project period." *Id.* § 75.251(b).

Under the governing regulations, the Department can stop funding a grant in multiple ways. One option is to terminate the grant outright. The Department holds authority to terminate grants in a wide range of circumstances, including where a grantee "fails to comply with the terms and conditions of the Federal award" and where "an award no longer effectuates the program goals or agency priorities." 2 C.F.R. § 200.340(a)(1), (4). Another option is not to terminate the grant, but to notify the grantee that the Department will not continue to provide funds in future budget periods. *See* 34 C.F.R. § 75.253. The details of this non-continuation authority are not at issue here.

2. Plaintiffs are States with grantees of multi-year SBMH or MHSP projects. Dkt. 1, at 8-10. In February 2025, the Acting Secretary issued a directive instructing "Department personnel" to conduct an "internal" review to ensure that "Department grants do not fund discriminatory practices—including in the form of [diversity, equity, and inclusion]." *Id.* at 16. Following that review, the Department sent notices to recipients of 70 SBMH and 153 MHSP grants that their funding would not be continued in 2026. *See* Declaration of Dana Carr ¶¶ 3, 6, *Washington v. U.S. Dep't of Educ.* (*Washington I*), No. 25-cv-01228 (W.D. Wash. Aug. 6, 2025), Dkt. 148. By issuing non-continuation notices rather than immediately terminating the grants, the

Department provided grantees with more than six months of lead time before they were to stop receiving federal funds.

B. Procedural History

1. This is the second case in which plaintiffs have sought to compel the Department to continue providing grantees with federal funds. In the first case, plaintiffs brought various APA claims challenging the non-continuation notices and the February 2025 Directive. *See Washington I*, Dkt. 1. The district court ultimately issued a Federal Rule of Civil Procedure 54(b) judgment, vacated the non-continuation notices and Directive, and entered an injunction requiring the Department to make new continuation decisions. *Washington I*, Dkt. 269, at 34-35. The government appealed and moved for a stay pending appeal, but this Court denied the motion. *Washington v. U.S. Dep't of Educ.*, 167 F.4th 1241, 1244 (9th Cir. 2026) (per curiam). Briefing on the appeal is underway. *See Washington v. U.S. Dep't of Educ.*, No. 26-510 (response brief filed on August 17).

Following this Court's denial of the stay motion, the Department issued new decisions continuing most of the grants. *See Washington I*, Dkt. 365 (explaining that the Department issued non-continuation decisions for a small number of grantees that voluntarily terminated their grants or failed to satisfy requirements not at issue in this litigation). The budget period for the continued grants extends through December 31, 2026. *Id.* at 2. The Department has ensured that grants are currently funded but has not yet made available all funds for the year. *See id.* at 2.

2. Recently, the Department notified the district court that it "intends" to use its separate authority under 2 C.F.R. § 200.340 to "terminate some or all of the grants," *Washington I*, Dkt. 437, at 2 (requesting, out of an abundance of caution, clarification that the injunction in the non-continuation case does not preclude termination). Before the Department determined which grants to terminate or what process to follow in doing so, plaintiffs filed this suit. Plaintiffs assert APA claims and request sweeping relief, including an order prohibiting the Department "from terminating or withholding federal financial assistance as applied to the Protected Grants without satisfying" numerous requirements that plaintiffs believe are implicated here.[1] Dkt. 1, at 34-52. On the same day that plaintiffs initiated this suit, they filed a motion requesting a preliminary injunction or, in the alternative, a TRO. Dkt. 10.

After holding a hearing, the district court granted plaintiffs' motion. Add.1-15. As a threshold matter, the court determined that the Tucker Act does not deprive it of jurisdiction over plaintiffs' claims. The court acknowledged that under this Court's decision in *Thakur v. Trump* (*Thakur I*), 163 F.4th 1198 (9th Cir. 2025), claims "seeking vacatur of termination notices *and reinstatement* of terminated grants f[a]ll within the scope of the Tucker Act." Add.9 (citing *Thakur I*, 163 F.4th at 1204). The court "distinguishe[d]" *Thakur*, however, on the ground that plaintiffs here "seek only

[1] Although plaintiffs' complaint also raises Spending Clause and ultra vires claims, *see* Dkt. 1, at 48-51, the district court did not address either claim.

prospective relief." Add.9. The court also reasoned that because "the Department's re-review [of the grants] has been planned and is intended to have legal consequences," it is "sufficiently final" to qualify as final agency action subject to APA review. Add.11-12.

Turning to the merits, the district court concluded that "the Department has formulated a plan to re-review Grants for termination based on unlawful reasons." Add.5. It appeared to assume that in terminating the grants, the Department would adopt a "substantively identical" approach to the one it followed when issuing the non-continuation notices, which the court regarded as flawed in various respects. Add.6 (citing orders entered in *Washington I*). The court did not identify any evidence showing that the Department has decided what procedures to follow when carrying out grant terminations (or even what provision of 2 C.F.R. § 200.340(a) the Department would invoke in doing so).

As a remedy, the district court entered what it described as a TRO barring the Department from "implementing or enforcing through any means the termination plan described in this order." Add.14. The order also prohibits the Department from "effectuating [the] terminations by evaluating the Grants for alignment with new priorities that did not exist at the time the Grantee applied for the Grant." Add.14. Although the court initially indicated that the order would expire after 28 days, Add.15; *see* Fed. R. Civ. P. 65(b)(2) (28-day limit on TROs absent the adverse party's consent), it later removed that limit, stating that the "TRO will not expire until the preliminary injunction [motion] is resolved," Add.18. This appeal followed.

The day after the government appealed, it requested that the district court stay its injunction pending appeal. Dkt. 66. In response, the court recognized that "the need for expedited resolution" of the stay request is "apparent." Dkt. 69 at 1. Yet as of the date of this filing—well over a week after the government moved for a stay—the court has not ruled.

ARGUMENT

In considering a stay pending appeal, courts examine "(1) whether the stay applicant . . . 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 . . . ; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 426 (2009) (quotation omitted). All four factors favor a stay here. As the Supreme Court and this Court have recognized, the Tucker Act precludes district court jurisdiction over claims challenging grant terminations. And plaintiffs' claims, which seek to prevent possible future terminations, also fail given plaintiffs' inability to identify final agency action. As to the equities, the Supreme Court has twice stayed similar orders and those stay decisions "inform how [this C]ourt should exercise its equitable discretion" here, *Thakur I*, 163 F.4th 1198, 1208 (9th Cir. 2025) (quotation omitted).

I. This Court Has Appellate Jurisdiction

This Court has appellate jurisdiction under 28 U.S.C. § 1292(a)(1). "[W]here an order has the 'practical effect' of granting or denying an injunction, it should be treated as such for purposes of appellate jurisdiction." *Abbott v. Perez*, 585 U.S. 579, 594 (2018). Here, "several factors counsel in favor of construing the District Court's order as an appealable preliminary injunction." *Department of Educ. v. California*, 604 U.S. 650, 651 (2025) (per curiam). The district court issued a detailed, 15-page order, "an adversary hearing has been held, and the court's basis for issuing the order is strongly challenged." *East Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 762 (9th Cir. 2018) (citation modified). The court also extended the TRO "beyond the time permissible under [Federal Rule of Civil Procedure] 65." *Sampson v. Murray*, 415 U.S. 61, 86 (1974). Under these circumstances, the Supreme Court has recognized that an order "must be treated as a preliminary injunction." *Id.*

II. The Government Is Likely to Prevail on the Merits

A. 1. The federal government is "immune from suit in federal court absent a clear and unequivocal waiver of sovereign immunity." *Crowley Gov't Servs., Inc. v. General Servs. Admin.*, 38 F.4th 1099, 1105 (D.C. Cir. 2022). The APA provides "a limited waiver of sovereign immunity for claims against the United States" seeking relief other than money damages, *id.*, that 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." *Id.*

One of those other statutes is the Tucker Act. It waives immunity for "any claim against the United States founded . . . upon any express or implied contract with the United States" by authorizing claims for money damages in the Court of Federal Claims. 28 U.S.C. § 1491(a)(1). Thus, the Tucker Act impliedly "precludes bringing contract claims against the United States in federal district court pursuant to the APA's waiver of sovereign immunity." *Thakur I*, 163 F.4th at 1204 (citing 5 U.S.C. § 702). This jurisdictional division 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). In determining whether "a particular action" is "at its essence a contract action" subject to the Tucker Act or instead a challenge properly brought under the APA, courts look at "the source of the rights upon which the plaintiff bases its claims" and "the type of relief sought (or appropriate)." *Megapulse, Inc. v. Lewis*, 672 F.2d 959, 968 (D.C. Cir. 1982) (quotation omitted); *see United Aeronautical Corp. v. U.S. Air Force*, 80 F.4th 1017, 1025 (9th Cir. 2023) (noting that this Court applies *Megapulse*).

In a trio of recent cases, the Supreme Court and this Court have recognized that district courts generally lack jurisdiction over "APA claims challenging grant terminations." *Thakur I*, 163 F.4th at 1204. In *California*, the Supreme Court concluded that the Tucker Act likely foreclosed district court jurisdiction over APA claims seeking to prevent the Department "from terminating various education-related grants." 604 U.S. at 650. Likewise, in *NIH v. American Public Health Ass'n*, the Supreme Court determined that the APA "does not provide the District Court with jurisdiction to adjudicate claims 'based on' . . . research-related grants." 145 S. Ct. 2658, 2660 (2025). Finally, in its stay- and merits-stage decisions in *Thakur v. Trump*, this Court reached the same conclusion with respect to APA claims seeking to protect "federally funded grants [that] had been or imminently would be terminated." 176 F.4th 1187, 1195 (9th Cir. 2026) (per curiam); *see Thakur I*, 163 F.4th at 1204.

2. These precedents establish that "the Tucker Act precludes district court jurisdiction" over plaintiffs' claims. *Thakur II*, 176 F.4th at 1197. As in *California*, *NIH*, and *Thakur*, both the "source of the rights upon which" plaintiffs base their claims and "the type of relief sought" are essentially contractual. *Id.* at 1198 (quotation omitted).

First, the grants are the source of plaintiffs' asserted rights. The grants bear all the hallmarks of contracts. *See Bennett v. New Jersey*, 470 U.S. 632, 638 (1985) (noting that "many . . . federal grant programs" are "much in the nature of a contract" (quotation omitted)). And without the grants, plaintiffs would have no claims. Plaintiffs fail to identify any statute or regulation that could plausibly be read to entitle them to federal funds.

Second, plaintiffs seek relief "designed to enforce [an] 'obligation to pay money' pursuant to [the] grants" at issue. *NIH*, 145 S. Ct. at 2660. In *Thakur v. Trump*, for example, the district court had issued a preliminary injunction reinstating the terminated grants and prohibiting "future grant terminations." 787 F. Supp. 3d. 955, 1005 (N.D. Cal. 2025). Here, likewise, plaintiffs sought—and the district court entered—an order barring the Department from "implementing or enforcing through any means the termination plan described in this order against the Grants." Add.14; *see also* Dkt. 1, at 52 (requesting an injunction against "terminating or withholding federal financial assistance . . . without satisfying" various requirements). In both this case and *Thakur*, the requested relief thus amounts to specific performance of government contracts.

3. Notwithstanding *California*, *NIH*, and *Thakur*, the district court asserted jurisdiction over plaintiffs' APA claims seeking to prevent future grant terminations. The court appeared to recognize that if plaintiffs had brought their claims after any terminations had occurred, those claims would belong in the Court of Federal Claims. The court attempted to "distinguish[]" *Thakur*, however, on the theory that while the *Thakur I* plaintiffs requested "vacatur of termination notices *and reinstatement* of terminated grants," plaintiffs here "seek only prospective relief." Add.9. That theory misreads *Thakur* and has no basis in Supreme Court precedent or the Tucker Act's text in any event.

Thakur reflects that the Tucker Act precludes district court jurisdiction over claims challenging both completed and future grant terminations. In addition to "reinstat[ing]" the relevant grants, the preliminary injunction in that case also prohibited "any future grant terminations" meeting specified criteria. *Thakur*, 787 F. Supp. 3d at 1006 (citation modified); *see Thakur II*, 176 F.4th at 1195 (recognizing that the injunction covered holders of grants that "imminently would be terminated"). Following the Supreme Court's lead in *NIH*, this Court recognized that the injunction was "designed to enforce [an] obligation to pay money' pursuant to [the] grants," and vacated the relevant part of the injunction, including the part prohibiting future grant terminations. *Thakur II*, 176 F.4th at 1198 (quotation omitted).

Even if this Court had not already recognized that the claims seeking to prevent future grant terminations belong in the Court of Federal Claims, Supreme Court precedent and statutory text would compel that result. Nothing in *California* or *NIH* supports distinguishing between claims requesting that an existing contract be continued and claims requesting that a terminated contract be reinstated. That is unsurprising, as the Tucker Act extends to all claims "founded . . . upon any express or implied contract with the United States." 28 U.S.C. § 1491(a)(1). Because claims seeking to prevent contract termination and claims seeking to reinstate contracts both request performance of a contract, they are "founded . . . upon" contracts and fall squarely within the Tucker Act's scope. *Id.*

The district court emphasized that if it did not assert jurisdiction here, "no court would have jurisdiction to provide injunctive relief in response to grant terminations." Add.12. But that is a natural consequence of Congress's decision to assign claims founded on government contracts to the Court of Federal Claims and to limit the remedies available in that court. The district court's role was to enforce that Congressional judgment, not circumvent it.

Other parts of the district court's order repeat arguments that did not prevail in *California*, *NIH*, and *Thakur*. Like plaintiffs, the court located the source of the asserted rights not in the grants but in the APA and in other "regulations, statutes, and/or the Constitution." Add.9. The plaintiffs in *California*, *NIH*, and *Thakur* made similar arguments, yet the Supreme Court and this Court determined that their claims must be raised in the Court of Federal Claims. *California*, 604 U.S. at 651; *NIH*, 145 S. Ct. at 2660; *Thakur I*, 163 F.4th at 1204. A general right to be free from arbitrary-and-capricious decision making, or for an agency to follow certain procedures when dealing with grants, is no substitute for a substantive right upon which the claim is premised. Framing the claim as one of agency error under the APA does not avoid the Tucker Act; as the D.C. Circuit has recognized, "[i]t 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 (quotation omitted).

Further illustrating the district court's error is its statement that the jurisdictional analysis here is "similar" to that in plaintiffs' separate challenge to the Department decisions non-continuing the relevant grants. Add.9. In that case, plaintiffs and the district court sought to distinguish *California* by highlighting differences between non-continuation, which involves declining to renew a grant for a future budget period, and termination, which generally involves an immediate end to a grant. *See, e.g.*, *Washington I*, Dkt. 174, at 23 (plaintiffs arguing that "[u]nlike grant terminations, grant discontinuances do not involve a contractual breach of the obligation to pay" and describing this as a "material fact."); *id.*, Dkt. 193, at 16 (district court emphasizing that the Department "did not terminate" the grants). To the extent that the district court no longer perceives a meaningful distinction between terminating a grant and non-continuing it, that would be a reason to conclude that there is no jurisdiction in the non-continuation case, not a reason to disregard Supreme Court and Circuit precedent recognizing that challenges to termination decisions must be brought in the Court of Federal Claims.

This Court's stay-stage opinion determining that the district court likely had jurisdiction in the non-continuation case confirms the absence of jurisdiction here. In its brief discussion of jurisdiction, the Court emphasized that the requested relief "would not result in the automatic reinstatement or continuance of [the] grants or the payment of any money to grantees." *Washington v. U.S. Dep't of Educ.*, 161 F.4th 1136, 1140 (9th Cir. 2025) (per curiam). Here, by contrast, the district court's order bars the

Department from implementing what the court called a "termination plan" for the grants. Add.14. Not only is that order "designed to enforce [an] 'obligation to pay money'" under the grants, *Thakur II*, 176 F.4th at 1198 (quotation omitted), the order is currently producing that result by requiring the Department to fulfill payment requests for grants it might otherwise have terminated.

B. Far from providing a basis for evading the Tucker Act, plaintiffs' decision to sue before the Department terminated any relevant grant creates a second, independent bar to their claims. To support a claim under the APA, a plaintiff must identify final agency action. *See San Francisco Herring Ass'n v. U.S. Dep't of the Interior*, 946 F.3d 564, 571 (9th Cir. 2019) (treating this requirement as jurisdictional). For an action to be final, "two requirements . . . must be satisfied": "First, the action must mark the 'consummation' of the agency's decisionmaking process," and "second, the action must be one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow.'" *Southern Cal. All. of Publicly Owned Treatment Works v. U.S. EPA*, 8 F.4th 831, 836 (9th Cir. 2021) (quotation omitted).

Because the Department has not terminated any grant, plaintiffs cannot satisfy either prerequisite for establishing final agency action. Like plaintiffs, the district court believed that the Department has developed a "termination plan" that is "sufficiently final." Add.11. But as plaintiffs acknowledged, the Department is still "considering" whether to terminate "some or all of the grants." Dkt. 10, at 13 (quotation omitted). A decision to consider which grants to terminate and how to do so is the start of an agency process, not its "consummation." *Southern Cal.*, 8 F.4th at 836 (quotation omitted). Regardless, even a definite plan to terminate specific grants would impose no legal consequences, which would instead flow from the completed terminations themselves. *See id.* at 837 (recognizing that "an agency action is not final when subsequent agency decision making is necessary to create any practical consequence[]").

The district court's discussion of final agency action illustrates plaintiffs' failure to satisfy the governing standards. According to the court, it was sufficient that the Department's "re-review has been *planned* and is *intended* to have legal consequences." Add.12 (emphasis added). An "intent" to "review" a grant is at most an intermediate step on a path that may lead to termination, not a final action itself. Add.11.

Similarly highlighting plaintiffs' failure to identify final agency action is the district court's reliance (Add.12) on *U.S. Army Corps of Engineers v. Hawkes Co.*, 578 U.S. 590 (2016). That case concerned a challenge to an Army Corps of Engineers "jurisdictional determination" that certain waters are subject to the Clean Water Act. *Id.* at 595 (quotation omitted). There, the government did not dispute that the determination "mark[ed] the consummation" of the Corps' decisionmaking process. *Id.* at 597 (quotation omitted). And in concluding that the jurisdictional determination carried legal consequences, the Supreme Court emphasized that the determination was "binding on the Government" for five years. *Id.* at 598 (quotation omitted). *Hawkes* thus bears no resemblance to this case, where the Department has not made a final decision to terminate any grant, and where any legal consequences would be attributable to the terminations themselves.

The district court appropriately refrained from relying on the Department's February 2025 directive and a similar directive issued later that year. As a threshold matter, the directives instruct Department personnel how to perform internal reviews of certain grants. Dkt. 11-3, at 2; Dkt. 11-4, at 2-4. While those reviews may eventually lead to final actions with legal consequences, the directives themselves are not actions subject to APA review. Regardless, plaintiffs did not request—and the district court did not enter—relief limited to prohibiting the Department from implementing the directives. In that case, the Department would be free to conduct individualized reviews of the grants and terminate them if appropriate. Instead, the order forbids all grant terminations that meet certain criteria, regardless of whether the terminations have anything to do with the directives. *See* Add.14.

The absence of any final agency action is underscored by the district court's mistaken merits analysis. The court believed that the "Department has formulated a plan to re-review Grants for termination based on unlawful reasons," hypothesizing that the agency will rely on "priorities" that the court regards as impermissible and omit procedures that the court regards as "required." Add.5-6. That analysis fails on multiple levels. As the government has elsewhere explained, the district court's understanding of the relevant statutory and regulatory requirements is deeply flawed. *See* Brief for Appellants 20-30, *Washington v. U.S. Dep't of Educ.*, No. 26-510 (9th Cir.).

Even putting aside that problem, nothing in the record supports the court's predictions about how the Department would carry out grant terminations. Apart from committing to individualized reviews of each grant, *see Washington I*, Dkt. 447, at 3, the Department has not yet determined what procedures it would follow. The APA's final agency action requirement prevents the district court from entering relief based on unsupported speculation about how the Department might carry out future grant terminations.

III. The Remaining Factors Support a Stay

The balance of harms and public interest overwhelmingly favor a stay pending appeal. *See Nken*, 556 U.S. at 435 (noting these factors merge in cases involving the government). In *California*, *NIH*, and *Thakur I*, the Supreme Court and this Court considered remarkably similar circumstances—which involved the termination of grants supporting education and research—and concluded that stays were warranted. Those stay decisions "inform how [this C]ourt should exercise its equitable discretion in like cases." *Thakur I*, 163 F.4th at 1208 (quotation omitted).

For the same reasons that the orders stayed in *California*, *NIH*, and *Thakur* inflicted significant harm on the government and the public, so does the district court's order here. Under that order, the Department cannot implement its plan to terminate some or all of the grants. *See* Add.14. As a result, the Department must continue distributing federal funds in response to grantees' payment requests, which have previously averaged over $1 million per week. Dkt. 67, at 2. The government "is unlikely to recover the grant funds once they are disbursed," *California*, 604 U.S. at 651-52, and "plaintiffs do not state that they will repay grant money if the Government ultimately prevails," *NIH*, 145 S. Ct. at 2660. Absent a stay, the Department may thus be forced to disperse millions of taxpayer dollars that it would likely never recover if it ultimately prevails in this litigation.

These harms are magnified by the part of the district court's order barring the Department from making termination decisions based on "new priorities that did not exist at the time the Grantee applied for the Grant." Add.14. Not only does that prohibition disregard the Department's express authority to terminate grants that "no longer effectuate[] . . . agency priorities," 2 C.F.R. § 200.340(a)(4), it also tethers funding decisions to priorities set by a prior Administration with which the current Administration vehemently disagrees. Compelling the Department to decide how to allocate taxpayer dollars without regard to its current priorities "improper[ly] intru[des]" on the Executive Branch's authority. *Trump v. CASA, Inc.*, 606 U.S. 831, 859 (2025) (alterations in original) (quotation omitted).

At the same time, plaintiffs' asserted harms warrant little if any weight. To the extent that plaintiffs have identified a legally cognizable injury, the gravamen of that injury is the loss of money associated with specific grants—a classic example of reparable harm. *See Los Angeles Mem'l Coliseum Comm'n v. NFL*, 634 F.2d 1197, 1202 (9th Cir. 1980) (observing that "monetary injury is not normally considered irreparable"). And 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." *Dennis Melancon, Inc. v. City of New Orleans*, 703 F.3d 262, 279 (5th Cir. 2012) (alteration in original) (quotation omitted). Here, nothing prevents the grantees from filing suit in the Court of Federal Claims and seeking damages. This fundamental asymmetry—where the government likely cannot recover disbursed funds, but grantees have recourse to a damages action—informed the Supreme Court's stay decisions in *California* and *NIH* and this Court's stay decision in *Thakur*. There is no basis for a different result here.

The district court's cursory discussion of the equities repeats errors discussed above. The court emphasized that "the public interest is served by enjoining unlawful agency decisions." Add.13. But as explained, plaintiffs have failed to establish district court jurisdiction or identify any final agency action—much less any unlawful agency action. *See supra* pp. 9-18. The court likewise erred in concluding that the requested relief "enjoins the implementation of an unlawful termination plan" without "order[ing] the Department to pay out any funds." Add.13. As this Court has recognized, there is no material difference between an order preventing grant terminations and an order "designed to enforce [an] obligation to pay money' pursuant to [the] grants." *Thakur II*, 176 F.4th at 1198.

CONCLUSION

The Court should stay the district court's order pending appeal.

Respectfully submitted,

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August 2026

CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) and Local Rules 27-1(d) and 32-3 because it contains 5,199 words. This motion also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Word for Microsoft 365 in Garamond 14-point font, a proportionally spaced typeface.

/s/ Steven H. Hazel
STEVEN H. HAZEL

CERTIFICATE OF SERVICE

I hereby certify that on August 20, 2026, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the ACMS system. Service will be accomplished by the ACMS system.

s/ Steven H. Hazel
Steven H. Hazel

ADDENDUM

TABLE OF CONTENTS

Order Granting Motion for Temporary Restraining Order Add.1

Order Extending Temporary Restraining Order... Add.16

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON, et al., Plaintiff(s), v. UNITED STATES DEPARTMENT OF EDUCATION, et al., Defendant(s).	CASE NO. C26-2409-KKE ORDER GRANTING MOTION FOR TEMPORARY RESTRAINING ORDER

A group of 15 states ("Plaintiff States") filed this action challenging the Defendant United States Department of Education's plan to terminate a group of grants ("the Grants") that provide mental health services for public-school students in their states no earlier than July 31, 2026. Dkt. No. 1. Plaintiff States also filed a motion for temporary restraining order ("TRO") to enjoin the Department from terminating the grants for allegedly unlawful reasons. Dkt. Nos. 10, 22.[1] Because Plaintiff States have demonstrated that they are entitled to temporary preliminary relief, the Court will grant their motion.

I. BACKGROUND

Congress created two grant programs, the School-Based Mental Health Services Grant Program and the Mental Health Service Professional Demonstration Grant Program (collectively

[1] This order refers to the parties' briefing by CM/ECF page number.

"the Programs"), in response to evidence demonstrating a mental health crisis in schools, particularly in rural, low-income, high-need areas. Dkt. No. 1 ¶¶ 5, 42–46. The Programs fund scholarships and clinical training for graduate students, as well as funding salaries for mental health professionals hired directly by state and local education agencies. *Id.* ¶ 44–45. The Department administers the Programs by awarding grants, including multi-year projects. *Id.* ¶¶ 47–49.

In February 2025, the Department issued guidance instructing agency personnel to review existing grants to ensure that their programs align with the new presidential administration's priorities, and stating that grants that do not meet the new priorities would be subject to termination under 2 C.F.R. § 200.340(a)(4). Dkt. No. 1 ¶ 61 (referencing Dkt. No. 11-3 ("the February 2025 directive")). The February 2025 directive identified the Department's new priority of "eliminating discrimination" by ensuring that Department grants "do not support or take part in diversity, equity, and inclusion ('DEI') initiatives" because such efforts "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." Dkt. No. 11-3 at 2. After that re-review, many Program multi-year grantees received notices of non-continuation in April 2025. Dkt. No. 1 ¶ 64. In early June 2025, the Department issued additional guidance instructing agency personnel to review grant awards—explicitly including the equity statement that grant applicants were required to include in their applications—for compliance with the priorities of the new administration. Dkt. No. 11-4 ("the June 2025 directive"). The June 2025 directive referenced the same priorities identified in the February 2025 directive. *Id.* at 2 ("The Department will review all grant awards to advance the Administration's priorities of ensuring Federal funds do not support projects that: violate the letter or purpose of Federal civil rights law; conflict with the Department's policy of prioritizing merit, fairness and excellence in education; undermine the well-being of the students these programs are intended to help; or constitute an inappropriate use of federal funds.”).

On June 30, 2025, a group of 16 states filed a lawsuit to challenge the Department’s actions with respect to grants serving their states. *See Washington v. U.S. Dep’t of Educ.,* No. C25-1228-KKE (W.D. Wash. 2025) (“*Washington* action”). The Court granted Plaintiff States’ motion for a preliminary injunction, and later granted their motion for summary judgment and permanent injunction, finding that the Department’s re-review procedure culminating in discontinuation decisions was arbitrary and capricious and contrary to law. *Washington* action, Dkt. Nos. 193, 269. The Court vacated the discontinuation notices, instructing the Department to issue new continuation decisions that comply with 34 C.F.R. § 75.253. *Id.*, Dkt. No. 269 at 34–36.

The Department issued new continuation decisions and has awarded funding to most grantees (the “Grantees”) through July 31, 2026. Dkt. No. 1 ¶¶ 77–78. In June 2026, the Department informed the Grantees and the Court that no earlier than July 31, 2026, the Department would issue notices terminating “some or all” of the Grants under 2 C.F.R. § 200.340.[2] *Id.* ¶ 77. In response, Plaintiff States filed this lawsuit against the Department,[3] asserting that the Department’s termination plan (and the February 2025 and June 2025 directives that led to it) violates the Administrative Procedure Act (“APA”) in multiple ways because the plan is arbitrary and capricious, contrary to law, violates notice-and-comment rulemaking requirements, violates the General Education Provisions Act (“GEPA”), violates statutory procedures for addressing

[2] The Department filed a motion for clarification in the *Washington* action, asking the Court to “clarify” that its proposed termination plan did not violate the permanent injunction. *Washington* action, Dkt. No. 437. Plaintiff States opposed the motion and requested clarification of their own. *Id.*, Dkt. No. 443. The relief Plaintiff States requested in that opposition brief is narrower than the relief requested in the TRO motion in this case, although the Court heard oral argument on the TRO motion and the motion for clarification together. *See id.*, Dkt. No. 451; Dkt. No. 49. The Court finds that granting the TRO motion in this case moots the motion for clarification in the *Washington* action.

[3] The Department’s Secretary Linda McMahon is also a Defendant, but this order refers to Defendants collectively as “the Department.”

alleged civil rights violations; is *ultra vires*; and violates the Spending Clause of the United States Constitution. Dkt. No. 1 ¶¶ 114–200.

Plaintiff States filed a motion for TRO, alleging they are likely to prevail on their APA claim (specifically the contrary to law and arbitrary and capricious theories) and Spending Clause claim. Dkt. No. 10. After considering the parties' briefing, the remainder of the record, and the argument of counsel, the Court will grant Plaintiff States' motion and enjoin the Department from taking further action to unlawfully terminate the Grants.

II. ANALYSIS

A. Legal Standards

"Preliminary injunctive relief is an extraordinary equitable remedy that is never awarded as of right." *Bennett v. Isagenix Int'l LLC*, 118 F.4th 1120, 1129 (9th Cir. 2024) (citation modified). "The 'purpose of a preliminary injunction is to preserve the status quo ante litem pending a determination of the action on the merits.'" *Boardman v. Pac. Seafood Grp.*, 822 F.3d 1011, 1024 (9th Cir. 2016) (quoting *Sierra Forest Legacy v. Rey*, 577 F.3d 1015, 1023 (9th Cir. 2009)).

To succeed on a motion for preliminary injunction or temporary restraining order, the moving party must show: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm to the moving party in the absence of preliminary relief; (3) that the balance of equities tips in the favor of the moving party; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council*, Inc., 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (explaining that the TRO standard is "substantially identical" to the preliminary injunction standard). "Where the government is a party to a case in which a preliminary injunction is sought, the balance of the equities and public interest factors merge." *Roman v. Wolf*, 977 F.3d 935, 940–41 (9th Cir. 2020).

With these standards in mind, the Court will address the *Winter* factors to determine whether Plaintiff States are entitled to temporary preliminary relief.

B. Plaintiff States are Likely to Succeed on the Merits.

1. *Plaintiff States Are Likely to Succeed on the Merits of their APA (Arbitrary and Capricious and Contrary to Law) Claims.*[4]

Courts reviewing agency actions must "hold unlawful and set aside" actions that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or are unconstitutional, violate a statute, or fail to follow the required procedures. 5 U.S.C. § 706(2)(A)–(D).

The record contains sufficient evidence to permit the Court to find that Plaintiff States are likely to prevail on their APA claims challenging the Department's actions as arbitrary and capricious and contrary to law.[5] When viewed in combination, the February 2025 directive, the June 2025 directive, the June 2026 notices sent to Grantees, the Department's second status report issued in the *Washington* action, and the declaration of Murray Bessette filed in the *Washington* action demonstrate that the Department has formulated a plan to re-review Grants for termination based on unlawful reasons. *See* Dkt. Nos. 11-3, 11-4, 13-4; *Washington* action, Dkt. Nos. 445, 447.

As the Court explained in the *Washington* action, it is unlawful to make funding decisions for approved multi-year Grantees by evaluating their original grant applications against new

[4] Because the Court finds that Plaintiff States are likely to succeed on the merits of their arbitrary and capricious and contrary to law APA claims, it need not address whether Plaintiff States are likely to succeed on other claims to find that the first *Winter* factor has been satisfied. *See, e.g.*, *Mid-Atl. Equity Consortium v. U.S. Dep't of Educ.*, 793 F. Supp. 3d 166, 189 n.6 (D.D.C. 2025).

[5] The Department did not oppose the substance of Plaintiff States' claims on their merits, instead arguing that the Court lacks jurisdiction to hear this case. Dkt. No. 36 at 9. The Court will address the Department's jurisdictional argument in the next subsection of this order.

unpublished priorities not in effect at the time that the Grants were approved. *See Washington v. U.S. Dep't of Educ.*, 813 F. Supp. 3d 1222, 1245 (W.D. Wash. 2025).[6] It is likely that the Department's termination plan is based on such an unlawful evaluation because the June 2025 directive instructs Department personnel to complete a re-review of the Grants using the same unpublished priorities identified in the February 2025 directive, and this guidance is apparently still in effect at the Department. Dkt. No. 13-4; *Washington* action, Dkt. No. 447. The Court previously enjoined a similar if not substantively identical procedure in the *Washington* action used to discontinue the grants, and the procedure is no more lawful in the termination context here than it was there.

It is also unlawful for the Department to withhold payments from Grantees without first providing the notice and an opportunity for administrative and/or judicial review required under GEPA.[7] *See* 20 U.S.C. §§ 1234(a)(2), 1234d, 1234g, 1234i(1)–(2); 34 C.F.R. §§ 75.903. The Department's regulations implement these procedural requirements. 34 C.F.R. § 81.1–.45. And although the June 2025 directive instructs Department personnel to consider whether Grants violate federal civil rights law (Dkt. No. 11-4 at 2–3), an agency must first attempt to secure voluntary compliance and provide an opportunity for a hearing before terminating a grant on that basis, and must report the violation to Congress 30 days before a termination can be effective. *See* 42 U.S.C. § 2000d-1; 20 U.S.C. § 1682; 34 C.F.R. §§ 100.8–.11, 106.81. Given that the Department's June 2026 notice to Grantees indicates that termination could occur as early as the

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[6] The Ninth Circuit found, in denying the Department's motion for a stay pending appeal, that the Department had "not made a showing it is likely to succeed on the merits of Plaintiff States' claims that the Department's discontinuation notices were contrary to law and arbitrary and capricious under the APA." *Washington v. U.S. Dep't of Educ.*, 167 F.4th 1241, 1245 (9th Cir. 2026).

[7] Neither in briefing nor in response to questioning at oral argument has the Department disputed that the Grants at issue in this case are subject to GEPA procedural protections. Although Department counsel suggested that there are circumstances under which an "effective immediately" grant termination could be lawful (*Washington* action, Dkt. No. 453 at 31), counsel did not cite authority for that proposition, and the Court is not aware of any such authority.

last day that the Grant is funded (Dkt. No. 13-4 at 2), it is likely that the Department intends to terminate Grants without advance notice or any of the procedural protections to which Grantees are entitled under either GEPA or federal civil rights statutes.

Because the Department's termination plan likely reflects an unexplained change in Department policy, and the Department's plan likely fails to comply with its own regulations or the statutes identified in this section, and bases terminations on factors Congress did not intend the Department to consider, the Department's termination plan is likely arbitrary and capricious and contrary to law and thus violates the APA. *See Mont. Wildlife Fed. v. Haaland*, 127 F.4th 1, 39 (9th Cir. 2025) ("A change in policy or in a planned agency action may nevertheless be arbitrary and capricious if the agency fails to provide a "reasoned explanation" for the change."); *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (defining agency action as "arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider"); *Doe v. Noem*, 778 F. Supp. 3d 1151, 1160 (W.D. Wash. 2025) ("It is contrary to law for an agency to disregard its own regulations and policies.").

2. The Court Has Jurisdiction to Temporarily Enjoin Unlawful Terminations.

As part of its assessment that Plaintiff States are likely to succeed on the merits of their APA claims, the Court also considers its jurisdiction to hear those claims. The APA waives sovereign immunity for suits "seeking relief other than money damages" against a federal agency, so long as no other statute "expressly or impliedly forbids the relief which is sought." 5 U.S.C. § 702. Even if (as here) an APA action does not seek money damages, it may nonetheless contain a contract claim mischaracterized as an APA claim, which would fall outside the APA's waiver of sovereign immunity. *Nat'l Insts. of Health v. Am. Pub. Health Ass'n*, 606 U.S. __, 2025 WL 2415669 (2025) ("*NIH*"); *Dep't of Educ. v. California*, 604 U.S. 650, 651 (2025). Per the Tucker Act, the exclusive jurisdiction for such claims is found in the Court of Federal Claims:

> The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

28 U.S.C. § 1491(a)(1). The Tucker Act likewise deprives district courts of jurisdiction to hear contract claims disguised as constitutional claims. *Tucson Airport Auth. v. Gen. Dynamics Corp.*, 136 F.3d 641, 647–48 (9th Cir. 1998). Courts, including those in the Ninth Circuit, look to factors first identified in *Megapulse*, *Inc. v. Lewis* to determine whether a claim against the United States is a contract claim in disguise: "(1) 'the source of the rights upon which the plaintiff bases its claims' and (2) 'the type of relief sought (or appropriate).'" *United Aeronautical Corp. v. U.S. Air Force*, 80 F.4th 1017, 1026 (9th Cir. 2023) (quoting *Megapulse*, 672 F.2d 959, 968 (D.C. Cir. 1982)).

As support for its argument that Plaintiff States' claims are Grant/contract-based, for purposes of the first *Megapulse* prong, the Department notes that if the Grants had never existed, then Plaintiff States would have no claim against the Department. Dkt. No. 36 at 6. That the Grantees have a contractual relationship with the Department does not transform any claim between these parties into a contract claim, however. *See Ass'n of Am. Univs. v. Dep't of Defense*, 806 F. Supp. 3d 79, 93–94 (D. Mass. 2025) (rejecting the Government's argument that "wrongly assumes that any claim between contracting parties arises in contract" (citing, among other things, *Megapulse*, 672 F.2d at 967–68; *NIH*, 606 U.S. __, 2025 WL 2415669, at *2 (2025) (Barrett, J., concurring))). Plaintiff States insist that the source of their injury arises from violations of statutes, regulations, and the Constitution, rather than any breach of the Grant terms, and thus Plaintiff States contend that their claims do not seek to vindicate contractual rights. Dkt. No. 37 at 6–7.

The Court agrees with Plaintiff States. Plaintiff States do not contend that the Grant terms themselves prohibit termination or seek to compel the Department to extend the Grants (Dkt. No.

1 at 35–52), but instead seek to prevent agency action that would violate regulations, statutes, and/or the Constitution. *See id*. at 52–53. Plaintiff States' claims here are similar to those brought in the *Washington* action, and the Ninth Circuit found that the Department was not likely to prevail on its argument that the claims there fell within the Tucker Act's scope. *See Washington v. U.S. Dep't of Ed.*, 161 F.4th 1136, 1139 (9th Cir. 2025). Under the circumstances, the Court is satisfied that Plaintiff States' claims do not sound in contract.

The second *Megapulse* prong asks whether an action seeks contractual relief. Here, as noted earlier in this order, the complaint's prayer for relief does not seek contractual remedies (extension of the grants or money damages): Plaintiff States seek declaratory relief and an injunction against the agency directives that violate the APA and the Constitution. *See* Dkt. No. 1 at 52–53. This form of relief distinguishes this case from *Thakur v. Trump*, where the Ninth Circuit found that a suit seeking vacatur of termination notices *and reinstatement* of terminated grants fell within the scope of the Tucker Act. 163 F.4th 1198, 1204 (9th Cir. 2025). Plaintiff States seek only prospective relief. *See* Dkt. No. 1 at 52–53. Under these circumstances, the Court thus concludes that Plaintiffs do not seek contract remedies. *See Washington*, 161 F.4th at 1140 (finding the Department had not made a strong showing on the merits of its Tucker Act argument "[b]ecause Plaintiff States' claims seek purely prospective relief regarding multiyear grant discontinuations that do not take effect until December 31, 2025").

Because both *Megapulse* prongs favor the Court's exercise of jurisdiction, the Court finds that it likely retains jurisdiction to consider Plaintiff States' claims.

3. *There is Sufficient Evidence of a "Final Agency Action" to Support a TRO.*

The APA provides that only "final" agency actions "for which there is no other adequate remedy in a court are subject to judicial review." 5 U.S.C. § 704. Only "final" agency actions may be reviewed under the APA, meaning that (1) "the action must mark the 'consummation' of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature," and (2) "the action must be one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow.'" *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (first quoting *Chi. & S. Air Lines, Inc. v. Waterman S.S. Corp.*, 333 U.S. 103, 113 (1948); and then quoting *Port of Bos. Marine Terminal Ass'n v. Rederiaktiebolaget Transatl.*, 400 U.S. 62, 71 (1970)).

Plaintiff States challenge the Department's termination plan to, as instructed in as the Department's February 2025 directive and the June 2025 directive, re-review existing grants for alignment with new administration priorities and make funding decisions accordingly. Dkt. No. 10 at 3–4. Plaintiff States argue that the February 2025 directive and the June 2025 directive, as well as the Department's plan to re-review the Grants in accordance with those directives to culminate in the termination of some or all of the Grants, are final agency actions subject to judicial review under the APA. *Id.* at 14–17.

The Department does not directly dispute that the February 2025 and June 2025 directives are final agency actions, but cites the Bessette declaration filed in the *Washington* action indicating that the agency has not relied on the February 2025 directive for more than a year (since the June 2025 directive was issued). *See Washington* action, Dkt. No. 447 ¶ 7. Because the Court has already prohibited the Department from implementing the February 2025 directive, and the Department denies that the June 2025 directive has any connection to either the *Washington* action or this case, the Department characterizes Plaintiff States' request to vacate the directives as "both bizarre and moot[.]" Dkt. No. 36 at 10. Curiously, although the Department filed a motion for clarification in the *Washington* action asking the Court to state whether its termination plan violated the injunction entered in that case, the Department contends in this case that the alleged termination plan is nothing more than a "mirage" and thus cannot constitute a final agency action. *Id*.

The Court previously found that because Department personnel were ordered to comply with the February 2025 directive, and compliance with that directive had legal consequences—the discontinuation of grants in violation of the process set forth in 34 C.F.R. § 75.253—the policy change established by the February 2025 directive satisfies both requirements of a final agency action subject to judicial review. *Washington* action, Dkt. No. 269 at 12–16.

The Department's current termination plan is startlingly similar: the Department has instructed Program staff to re-review existing Grants for alignment with the administration's new unpublished priorities, with an intent to terminate Grants that do not further those priorities.[8] *See* Dkt. No. 13-4; *Washington* action, Dkt. No. 447. Although the Department continued the Grants for the entirety of 2026 in response to this Court's permanent injunction in the *Washington* action, it only *funded* the Grants through July 31, 2026. It now apparently intends to terminate some or all of them on July 31, 2026, or thereafter. The Department's termination plan is sufficiently final that Grantees and this Court have been notified of it, and the Department sought this Court's blessing to enact it. Indeed, in the *Washington* action, in support of its motion for clarification,

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[8] At oral argument, the Department disavowed that the June 2025 directive is guiding the termination plan, but when pressed, Department counsel could not identify any policy that had replaced it. *Washington* action, Dkt. No. 453 at 36–37. Rather, when asked what was informing the terminations, Department counsel said it was a "policy decision" that would be made "on the merits of the individual grants." *Id*. When further pressed on the details of the "policy," counsel responded that the Department would assess what the Department "believe[s] the merits [of the grants] to be" and otherwise, he did not know. *Id*. Counsel then confirmed that the terminations were likely to be made at the end of this week and potentially effective immediately. *Id.* at 37. The notion that the Department is making termination decisions based upon a policy without any substance beyond "merit" is implausible. There is no evidence in the record that the June 2025 directive has been superseded. And Grantees were informed in June 2026 that any challenge to the termination of their Grants could be brought only in the Court of Federal Claims, which suggests that the Department has decided that no administrative appeal procedures under GEPA or federal civil rights laws will be followed once the grants are terminated. Dkt. No. 13-4. The Department confirmed this position in its motion for clarification in the *Washington* action, where it represented that Grantees would be funded only through the date of the termination notice and not through the pendency of any administrative process. *See Washington* action, Dkt. No. 437 at 2. These facts further support a preliminary finding of final agency action sufficient to grant Plaintiffs' motion.

the Department rebuffed Plaintiff States' suggestion that its termination plan was not "concrete" and thus insufficiently particular to allow the Court to determine whether it violates the injunction in that case. *See Washington* action, Dkt. No. 443 at 11, Dkt. No. 446 at 4. The Department cannot have it both ways.

From this Court's vantage point, the documents that are already part of the record satisfy Plaintiff States' burden to show that it is likely that the Department's re-review has been planned and is intended to have legal consequences, and there may be internal Department guidance yet to be uncovered that explicitly describes the procedure in more detail. Plaintiff States need not wait until the Department effectuates terminations to challenge the Department's clear intention to do so. *See, e.g.*, *Illinois v. Vought*, 820 F. Supp. 3d 727, 732 (N.D. Ill. 2026) (preliminarily finding jurisdiction and granting emergency TRO because "plaintiffs have made a sufficient showing that defendants issued internal guidance to terminate public-health grants for unlawful reasons; that guidance is enjoined as the parties develop a record"). According to the Department, no court would have jurisdiction to provide injunctive relief in response to grant terminations after they occur. Thus, Plaintiff States need not simply wait out the termination clock "in order to have their day in court." *U.S. Army Corps of Eng'rs v. Hawkes Co., Inc.*, 578 U.S. 590, 600 (2016) (explaining that a plaintiff may challenge a final agency action before it has been enforced against them).

For these reasons, the Court finds that Plaintiff States are likely to prevail on the merits of their claims, which are amenable to judicial review and fall within the scope of the Court's jurisdiction.

C. The Remaining *Winter* Factors Are Also Satisfied.

The Department does not meaningfully dispute that Plaintiff States are likely to suffer irreparable harm without injunctive relief. Plaintiff States have submitted evidence from representative Grantees describing the harms their Programs will suffer without federal funding. Dkt. Nos. 12, 13. The record before the Court in the *Washington* action on this topic is voluminous. *See Washington* action, Dkt. No. 269 at 31–32 (summarizing and citing Grantee declarations detailing harm). This evidence is sufficient to permit the Court to find that Plaintiff States are likely to suffer irreparable harm if the Department's termination plan is not enjoined.

Similarly, the balance of the equities favors Plaintiff States and the public interest is served by enjoining unlawful agency decisions. *See, e.g., League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) ("There is generally no public interest in the perpetuation of unlawful agency action."). Although the Department complains that it "is unlikely to recover any grant funds once they are disbursed" (Dkt. No. 36 at 10), Plaintiff States do not ask this Court to order the Department to pay out any funds. The preliminary relief Plaintiff States request instead enjoins the implementation of an unlawful termination plan. *See* Dkt. No. 10-1.

Because the Court finds that Plaintiff States have made sufficient showings on all of the *Winter* factors, the Court will grant their motion for temporary preliminary relief.

D. No Bond Is Required.

Under Federal Rule of Civil Procedure 65(c), "[t]he 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." "Despite the seemingly mandatory language, Rule 65(c) invests the district court with discretion as to the amount of security required, if any." *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) (citation modified).

Here, the Court waives the imposition of any bond on Plaintiff States. "In public-interest litigation where the court enjoins unlawful agency action, a nominal bond is appropriate, especially where, as here, the government-defendant fails to provide any evidence that an injunction would impose a substantial cost." *Washington v. U.S. Dep't of Transp.*, 792 F. Supp. 3d 1147, 1193–94 (W.D. Wash. 2025) (citation modified). Because, as Plaintiff States note, the Department has not obligated any funds beyond the proposed termination date, and Plaintiff States do not request that the Court order the Department to fund the Grants beyond that date, there is no evidence that granting temporary preliminary relief would require the Department to disburse funds to which Plaintiff States are not entitled.

IV. CONCLUSION

For the reasons explained in this order, the Court GRANTS Plaintiff States' motion for TRO (Dkt. No. 10) and ORDERS as follows:

1. Defendants and all their respective officers, agents, servants, employees and attorneys, and any person in active concert or participation with them who receive actual notice of this order are hereby fully enjoined from the following:

   a. implementing or enforcing through any means the termination plan described in this order against the Grants, specifically by failing to provide any procedural protections to which the Grantees are due under federal statute or regulation, such as those provided by 20 U.S.C. §§ 1234d, 1234g, 1221(d), 1682; 34 C.F.R. §§ 81.1–.45, 100.8–.11, 106.81; and 42 U.S.C. § 2000d-1;

   b. effectuating terminations by evaluating the Grants for alignment with new priorities that did not exist at the time the Grantee applied for the Grant, for purposes of evaluating whether to withhold funds from the Grantee.

2. Defendants must immediately take every step necessary to effectuate this Order, including clearing any administrative, operational, or technical hurdles to implementation, and notifying the Grantees protected by this injunction.

3. This injunction applies to the grants protected by the permanent injunction entered on December 19, 2025, in *Washington v. U.S. Department of Education*, No. 2:25-cv-01228-KKE (W.D. Wash.), Dkt. No. 269.

4. Defendants' counsel shall provide written notice of this Order within 24 hours to all Defendants, and their employees, contractors, and grantees.

5. Defendants' counsel shall file a status report within 24 hours, documenting the actions that they have taken to comply with this order, including a copy of the notice and an explanation as to whom the notice was sent.

6. A bond is not necessary under these circumstances and the Court exercises its discretion not to require one.

7. This TRO will expire on August 24, 2026.[9] The courtroom deputy will contact the parties to schedule a preliminary injunction hearing and will inquire whether the parties wish to supplement their briefing before that time.

Dated this 27th day of July, 2026.

Kymberly K. Evanson
United States District Judge

[9] "When a TRO is issued with notice and after a hearing … the 14-day limit for TROs issued without notice does not apply." *Miller v. Heimuller*, No. 3:23-cv-293-SI, 2023 WL 2474345, at *2 n.1 (D. Or. 2023) (citing *Pac. Kidney & Hypertension, LLC v. Kassakian*, 156 F. Supp. 3d 1219, 1222 n.1 (D. Or. 2016)). Courts should nonetheless schedule a preliminary injunction hearing no later than 28 days after the date that the court first issues a noticed TRO. *See id*.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON, et al., Plaintiff(s), v. UNITED STATES DEPARTMENT OF EDUCATION, et al., Defendant(s).	CASE NO. C26-2409-KKE ORDER SETTING BRIEFING SCHEDULE

A group of 15 states ("Plaintiff States") filed this action challenging the Defendant United States Department of Education's plan to terminate a group of grants ("the Grants") that provide mental health services for public-school students in their states no earlier than July 31, 2026. Dkt. No. 1. Plaintiff States also filed a motion for temporary restraining order ("TRO") to enjoin the Department from terminating the grants for allegedly unlawful reasons. Dkt. Nos. 10, 22.

The Court granted Plaintiff States' TRO motion, temporarily prohibiting the Government from terminating the Grants without providing certain procedural protections or terminating the Grants by evaluating the Grants for alignment with new priorities that did not exist at the time the Grantee applied for the Grant. Dkt. No. 50 at 14. The Court stated that the TRO will expire on August 24, 2026. *Id.* at 15. The Court entered an agreed briefing schedule for Plaintiff States' motion for a preliminary injunction: Defendants' (referred to collectively as "the Government") opposition is due August 14, 2026; Plaintiff States' reply is due August 20, 2026; and oral argument will be heard on August 24, 2026. Dkt. No. 53.

Plaintiff States filed a statement[1] on August 3, 2026, indicating that they request leave to seek expedited discovery. Dkt. No. 57. Plaintiff States aver that they have shown the "good cause" necessary to support expedited discovery here because "further preliminary relief" beyond a TRO "would benefit from a more developed factual record." *Id*. at 2. Plaintiff States also emphasize that the Government retains sole possession of the factual record, and that the Government will not agree to provide discovery "on [an] expedited basis, absent this Court's intervention." *See, e.g.*, Dkt. No. 57-1.

Plaintiff States thus request that the Court order the Government to respond to a set of requests for production, interrogatories, and requests for admission related to the Government's plan to terminate the Grants. Dkt. No. 57 at 2. Plaintiff States also request that the Government prepare an expedited administrative record. *Id*. According to Plaintiff States, the information sought is needed to respond to the Government's anticipated jurisdictional arguments in opposition to the preliminary injunction motion, as previewed in its opposition to the TRO. *Id*. at 3. Plaintiff States request that the Government be ordered to respond to their discovery requests by August 14, 2026, before their reply on the preliminary injunction motion is due. *Id*. at 2.

The Government takes the position that if Plaintiff States wish to seek leave for expedited discovery, they must file a motion and that motion should be briefed in the normal course. The Court finds merit in this argument, in large part. The Court construes Plaintiff States' statement (Dkt. No. 57) as a motion for expedited discovery, and orders the parties to brief this motion as follows: the Government's opposition is due no later than August 18, 2026, and Plaintiff States'

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[1] Although Plaintiff States invoked this Court's procedure for resolving discovery disputes, the Court finds that due to the posture of this case, this dispute is not amenable to that procedure.

reply is due no later than August 20, 2026. Plaintiff States are afforded slightly less time to file a reply under the Court-ordered schedule than under the Local Rules because it is Plaintiff States who seek expedited relief. The Clerk is directed to NOTE Plaintiff States' motion (Dkt. No. 57) for August 20, 2026.

Granting the Government's request for a full opportunity for briefing on the issue of expedited discovery in this manner necessitates an extension of the preliminary injunction briefing schedule, and therefore a brief extension of the TRO. The Court VACATES the prior briefing and hearing schedule (Dkt. Nos. 52, 53) and directs the parties to meet and confer on an appropriate extended briefing schedule for the preliminary injunction motion, such that the hearing currently set for August 24, 2026, will be re-set for no earlier than September 8, 2026. The parties shall file a proposed briefing schedule (either jointly or separately), no later than August 6, 2026.

To provide sufficient time to brief both the motion for expedited discovery and the preliminary injunction motion, the TRO will not expire until the preliminary injunction is resolved. *See, e.g.*, *Dataspan Holdings, Inc. v. Choquer*, No. 2:25-cv-2607-BJR, 2026 WL 114306, at *6 & n.1 (W.D. Wash. Jan. 15, 2026) ("While TROs typically expire after fourteen days, the Court may extend them for good cause. Based on the record before it and the discovery and motion schedules outlined above, the Court presumptively extends the expiration deadline. [Defendant] may move for relief if she believes such relief is necessary.").

Dated this 4th day of August, 2026.

Kymberly K. Evanson
United States District Judge