No. 25A

In the Supreme Court of the United States

NATIONAL INSTITUTES OF HEALTH, ET AL., APPLICANTS

v.

AMERICAN PUBLIC HEALTH ASSOCIATION, ET AL.

ROBERT F. KENNEDY, JR., ET AL., APPLICANTS

v.

COMMONWEALTH OF MASSACHUSETTS, ET AL.

APPLICATION TO STAY THE JUDGMENTS OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY

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PARTIES TO THE PROCEEDING

Applicants (defendants-appellants below) in *National Institutes of Health* v. *American Public Health Association* are the National Institutes of Health; Jay Bhattacharya, in his official capacity as Director of the National Institutes of Health; United States Department of Health and Human Services; and Robert F. Kennedy, Jr., in his official capacity as Secretary of the United States Department of Health and Human Services.

Respondents (plaintiffs-appellees below) in *National Institutes of Health* v. *American Public Health Association* are the American Public Health Association, IBIS Reproductive Health, United Auto Workers, Brittany Charlton, Katie Edwards, Peter Lurie, and Nicole Maphis.

Applicants (defendants-appellants below) in *Kennedy* v. *Massachusetts* are Robert F. Kennedy, Jr., in his official capacity as Secretary of the United States Department of Health and Human Services; United States Department of Health and Human Services; Jayanta Bhattacharya, in his official capacity as Director of the National Institutes of Health; National Institutes of Health; National Cancer Institute; National Eye Institute; National Heart, Lung, and Blood Institute; National Human Genome Research Institute; National Institute on Aging; National Institute on Alcohol Abuse and Alcoholism; National Institute of Allergy and Infectious Diseases; National Institute of Arthritis and Musculoskeletal and Skin Diseases; National Institute of Biomedical Imaging and Bioengineering; Eunice Kennedy Shriver National Institute of Child Health and Human Development; National Institute on Deafness and Other Communication Disorders; National Institute of Dental and Craniofacial Research; National Institute of Diabetes and Digestive and Kidney Diseases; National Institute on Drug Abuse; National Institute of Environmental Health Sciences;

National Institute of General Medical Sciences; National Institute of Mental Health; National Institute on Minority Health and Health Disparities; National Institute of Neurological Disorders and Stroke; National Institute of Nursing Research; National Library of Medicine; National Center for Advancing Translational Sciences; John E. Fogarty International Center for Advanced Study in the Health Sciences; National Center for Complementary and Integrative Health; and NIH Center for Scientific Review.

Respondents (plaintiffs-appellees below) in *Kennedy* v. *Massachusetts* are the Commonwealth of Massachusetts, State of California, State of Maryland, State of Washington, State of Arizona, State of Colorado, State of Delaware, State of Hawaii, State of Minnesota, State of Nevada, State of New Jersey, State of New Mexico, State of New York, State of Oregon, State of Rhode Island, and State of Wisconsin.

RELATED PROCEEDINGS

United States District Court (D. Mass.):

American Public Health Association v. *National Institutes of Health*, No. 25-cv-10787 (June 24, 2025) (denying stay)

Massachusetts v. *Kennedy*, No. 25-cv-10814 (June 24, 2025) (denying stay)

American Public Health Association v. *National Institutes of Health*, No. 25-cv-10787 (June 23, 2025) (partial final judgment)

Massachusetts v. *Kennedy*, No. 25-cv-10814 (June 23, 2025) (partial final judgment)

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

American Public Health Association v. *National Institutes of Health*, No. 25-1611 (July 18, 2025)

Massachusetts v. *Kennedy*, No. 25-1612 (July 18, 2025)

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Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Solicitor General—on behalf of National Institutes of Health, et al., and Robert F. Kennedy, Jr., Secretary of Health and Human Services, et al.—respectfully files this application to stay the judgments of the United States District Court for the District of Massachusetts (App., *infra*, 148a-150a, 151a-152a), pending the consideration and disposition of the government's appeal to the United States Court of Appeals for the First Circuit and, if the court of appeals affirms the judgments, pending the timely filing and disposition of a petition for a writ of certiorari and any further proceedings in this Court. In addition, the Solicitor General respectfully requests an

immediate administrative stay pending the Court's consideration of this application.

This application presents a particularly clear case for this Court to intervene and stop errant district courts from continuing to disregard this Court's rulings. Cf. *Trump* v. *Boyle*, No. 25A11 (July 23, 2025); *Department of Homeland Security* v. *D.V.D.*, No. 24A1153, 2025 WL 182186 (July 3, 2025). Over three months ago, on April 4, 2025, this Court stayed the District of Massachusetts' order blocking the government from terminating a host of discretionary grants that the Administration deemed contrary to its policies and priorities. *Department of Educ.* v. *California*, 145 S. Ct. 966, 968-969 (2025) (per curiam). This Court explained that the district court likely "lacked jurisdiction to order the payment of money under the" Administrative Procedure Act (APA), because "[t]he APA's limited waiver of immunity does not extend to orders 'to enforce a contractual obligation to pay money' along the lines of what the District Court ordered here." *Id.* at 968 (quoting *Great-West Life & Annuity Ins. Co.* v. *Knudson*, 534 U.S. 204, 212 (2002)). Further, this Court recognized, the government suffered irreparable harm because it was "unlikely to recover the grant funds once they are disbursed." *Id.* at 969. And the grantees suffered no countervailing harm because they could "recover any wrongfully withheld funds through suit in an appropriate forum." *Ibid.*

Notwithstanding this Court's decision in *California*, the District of Massachusetts declined to stay a materially identical order. The same day as this Court's *California* decision, the same plaintiffs (seven States, now joined by nine other States plus private parties suing separately) brought the same APA claims against the government—this time to stop the National Institutes of Health (NIH) from terminating $783 million in grants that contravened the Administration's policy positions on diversity, equity, and inclusion (DEI) and gender ideology. For instance, the NIH ter-

minated grants to study "Buddhism and HIV stigma in Thailand"; "intersectional, multilevel and multidimensional structural racism for English- and Spanish-speaking populations"; and "anti-racist healing in nature to protect telomeres of transitional age BIPOC for health equity." 25-cv-10814 D. Ct. Doc. 151, at 5, 7, 25 (June 23, 2025) (capitalization omitted). Grants like these, the NIH explained, rely "on artificial and non-scientific categories" that "are antithetical to the scientific inquiry, do nothing to expand our knowledge of living systems, provide low returns on investment, and ultimately do not enhance health, lengthen life, or reduce illness." App., *infra*, 85a. As in *California*, respondents sought reinstatement of the terminated grants.

When the government pointed out that respondents' challenges to those grant terminations belong in the Court of Federal Claims under *California*, the district court recognized with serious understatement that *California* was a "somewhat similar case." App., *infra*, 221a. Yet the district court dismissed this Court's ruling as "not final" and "without full precedential force," "agree[d] with the Supreme Court dissenters," and "consider[ed] itself bound" by the First Circuit ruling that *California* repudiated. *Ibid.*; *see id.* at 229a (*California* "is not binding on this Court"). The First Circuit then reprised the reasoning of its *California* ruling, insisting that respondents brought an action for "declaratory relief under the APA," not a contract claim that belongs in the Court of Federal Claims. *Id.* at 23a; cf. *California* v. *United States Dep't of Educ.*, 132 F.4th 92, 97 (2025) ("The States' claims are, at their core, assertions that the Department acted in violation of federal law -- not its contracts.").

The lower courts thus required the government to continue paying out over $783 million in grants that the Administration considers contrary to its policy objectives, even though forcing the government "to keep paying up" is the essence of a

contractual suit against the government that Congress barred district courts from adjudicating. See *United States Conference of Catholic Bishops* v. *United States Dep't of State*, 770 F. Supp. 3d 155, 163 (D.D.C. 2025). And the lower courts did so even though *California* recognizes that jurisdiction is likely lacking; that the government is irreparably harmed when forced to pay out millions of dollars on discretionary grants, with no guarantee of recouping the money; and that a stay was warranted in materially similar circumstances. 145 S. Ct. at 968-969.

On top of that, the lower courts held that they could review the NIH's allocation of lump-sum appropriations under the APA even though Congress left grant decisions to agency discretion. App., *infra*, 24a-26a, 238a-239a; cf. *California*, 132 F.4th at 97-98. And the lower courts deemed those terminations arbitrary and capricious by substituting their own political and policy judgments for those of the Executive Branch—asserting, for instance, that the President had "set [DEI] up as some sort of boogeyman" and unleashed "partisan appointed public officials" on an agency with a "historical norm" of "apolitic[ism]." App., *infra*, 52a, 127a; cf. *California*, 132 F.4th at 98-100. In every respect, this sequel poses an even bigger affront to bedrock legal principles than the original.

Worse, this case is no outlier. District-court defiance of this Court's decision in *California* has grown to epidemic proportions, as courts have issued nearly two dozen decisions asserting jurisdiction over claims challenging grant or funding terminations since *California*.[1] Meanwhile, other courts properly recognize that this

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[1] *E.g.*, *New York* v. *Kennedy*, No. 25-cv-196, 2025 WL 1803260, at *10 (D.R.I. July 1, 2025); *American Ctr. for Int'l Labor Solidarity* v. *Chavez-DeRemer*, No. 25-cv-1128, 2025 WL 1795090, at *19-*20 (D.D.C. June 30, 2025); *Louisiana Delta Serv. Corps* v. *Corporation for Nat'l & Cmty. Serv.*, No. 25-cv-378, 2025 WL 1787429, at *18-*22 (M.D. La. June 27, 2025); *National Job Corps Ass'n* v. *Department of Labor*, No. 25-cv-4641, 2025 WL 1752414, at *5 n.5 (S.D.N.Y. June 25, 2025); *Thakur* v. *Trump*, No. 25-cv-4737, 2025 WL 1734471, at *20-*21 (N.D. Cal. June 23, 2025), ap-

Court's precedent vests jurisdiction in the Court of Federal Claims alone, creating a sharp conflict between courts that follow this Court's rulings and those that do not.[2]

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peal pending, No. 25-4249 (9th Cir. filed July 10, 2025); *Green & Healthy Home Initiatives, Inc.* v. *EPA*, No. 25-cv-1096, 2025 WL 1697463, at *14 (D. Md. June 17, 2025); *San Francisco A.I.D.S. Found.* v. *Trump*, No. 25-cv-1824, 2025 WL 1621636, at *12 (N.D. Cal. June 9, 2025); *Maryland* v. *Corporation for Nat'l & Cmty. Serv.*, No. 25-cv-1363, 2025 WL 1585051, at *27 (D. Md. June 5, 2025); *Southern Educ. Found.* v. *United States Dep't of Educ.*, No. 25-cv-1079, 2025 WL 1453047, at *8-*9 (D.D.C. May 21, 2025), appeal pending, No. 25-5262 (D.C. Cir. filed July 21, 2025); *Colorado* v. *United States Dep't of Health & Human Servs.*, No. 25-cv-121, 2025 WL 1426226, at *9 (D.R.I. May 16, 2025), appeal pending, No. 25-1671 (1st Cir. filed July 16, 2025); *American Bar Ass'n* v. *United States Dep't of Justice*, No. 25-cv-1263, 2025 WL 1388891, at *6 (D.D.C. May 14, 2025); *AIDS Vaccine Advocacy Coal.* v. *United States Dep't of State*, No. 25-cv-400, 2025 WL 1380421, at *2-*3 (D.D.C. May 13, 2025); *Rhode Island* v. *Trump*, No. 25-cv-128, 2025 WL 1303868, at *6 (D.R.I. May 6, 2025), appeal pending, No. 25-1477 (1st Cir. filed May 20, 2025); *Community Legal Servs. in E. Palo Alto* v. *United States Dep't of Health & Human Servs.*, No. 25-cv-2847, 2025 WL 1233674, at *7 (N.D. Cal. Apr. 29, 2025), appeal pending, No. 25-2808 (9th Cir. filed May 1, 2025); *Sustainability Inst.* v. *Trump*, No. 25-cv-2152, 2025 WL 1486978, at *5*-6 (D.S.C. Apr. 29, 2025), appeal pending, No. 25-1575 (4th Cir. filed May 22, 2025); *San Francisco Unified Sch. Dist.* v. *Americorps*, No. 25-cv-2425, 2025 WL 1180729, at *8 (N.D. Cal. Apr. 23, 2025); *Widakuswara* v. *Lake*, No. 25-cv-1015, 2025 WL 1166400, at *9 (D.D.C. Apr. 22, 2025), appeal pending, No. 25-5144 (D.C. Cir. filed Apr. 24, 2025); *Community Legal Servs. in E. Palo Alto* v. *United States Dep't of Health & Human Servs.*, No. 25-cv-2847, 2025 WL 1168898, at *3-*4 (N.D. Cal. Apr. 21, 2025); *Climate United Fund* v. *Citibank, N.A.*, No. 25-cv-698, 2025 WL 1131412, at *11-*12 (D.D.C. Apr. 16, 2025), appeal pending, No. 25-5122 (D.C. Cir. filed Apr. 16, 2025), and No. 25-5123 (D.C. Cir. filed Apr. 17, 2025); *Woonasquatucket River Watershed Council* v. *USDA*, No. 25-cv-97, 2025 WL 1116157, at *14-*15 (D.R.I. Apr. 15, 2025), appeal pending, No. 25-1428 (1st Cir. filed May 1, 2025); *New York* v. *Trump*, No. 25-cv-39, 2025 WL 1098966, at *1-*3 (D.R.I. Apr. 14, 2025), appeal pending, No. 25-1413 (1st Cir. filed Apr. 28, 2025); *Maine* v. *USDA*, No. 25-cv-131, 2025 WL 1088946, at *19 n.8 (D. Me. Apr. 11, 2025).

[2] *E.g.*, *Sustainability Inst.* v. *Trump*, No. 25-1575, 2025 WL 1587100, at *1-*2 (4th Cir. June 5, 2025); *American Ass'n of Colls. for Teacher Educ.* v. *McMahon*, No. 25-1281, 2025 WL 1232337, at *1 (4th Cir. Apr. 10, 2025); *Board of Educ. for Silver Consolidated Schs.* v. *McMahon*, No. 25-cv-586, 2025 WL 2017177, at *7-*8 (D.N.M. July 18, 2025); *American Ass'n of Univ. Professors* v. *United States Dep't of Justice*, No. 25-cv-2429, 2025 WL 1684817 (S.D.N.Y. June 16, 2025), appeal pending, No. 25-1529 (2d Cir. filed June 17, 2025); *Child Trends, Inc.* v. *United States Dep't of Educ.*, No. 25-cv-1154, 2025 WL 1651148, at *6-*8 (D. Md. June 11, 2025); *American Library Ass'n* v. *Sonderling*, No. 25-cv-1050, 2025 WL 1615771, at *4-*11 (D.D.C. June 6, 2025); *Solutions in Hometown Connections* v. *Noem*, No. 25-cv-885, 2025 WL 1530318, at *11-*13 (D. Md. May 29, 2025), appeal pending, No. 25-1640 (4th Cir. filed June 2, 2025); *Pippenger* v. *United States DOGE Serv.*, No. 25-cv-1090, 2025 WL 1148345, at *5 (D.D.C. Apr. 17, 2025); *Massachusetts Fair Hous. Ctr.* v. *Department of Hous. & Urb. Dev.*, No. 25-cv-30041, 2025 WL 1225481 (D. Mass. Apr. 14, 2025), appeal pend-

For good reason, the Constitution vests the "judicial Power" in "one supreme Court," to which all others are "inferior Courts." U.S. Const. Art. III, § 1. As this Court explained yesterday, when lower courts face materially identical stay requests, this Court's emergency orders "squarely control[]." *Boyle*, slip op. 1. Our judicial system rests on vertical *stare decisis*, not a lower-court free-for-all where individual district judges feel free to elevate their own policy judgments over those of the Executive Branch, and their own legal judgments over those of this Court.

STATEMENT

A. Factual Background

1. Immediately after his inauguration, President Trump issued a trio of executive orders announcing policy directives relevant to the grants at issue.

On January 20, 2025, the President issued Executive Order No. 14,151, 90 Fed. Reg. 8339 (Jan. 29, 2025), titled *Ending Radical and Wasteful Government DEI Programs and Preferencing*, to eliminate "illegal and immoral discrimination programs, going by the name 'diversity, equity, and inclusion' (DEI)" from the government. *Id.* § 1. That Executive Order rescinded President Biden's Executive Order that mandated "an ambitious whole-of-government equity agenda" and instructed federal agencies to "allocate resources to address the historic failure to invest sufficiently, justly, and equally in underserved communities," *i.e.*, "populations sharing a partic-

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ing, No. 25-1368 (1st Cir. filed Apr. 16, 2025); *Solutions in Hometown Connections* v. *Noem*, No. 25-cv-885, 2025 WL 1103253, at *8-*11 (D. Md. Apr. 14, 2025); see *Catholic Bishops*, 770 F. Supp. 3d at 162-165 (reaching same conclusion pre-*California*); see also *United States Vera Inst. of Justice* v. *United States Dep't of Justice*, No. 25-cv-1643, 2025 WL 1865160, at *7-*14 (D.D.C. July 7, 2025) (holding that *California* forecloses APA claims but not constitutional claims), appeal pending, No. 25-5248 (D.C. Cir. filed July 8, 2025); *Harris County* v. *Kennedy*, No. 25-cv-1275, 2025 WL 1707665, at *6, *14-*15 (D.D.C. June 17, 2025) (same); *Amica Ctr. for Immigrant Rights* v. *United States Dep't of Justice*, No. 25-cv-298, 2025 WL 1852762, at *11-*15, *17 (D.D.C. July 6, 2025) (similar), appeal pending, No. 25-5254 (D.C. Cir. filed July 14, 2025).

ular characteristic * * * that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life." *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, Exec. Order No. 13,985, 86 Fed. Reg. 7009 §§ 1, 2, 6 (Jan. 25, 2021). President Trump instead directed "[e]ach agency, department, or commission head" to "terminate, to the maximum extent allowed by law, all * * * 'equity-related' grants or contracts." Exec. Order No. 14,151, § 2(b)(i).

On January 21, 2025, President Trump issued Executive Order No. 14,173, 90 Fed. Reg. 8633 (Jan. 31, 2025), titled *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, "to enforce our longstanding civil-rights laws and to combat illegal private-sector DEI preferences, mandates, policies, programs, and activities." *Id.* § 2. That Executive Order instructs each agency head to "include in every contract or grant award * * * [a] term requiring [the] counterparty or recipient to certify that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws." *Id.* § 3(b)(iv)(B). And that Order directs the head of the Office of Management and Budget (OMB) to "[e]xcise references to DEI * * * principles, under whatever name they may appear, from Federal acquisition, contracting, grants, and financial assistance procedures." *Id.* § 3(c)(ii).

On January 20, 2025, the President also issued Executive Order No. 14,168, 90 Fed. Reg. 8615 (Jan. 30, 2025), titled *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*. That Executive Order affirms "the immutable biological reality of sex" and rejects its replacement "with an ever-shifting concept of self-assessed gender identity" via "'[g]ender ideology.'" *Id.* §§ 1, 2(f). The Executive Order directs federal agencies to "take all necessary steps, as permitted by law, to end the Federal funding of gender ideology." *Id.*

§ 3(e). And the Order directs agencies to "ensure grant funds do not promote gender ideology." *Id.* § 3(g).

2. This case involves grant terminations at the NIH, a subagency of the Department of Health and Human Services (HHS). The NIH is made up of two dozen national research institutes or centers that generally focus on specific diseases or body systems, like the National Institute of Allergy and Infectious Diseases. 42 U.S.C. 281(b). The NIH and its constituent institutes make grants to fund research at universities, hospitals, laboratories, and other research institutions. See 42 U.S.C. 241(a)(1), 284(b)(1)-(2). Congress supports that research via lump-sum appropriations. For example, in 2024 Congress appropriated $6.5 billion for the National Institute of Allergy and Infectious Diseases to carry out the Public Health Service Act "with respect to allergy and infectious diseases." Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, Div. D, Tit. II, 138 Stat. 656; see Full-Year Continuing Appropriations and Extensions Act, 2025, § 1101(a)(8), Pub L. No. 119-4, 139 Stat. 11 (carrying forward HHS's 2024 appropriation into 2025).

Because funding is finite, NIH grants are "highly competitive," and the agency approves only 20 percent of applications. NIH, *Grants & Funding* (Oct. 15, 2024), https://grants.nih.gov/new-to-nih. NIH grants are typically discretionary and the funding decision is ultimately up to the head of the relevant NIH research institute. 42 U.S.C. 284(b)(2); Administrative Record (A.R.) 3860[3]; see 25-cv-10787 Compl. ¶ 57 (acknowledging that "[f]inal authority to make an award belongs to the Director of the [national research institute] responsible for the grant"); App., *infra*, 51a (district court acknowledging same).

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[3] A.R. 3825-4270, which includes the NIH Grants Policy Statement, is available at 25-cv-10814 D. Ct. Doc. 131 (June 11, 2025).

Once those discretionary grants obtain agency approval, NIH entities memorialize the grant terms in a Notice of Award—a formal legal document issued by the NIH entity to the recipient. A.R. 3982. The Notice of Award sets out "the amount of funds awarded" and the "terms and conditions" of the award, which the recipient accepts "by drawing or requesting funds." *Id.* at 3984-3986. The NIH's standard grant terms incorporate express caveats that awards can be terminated if they do not support agency objectives or policies. For instance, all NIH grants incorporate by reference the NIH Grants Policy Statement, which in turn incorporates OMB's guidance for federal financial assistance in 2 C.F.R. Pt. 200. A.R. 3924, 4078. OMB's guidance states that a "Federal award may be terminated" by the agency, "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). Further, all NIH grants are subject to HHS's uniform administrative requirements for federal awards. 45 C.F.R. 75.101; see, *e.g.*, Gov't C.A. App. 366 (sample Notice of Award incorporating the NIH Grants Policy Statement and 45 C.F.R. Pt. 75). Those HHS requirements mandate that NIH grants be administered "so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements," including those against "prohibiting discrimination." 45 C.F.R. 75.300(a).

3. Beginning in February 2025, the NIH moved to terminate grants that do not align with the Administration's policy priorities.

On February 10, 2025, the Acting HHS Secretary issued a "Secretarial Directive on DEI-Related Funding." App., *infra*, 59a-60a (capitalization altered). That directive ordered a review of all HHS payments "related to DEI and similar programs" to ensure that all payments were "consistent with current policy priorities"

and "improv[ed] the health and well-being of all Americans." *Id.* at 59a. Consistent with that directive, NIH paused all grants supporting "diversity, equity, and inclusion * * * initiatives or any other initiatives that discriminate on the basis of race, color, religion, sex, national origin, or any other protected characteristic." *Id.* at 64a.

On February 21, 2025, the Acting NIH Director directed his staff to ensure that NIH grants "do not fund or support low-value and off-mission research activities or projects – including DEI and gender identity research activities and programs." App., *infra*, 70a. As the Acting Director explained "based on [his] expertise and experience" and "consistent with recent Executive Orders," "amorphous equity objectives[] are antithetical to the scientific inquiry, do nothing to expand our knowledge of living systems, provide low returns on investment, and ultimately do not enhance health, lengthen life, or reduce illness." *Id.* at 69a. Likewise, gender-identity studies may "ignore * * * biological realities," "are often unscientific, have little identifiable return on investment, and do nothing to enhance the health of many Americans." *Ibid.* Accordingly, "it is the policy of NIH not to prioritize such research programs." *Ibid.*

Ensuing guidance documents directed NIH staff to review "the specific aims" of each project for compliance with the NIH's priorities. App., *infra*, 88a, 104a. Where "[t]he sole purpose of the project" contradicts those priorities, like a grant for a conference about "diversity," funding may not issue. *Ibid.* But if the project only "partially supports" impermissible activities, staff were directed to negotiate out those terms. *Id.* at 88a, 105a. For example, if a scientific conference limited to specific minority groups sought funding, the NIH would ask the conference hosts to remove the racially restrictive term and open the conference to all comers. *Id.* at 107a. If they agreed, the grant could proceed. *Ibid.* The guidance also identified other research topics inconsistent with NIH priorities. For instance, grants supporting Chi-

nese universities "contravene[] American national-security interests and hinder[] America's foreign-policy objectives." *Id.* at 90a. And COVID research has outlasted its "limited purpose" of "ameliorat[ing] the effects of the pandemic." *Id.* at 111a.

The NIH terminated numerous grants pursuant to that guidance, with appointees at HHS helping identify the ineligible grants. App., *infra*, 99a, 102a-103a, 114a.[4] For example, the NIH terminated grants involving:

- "Buddhism and HIV Stigma in Thailand," 25-cv-10814 D. Ct. Doc. 151, at 5;
- "the effects of intersectional stigma on HIV prevention among Latino MSM [men who have sex with men]," *id.* at 8;
- "intersectional, multilevel and multidimensional structural racism for English- and Spanish-speaking populations," *id.* at 25;
- "anti-racist healing in nature to protect telomeres of transitional age BIPOC [Black, Indigenous, and People of Color] for health equity," *id.* at 7 (capitalization omitted);
- "[c]ontrolled puberty in transgender adolescents," *id.* at 15; and
- "[t]he role of gender-affirming hormones in transgender women's immune response to COVID-19 vaccines," *id.* at 21.

The NIH sent letters to affected grant recipients explaining that the OMB guidelines incorporated into their grants permit termination "if an award no longer effectuates the program goals or agency priorities." App., *infra*, 85a. The letters identified why the grantees' projects "no longer effectuate[] agency priorities" using

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[4] The court of appeals' decision incorrectly states "that [Department of Government Efficiency (DOGE)] staffers (who had no affiliation with either NIH or HHS) decided which grants to terminate." App., *infra*, 11a. The official that the court of appeals identified is a detailee from DOGE who is employed by HHS.

standardized language tracking the Acting Director's guidance. *Id.* at 85a-86a. For example, researchers working on DEI-related grants were informed that "it is the policy of NIH not to prioritize such research" because "[r]esearch programs based primarily on artificial and non-scientific categories, including amorphous equity objectives, are antithetical to the scientific inquiry." *Ibid.* And those studying "[t]ransgender issues" were informed of the NIH's conclusion that "[r]esearch programs based on gender identity are often unscientific, have little identifiable return on investment, and do nothing to enhance the health of many Americans." *Id.* at 86a. The letters explained how the grantees could appeal the decision to the NIH Director or his designee. *Ibid.*; see 45 C.F.R. 75.374.

B. Procedural History

1. On April 4, 2025, this Court granted a stay pending appeal of a temporary restraining order from the District of Massachusetts enjoining the Department of Education from terminating DEI-related grants. *California*, 145 S. Ct. at 968-969. The Court explained that such claims likely belonged in the Court of Federal Claims, that the district court accordingly lacked jurisdiction, and that the government faced irreparable harm absent a stay, while the recipients' claimed monetary injuries were not irreparable. *Ibid.*

On the eve of this Court's *California* ruling, on April 2 and 4, 2025, two sets of plaintiffs challenged the NIH's grant terminations in the District of Massachusetts. App., *infra*, 5a. Research and advocacy organizations, a union, and individual researchers filed *American Public Health Ass'n* v. *National Institutes of Health*, No. 25-cv-10787 (D. Mass.). And 16 States—including all but one of the *California* respondents—filed *Massachusetts* v. *Kennedy*, No. 25-cv-10814 (D. Mass.), asserting the rights of their public universities. As in *California*, both suits alleged that the grant

terminations were arbitrary and capricious in violation of the APA. 25-cv-10787 Compl. ¶¶ 196-215; 25-cv-10814 Am. Compl. ¶¶ 225-233. And much like in *California*, respondents asked the court to enjoin the NIH from "terminating any grants" pursuant to the challenged guidance documents and "[o]rder NIH to restore the grant awards, retroactive to the respective termination date." 25-cv-10787 Compl. 76; accord 25-cv-10814 Am. Compl. 88-89; cf. Compl. at 52, *California* v. *U.S. Dep't of Educ.*, No. 25-cv-10548 (D. Mass. filed Mar. 6, 2025) (requesting injunction against "terminating any individual * * * grant for recipients in Plaintiff States" and order that the government "restore recipients in Plaintiff States to the pre-existing status quo prior to the termination").

2. The district court informally consolidated the cases and issued a series of decisions:

a. First, on May 12, 2025, the district court held that it had subject-matter jurisdiction in *Massachusetts*. App., *infra*, 213a-240a. The court acknowledged that, in *California*, this Court had stayed a district-court decision "enjoining the Department of Education from terminating certain grants" because such contract disputes can likely only be brought in the Court of Federal Claims under the Tucker Act. *Id.* at 224a-225a. But in the district court's view, *California* was "not binding on this Court" and "of little assistance to the district courts" because it was "an emergency interlocutory order." *Id.* at 221a, 229a, 232a. The court instead "agree[d] with the Supreme Court dissenters" and followed the First Circuit decision that this Court had effectively overruled in *California*. *Id.* at 221a, 235a.

Separately, the district court rejected the government's argument that NIH funding decisions are committed to agency discretion by law and thus not reviewable under the APA. App., *infra*, 239a (citing 5 U.S.C. 701(a)(2)). In the court's view, there

was "arguably" law to apply because respondents alleged that the grant terminations "conflict with authorizing statutes and applicable regulations." *Ibid.* (citation omitted). But the court did not identify what those statutory or regulatory requirements might be or conclude that the agency had violated them. *Ibid.*

b. In *American Public Health Ass'n*, the district court construed the parties' preliminary-injunction briefing as a motion to dismiss, which the court denied in relevant part on May 30, 2025. App., *infra*, 169a-212a. The court rejected the government's Tucker Act argument "substantially for the same reasons" as in *Massachusetts* and concluded that the organizational plaintiffs had standing. *Id.* at 182a; see *id.* at 182a-189a. On the merits, the court held that respondents had adequately pleaded an arbitrary-and-capricious claim because the termination notices read "more like a political statement than reasoning about the grants." *Id.* at 199a.

c. The district court held a joint hearing and bench trial in the two cases, largely limited to respondents' arbitrary-and-capricious claims. App., *infra*, 44a. At the end of the hearing, on June 16, 2025, the court orally vacated the NIH guidance and respondents' grant terminations as arbitrary and capricious and promised that "a full written opinion" would follow. *Id.* at 153a-168a. The court concluded its oral ruling by equating DEI grant terminations with "palpable" "racial discrimination," expressed its "unutterabl[e] sad[ness]," and asked, "of our society as a whole, have we fallen so low? Have we no shame?" *Id.* at 166a, 168a.

The court issued partial final judgments in both cases reflecting the court's oral ruling, *id.* at 148a-152a, and denied the government's request for a stay pending appeal, *id.* at 142a-147a. In denying a stay, the district court lauded its own "rigorous" fact-finding as reflecting "the true glory of our trial courts" and asserted that funding delays "destroy[] the unmistakable legislative purpose from its accomplish-

ment." *Id.* at 144a-146a & n.1 (citation omitted).

d. Over two weeks after the bench ruling, on July 2, 2025, the district court issued its promised written decision holding that the challenged decisions were arbitrary and capricious. App., *infra*, 39a-141a. Relying on Justice Jackson's *California* dissent, the court concluded that the NIH had engaged in "no reasoned decision-making * * * in the 'robotic rollout' of this grant-termination action." *Id.* at 125a (quoting 145 S. Ct. at 975-976). The court principally objected to the NIH's failure to define the term "DEI," which the court found "purely circular." *Id.* at 52a, 125a-134a.

More broadly, the court faulted the "new Administration" for breaking "a historical norm of a largely apolitical scientific research agency" and "weaponizing what should not be weaponized." App., *infra*, 51a-52a. The court criticized the President's DEI Order as "rudderless" and "set[ting] [DEI] up as some sort of boogeyman" for "partisan appointed public officials" to expunge. *Id.* at 127a. And the court characterized the President's Order on gender ideology as a "fiat" that induced "extensive discrimination against everyone whose lived experience of their sexuality is in any way different from the executive orthodoxy." *Id.* at 46a n.4. The court described the NIH's decision to terminate gender-identity grants as "a truly hold-my-beer-and-watch-this moment." *Id.* at 129a. And the court viewed "[t]he lack of any demonstrable pushback" from agency staff as proof of "the tremendous bureaucratic pressure at play." *Id.* at 129a n.15.

The district court further objected to NIH's reliance on OMB guidance permitting termination of grants that "no longer effectuate[] the program goals or agency priorities" because HHS had not yet adopted that guidance as its own. App., *infra*, 134a-137a (quoting 2 C.F.R. 200.340(a)(4)). Nonetheless, the court did not dispute that the OMB guidance is incorporated by reference into all NIH grants. *Id.* at 137a-

138a. Given its arbitrary-and-capricious holding, the court declined to resolve respondents' other statutory challenges to the terminations. *Id.* at 139a.

The government sought a stay from the court of appeals the next day, July 3.

3. The court of appeals denied an administrative stay on July 4, 2025, promising a stay decision "as soon as practicable." App., *infra*, 35a, 38a. The court noted that the government filed its "motion the day after the district court had entered a promised memorandum reflecting its legal reasoning, and our denial of immediate relief therefore is not based on the timing of relevant filings." *Ibid.*

Two weeks later, on July 18, 2025, the court of appeals denied a stay. App., *infra*, 1a-34a. On jurisdiction, the court treated the district court's vacatur of NIH's guidance and the subsequent grant terminations as two separate declaratory judgments. *Id.* at 19a. The court held that the government had waived any argument that the district court lacked jurisdiction to vacate the guidance. *Ibid.* In any event, the court held, "the district court clearly had jurisdiction to grant 'prospective relief' that will govern 'the rather complex ongoing relationships'" between the parties. *Ibid.* (quoting *Bowen* v. *Massachusetts*, 487 U.S. 879, 905 (1988)). The court acknowledged that the grant terminations posed "a closer question," but thought that this case could proceed because the district court provided "declaratory relief that is unavailable in the Court of Federal Claims" and does not "depend on the terms or conditions of any contract." *Id.* at 19a-20a. The court of appeals distinguished *California* as limited to an order "to pay out past-due grant obligations." *Id.* a 21a (quoting 145 S. Ct. at 968). In the court's view, the district court here had "simply declared that the Department unlawfully terminated certain grants" without relying on any particular grant terms. *Id.* at 22a-23a.

The court of appeals also rejected the government's argument that NIH fund-

ing allocations are committed to agency discretion by law. App., *infra*, 24a-26a. The court deemed this argument forfeited because the government had not specifically reiterated it in its district-court stay motion. *Id.* at 24a-25a. But the court of appeals went on to hold that "numerous statutory provisions" and an HHS regulation provide "'judicially manageable standards'" for review. *Id.* at 25a-26a (citation omitted).

The court of appeals further held that the grant terminations were likely arbitrary and capricious. App., *infra*, 26a-30a. The court saw "no obvious error" in the district court's conclusion that the NIH engaged in an unexplained "about-face" that "entirely ignored significant reliance interests." *Id.* at 27a-28a.

The court of appeals concluded that the other factors disfavored a stay. App., *infra*, 30a-34a. The court acknowledged the government's irreparable harm in paying unrecoverable grants. *Id.* at 31a. But the court reasoned that, because the challenged agency action was unlawful, the government had no interest in "the President's ability to execute core Executive Branch policies." *Id.* at 30a. The court found the government's injury outweighed by respondents' "non-monetary harms" from an "abrupt cutoff in funding." *Id.* at 31a-32a. And the court held that the balance of equities supported a stay given the importance of "scientific and medical advancements" and the "substantial public interest" in agencies following the law. *Id.* at 33a-34a.

ARGUMENT

Under Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Court may stay a final judgment entered by a federal district court. See, *e.g.*, *Trump* v. *Wilcox*, 145 S. Ct. 1415 (2025); *Merrill* v. *Alabama*, 141 S. Ct. 25 (2020). To obtain a stay, an applicant must show a likelihood of success on the merits, a reasonable probability of certiorari, and a likelihood of irreparable harm. See *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam). In "close cases," "the Court will bal-

ance the equities and weigh the relative harms." *Ibid.* Those factors overwhelmingly support a stay here, not least because the lower courts are systematically ignoring a recent, controlling ruling of this Court that resolves those factors in the government's favor.

A. The Government Is Likely To Succeed On The Merits

The same district that produced the *California* order has again asserted jurisdiction to order the government to continue paying unrecoverable grants contrary to the current Administration's priorities. That order is, if anything, even more legally flawed than the order that this Court stayed in *California*. First, as this Court held in *California*, the Tucker Act likely precludes district-court jurisdiction over suits challenging grant terminations. The district court flouted that decision, declaring "[t]he views of the dissenters" more "persuasive." App., *infra*, 232a. But under our system of vertical *stare decisis*, the majority's opinion controls. Second, NIH grant decisions are committed to agency discretion by law and not reviewable under the APA. Given limited research funding, Congress has appropriated lump sums for the NIH to award as it sees fit. Third, the challenged decisions were not arbitrary or capricious. Following the change in Administration, the NIH identified, explained, and pursued new funding priorities. That is democracy at work, not, as the district court thought, proof of inappropriate "partisan[ship]"—let alone a permissible basis for setting agency action aside under the APA. *Id.* at 127a.

1. The district court lacked subject-matter jurisdiction to compel the government to pay terminated grants

The government is likely to succeed in showing that the district court lacked jurisdiction to order the government to pay out some $783 million in terminated grants, as this Court recognized in *California*, 145 S. Ct. at 968. This Court's renewed

intervention is essential to ensure that district courts stop asserting jurisdiction that they lack and that contract disputes over government grant terminations proceed where Congress said they belong: in the Court of Federal Claims. See 28 U.S.C. 1491(a)(1).

a. *California* should have conclusively resolved this case. There, as here, the Administration conducted a comprehensive internal review "to 'ensure that Department grants do not fund discriminatory practices—including in the form of DEI—that are either contrary to law or to the Department's policy objectives.'" Appl. at 6, *California*, *supra* (No. 24A910) (*California* Appl.) (citation omitted). There, as here, the agency subsequently rescinded DEI-related grants that "no longer effectuate[d] the program goals or agency priorities"—an authority incorporated by reference into the grant contract. *Ibid.* (quoting 2 C.F.R. 200.340(a)(4)). There, as here, grant recipients—all but one of whom is also a respondent here—sued, alleging that the grant terminations were arbitrary and capricious in violation of the APA. *Id.* at 7. There, as here, the district court ordered the government to continue to pay, holding that the Tucker Act did not preclude jurisdiction because the plaintiffs invoked federal statutes and regulations and did not style their action as one for money damages. *Id.* at 9. And there, as here, the First Circuit denied an administrative stay, promised further action "as soon as practicable," and then sat on the case (here, for two weeks) before concluding that the APA authorized district-court jurisdiction. *Id.* at 9-10 (citation omitted).

In *California*, this Court issued a stay. 145 S. Ct. at 968. As the Court explained, the District of Massachusetts had "enjoin[ed] the Government from terminating various education-related grants" and "require[d] the Government to pay out past-due grant obligations and to continue paying grant obligations as they accrue."

Ibid. But the district court likely lacked jurisdiction because the APA's waiver of sovereign immunity "does not extend to orders 'to enforce a contractual obligation to pay money' along the lines of what the District Court ordered." *Ibid.* (quoting *Great-West*, 534 U.S. at 212). Instead, such suits must be brought in the Court of Federal Claims, in which Congress vested "jurisdiction over suits based on 'any express or implied contract with the United States.'" *Ibid.* (quoting 28 U.S.C. 1491(a)(1)).

That ruling reflects black-letter jurisdictional principles. Given the federal government's sovereign immunity, federal courts generally lack jurisdiction over "suits against the United States absent Congress's express consent." *United States* v. *Miller*, 145 S. Ct. 839, 849 (2025). The APA provides a limited waiver of sovereign immunity for claims "seeking relief other than money damages." 5 U.S.C. 702. But the APA's waiver "comes with an important carve-out": It does not apply "'if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.'" *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians* v. *Patchak*, 567 U.S. 209, 215 (2012) (quoting 5 U.S.C. 702).

Thus, parties that seek funds that the government is allegedly obligated to pay by contract—including via grant agreements, which are a species of contract—must typically proceed under the Tucker Act, not the APA. The Tucker Act provides that the "United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded" on "any express or implied contract with the United States." 28 U.S.C. 1491(a). The D.C. Circuit has thus "held that the Tucker Act 'impliedly forbids'" bringing "contract actions" against "the government in a federal district court" under the APA. *Albrecht* v. *Committee on Emp. Benefits of the Fed. Reserve Emp. Benefits Sys.*, 357 F.3d 62, 67-68 (2004) (citation omitted). *California* implicitly endorsed that principle, 145 S. Ct. at 968, and re-

spondents do not dispute it, States C.A. Opp. 18-20; APHA C.A. Opp. 7-9.

To determine which court has jurisdiction, the question is whether "an action is in 'its essence' contractual," *Perry Capital LLC* v. *Mnuchin*, 864 F.3d 591, 618-619 (2017) (citation omitted), cert. denied, 583 U.S. 1115 (D.C. Cir. 2018), which "depends both on the source of the rights upon which the plaintiff bases its claims, and upon the type of relief sought," *Megapulse, Inc.* v. *Lewis*, 672 F.2d 959, 968 (D.C. Cir. 1982). If a plaintiff's claim rests on the notion that the government purportedly breached its contract and seeks to compel the government to pay sums due under the contract, that is a Tucker Act claim, not an APA claim. See *id.* at 967-971.

In *California*, those principles established that the respondents' putative APA claim was just a disguised breach-of-contract claim that belonged in the Court of Federal Claims. The Department of Education's grant agreements had "the essential elements of a contract"—offer, acceptance, and consideration. See *Henke* v. *United States Dep't of Commerce*, 83 F.3d 1445, 1450-1451 (D.C. Cir. 1996). And those grant agreements were "the source of the rights upon which" the respondents based their claims. *Megapulse*, 672 F.2d at 968. Without a grant agreement, the respondents would have had no right to payment in the first place.

That contract-based right readily distinguishes *Bowen* v. *Massachusetts*, 487 U.S. 879 (1988), because *Bowen* did not involve a contract claim at all, let alone the APA provision in 5 U.S.C. 702 precluding claims that are impliedly forbidden by another statute. See *Great-West*, 534 U.S. at 212 (noting that *Bowen* did not involve any "contractual obligation"). Instead, *Bowen* involved two separate provisions: (1) part of 5 U.S.C. 702 precluding APA claims for "money damages," and (2) part of 5 U.S.C. 704 requiring "no other adequate remedy in a court" for an agency action to be subject to APA review. *Bowen* held that a State's APA claim for adjusted reimburse-

ment rates under the Medicaid Act was not a "money damages" claim under 5 U.S.C. 702 just because it might result in the payment of money. 487 U.S. at 891-901. And *Bowen* added that a Tucker Act suit was not an alternative "adequate remedy" for the State's Medicaid reimbursement-rate suit so as to preclude review under 5 U.S.C. 704. 487 U.S. at 901-908. Nothing in *Bowen* addresses the separate bar in 5 U.S.C. 702 on suits "expressly or impliedly forbid[den]" by other statutes, which is presumably why this Court cited *Bowen* approvingly in *California* before concluding that grant-termination suits like this one are disguised breach-of-contract claims that likely belong in the Court of Federal Claims. 145 S. Ct. at 968.

b. *California* "squarely control[s]" this materially identical case. *Boyle*, slip op. 1. Here too, the district court relied on the APA's waiver of sovereign immunity to bar the government from terminating grant agreements. App., *infra*, 150a, 152a, 235a. The court "set aside" specific grant terminations, *id.* at 150a, 152a (capitalization omitted), while recognizing that doing so would require the "forthwith * * * disbursement of funds both appropriated by the Congress of the United States and allocated heretofore by the defendant agencies," *id.* at 160a-161a. In substance, that order compelled "specific performance of the grant agreements—a quintessentially contractual remedy." *Widakuswara* v. *Lake*, No. 25-5144, 2025 WL 1288817, at *4 (D.C. Cir. May 3, 2025) (per curiam), reh'g granted and stay denied, 2025 WL 1521355, at *1 (D.C. Cir. May 28, 2025) (en banc) (per curiam). While *California* is an interim decision that is "not conclusive as to the merits," it is still a precedent of this Court which "inform[s] how a court should exercise its equitable discretion in like cases." *Boyle*, slip op. 1. Where a "case does not otherwise differ * * * in any pertinent respect," lower courts must treat like cases alike. *Ibid.* Yet here, despite failing to meaningfully distinguish *California*, the district court denied a stay by re-upping

its earlier jurisdictional analysis without elaboration. App., *infra*, 144a.

The district court's earlier analysis was extraordinarily candid in its disagreement with this Court. The district court declared this Court's decision "not binding," instead finding the First Circuit decision this Court effectively reversed "more compelling." App., *infra*, 229a, 232a. The district court then spent pages quoting the *California* dissents, deeming them "persuasive authority" for its decision. *Id.* at 226a-228a, 232a. The district court declared that it "agree[d] with the Supreme Court dissenters"—a result the court acknowledged was "somewhat awkward." *Id.* at 221a.

The district court also briefly endeavored to distinguish *California* as "somewhat different" on the ground that it involved only "'sums awarded * * * in previously awarded discretionary grants.'" App., *infra*, 228a (quoting *Widakuswara*, 2025 WL 1288817, at *13 (Pillard, J., dissenting)). But that cursory point is clearly incorrect. The district court's order here also involves only previously awarded discretionary grants. See *id.* at 149a n.1, 151a n.2 (describing the terminated grants which respondents challenge).

For its part, the court of appeals attempted to distinguish *California* by describing this Court's decision as addressing only an order "to pay out past-due grant obligations." App., *infra*, 21a (quoting 145 S. Ct. at 968). In fact, the order in *California* "require[d] the Government to pay out past-due grant obligations *and to continue paying obligations as they accrue*." 145 S. Ct. at 968 (emphasis added). That forward- and backward-looking relief is identical to the order here, which declared the grant terminations to be "of no effect" and accordingly required the ongoing payment of funds "forthwith." App., *infra*, 150a, 160a-161a; see *id.* at 152a; cf. *Community Legal Servs. in E. Palo Alto* v. *United States Dep't of Health & Human Serv.*, 135 F.4th 852, 855 (9th Cir. 2025) (Bumatay & VanDyke, JJ., dissenting from the denial

of rehearing en banc) (*California* "cannot be distinguished on the ground that the Plaintiffs here instead seek forward-looking injunctive relief * * * rather than monetary relief for past-due contractual breaches.").

The court of appeals also observed that the *California* respondents, unlike respondents here, did not dispute that grants are contracts. App., *infra*, 22a. But this Court recognized that *California* involved "grants," yet did not hesitate to characterize the claim as one "to enforce a contractual obligation to pay money." 145 S. Ct. at 968 (citation omitted). Regardless, respondents' grant agreements are plainly contracts. They reflect "offer, acceptance, consideration, mutuality of intent, and action by an official with authority to bind the government." *Widakuswara*, 2025 WL 1288817, at *3; see *Columbus Reg'l Hosp. v. United States*, 990 F.3d 1330, 1338 (Fed. Cir. 2021) ("[F]ederal grant agreements [are] contracts when the standard conditions for a contract are satisfied, including that the federal entity agrees to be bound."). The NIH offers federal funding to perform agreed-upon research subject to extensive terms and conditions. A.R. 3924-3925. And the grant "recipient indicates acceptance of an NIH award and its associated terms and conditions by drawing or requesting funds." A.R. 3984. While respondents note that some authorities describe NIH grants and contracts separately, APHA C.A. Opp. 12, those labels have no bearing on whether respondents' claims are founded "upon any express or implied contract with the United States" as required by the Tucker Act, 28 U.S.C. 1491(a)(1).

The court of appeals also cast the claims in *California* as "depend[ing] on the terms and conditions of the grant awards," while the district court here supposedly "neither examined any of the plaintiffs' grant terms nor interpreted them in reaching its ruling." App., *infra*, 22a-23a (citing *California* Appl. at 16; Reply Br. at 9, *California*, *supra* (No. 24A910) (*California* Reply Br.)). But the claims in *California* de-

pended on the grant contracts in the exact same way as the claims here: "The ultimate source of grantees' asserted right to payment is the grant awards, not the grant-making statutes or grant-termination regulations that respondents claim the government violated." *California* Appl. at 16. And "the relevant regulatory language," including the OMB guidance authorizing termination for grants that "no longer effectuate[] the program goals or agency priorities," 2 C.F.R. 200.340(a)(4), is incorporated into respondents' contracts, "confirming the inescapably contractual nature of the dispute." *California* Reply Br. at 9. Indeed, the district court here considered whether the OMB guidance gave the NIH the right to terminate respondents' grants on the assumption that the guidance "has been incorporated into the terms and conditions of the grantees' awards"—a fact the court of appeals seemingly overlooked. App., *infra*, 137a. This is a contract dispute through and through.

c. The court of appeals' other arguments for jurisdiction are unavailing. In an effort to cast the relief here as non-contractual, the court of appeals sought to sever the district court's vacatur of NIH's internal grant-making guidance from its vacatur of the termination of respondents' grants. App., *infra*, 19a. The court asserted that the government had waived any challenge to the former remedy, which, in the court's view, "the district court clearly had jurisdiction to grant." *Ibid.*

But those two remedies merge here. The district court correctly limited relief "only to the parties before it" and focused only on the termination of *existing* grants. *Id.* at 140a (citing *Trump* v. *CASA, Inc.*, 145 S. Ct. 2540, 2562 (2025)); see *id.* at 148a-149a, 151a (addressing "Resulting Grant Terminations"). The district court did not suggest that the agency would have to award DEI- and gender-identity grants to respondents going forward—claims which would be lacking in both standing and ripeness given the highly discretionary nature of NIH grant decisions. See *id.* at 160a

(reserving claims related to notices of funding opportunities, *i.e.*, future grants, for "further consideration"). Indeed, the court bracketed claims that the government had unreasonably delayed issuing new grants for a separate "Phase Two" hearing that has yet to occur. *Id.* at 42a, 207a-208a. Ordering the government not to apply the guidance to respondents' grants and ordering the government to reinstate those grants are thus effectively the same remedy: To comply with those rulings, the government must perform the grant contracts instead of terminating them. That claim belongs in the Court of Federal Claims, not the District of Massachusetts.

The court of appeals also analogized this case to *Bowen*, asserting that respondents, like the State in *Bowen*, simply seek "declaratory relief that is well within the scope of the APA." App., *infra*, 20a-21a. But the same was true in *California*: The respondents "sought declaratory and injunctive relief to set aside the termination of the previously awarded grants." 145 S. Ct. at 971 (Jackson, J., dissenting). Regardless, the critical difference in *Bowen* was that the State had no contractual claim to payment; they were thus not seeking to enforce contractual rights and their suit could not have been impliedly precluded by the Tucker Act provisions at issue here. *Great-West*, 534 U.S. at 212; see *Middle E. Broad. Networks, Inc.* v. *United States*, No. 25-5150, 2025 WL 1378735, at *3 (D.C. Cir. May 7, 2025) (en banc) (Katsas, J., dissenting). If plaintiffs could evade the Tucker Act just by requesting declaratory relief, virtually any contract suit could be transmuted into an APA claim. As the D.C. Circuit has observed, "[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 (brackets and citation omitted); see *Catholic Bishops*, 770 F. Supp. 3d at 165 ("Sure, the [plaintiff] seeks to set aside agency action. But the agency action that it asks the Court to reverse is the

Government's decision to cease a financial relationship with the [plaintiff]. This is not standard injunctive fare.").

When claims like respondents' are "[s]tripped of [their] equitable flair," the "requested relief seeks one thing: * * * [T]he Court to order the Government to stop withholding the money due" under their grant agreements. *Catholic Bishops*, 770 F. Supp. 3d at 163. "In even plainer English: [They] want[] the Government to keep paying up." *Ibid.* Such a claim for "the classic contractual remedy of specific performance" "must be resolved by the Claims Court." *Ibid.* (citations omitted). This Court has already resolved in a similar stay posture that such claims belong in the Court of Federal Claims. This Court should not allow lower courts to continue to deny preliminary relief by defying basic jurisdictional principles—and this Court's authority.

2. NIH grant decisions are committed to agency discretion by law

Even if the district court had jurisdiction, the government's decision to terminate specific NIH grants is "committed to agency discretion by law" and not subject to APA review. 5 U.S.C. 701(a)(2).

a. Consistent with the "'basic presumption of judicial review,'" the APA "instructs reviewing courts to set aside agency action that is 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'" *Department of Commerce* v. *New York*, 588 U.S. 752, 771 (2019) (quoting *Abbott Labs.* v. *Gardner*, 387 U.S. 136, 140 (1967); then quoting 5 U.S.C. 706(2)(A)). But that presumption comes with a key caveat: The APA does not apply when agency action is "committed to agency discretion by law." 5 U.S.C. 701(a)(2). That exception applies when a "statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion." *Heckler* v. *Chaney*, 470 U.S. 821, 830 (1985).

One paradigmatic decision "traditionally regarded as committed to agency discretion" is "[t]he allocation of funds from a lump-sum appropriation." *Lincoln* v. *Vigil*, 508 U.S. 182, 192 (1993). "After all, the very point of a lump-sum appropriation is to give an agency the capacity to adapt to changing circumstances and meet its statutory responsibilities in what it sees as the most effective or desirable way." *Ibid.* Lump-sum appropriations thus leave it to the agency to decide how "'resources are best spent'" and "whether a particular program 'best fits the agency's overall policies.'" *Id.* at 193 (quoting *Heckler*, 470 U.S. at 831). While Congress may set outer guardrails on "permissible statutory objectives," courts have "no leave to intrude" so long as agencies adhere to those limits in allocating funding. *Ibid.*

This case falls in the heartland of that exception. As explained, NIH grants come from lump-sum appropriations. See p. 8, *supra*. The only guidance the appropriations acts provide is that each national research institute must spend the money on its assigned topic, like "cancer" or "neurological disorders and stroke." *E.g.*, 138 Stat. 656. That level of discretion makes sense given that the NIH receives five times as many proposals as it could possibly fund. See p. 8, *supra*. Congress did not decide for itself which studies on "dental and craniofacial diseases" warrant federal support, instead delegating that decision to the unreviewable discretion of the National Institute of Dental and Craniofacial Research. 138 Stat. 656. "[T]he 'agency is far better equipped than the courts to deal with the many variables involved in'" prioritizing competing scientific grant applications. See *Lincoln*, 508 U.S. at 193 (quoting *Heckler*, 470 U.S. at 831-832).

b. The court of appeals disagreed, citing an HHS regulation and the "numerous statutory provisions that direct NIH to prioritize or to consider certain research objectives." App., *infra*, 25a-26a. But Congress's delineation of "permissible

statutory objectives" does not rescind an agency's discretion to allocate lump-sum appropriations. *Lincoln*, 508 U.S. at 193. "'[T]o [the] extent'" the agency complies with those objectives, "§ 701(a)(2) gives the courts no leave to intrude." *Ibid.* (quoting 5 U.S.C. 701(a)(2)) (first alteration in original). Here, the district court notably did not find any deviation from Congress's statutory objectives, so the NIH's decisions about how to act within those objectives were the NIH's alone. App., *infra*, 139a-140a. Regardless, the cited statutes merely require the NIH to, *e.g.*, disaggregate data by race, sex, and age and support "basic research" on "pathogens of pandemic concern." 42 U.S.C. 282(b)(4)(B); 42 U.S.C. 285f-5(b)(1). And the cited regulation states that grants "may be terminated * * * for cause" without purporting to limit the agency's discretion to terminate grants under other authorities, like 2 C.F.R. 200.340(a)(4), or suggesting that a violation of the agency's priorities would not constitute "cause," 45 C.F.R. 75.372(a)(2). Those provisions hardly obligate the NIH to fund studies on anti-racism and intersectionality.

The court of appeals also reasoned that the government forfeited its argument that lump-sum appropriations are committed to agency discretion by law by not expressly raising it in the district-court stay motion. App., *infra*, 24a-25a. But the district court had already considered and rejected the point, *id.* at 238a-239a, so the government's stay motion incorporated by reference "the other reasons argued by Defendants" in previous briefs rather than relitigate rejected points, D. Ct. Stay Mot. 6. Regardless, the court of appeals "passed upon" the discretion question notwithstanding its forfeiture concerns, making this Court's ability to review clear. *United States* v. *Williams*, 504 U.S. 36, 41 (1992); see App., *infra*, 25a-26a.

3. The grant terminations were not arbitrary or capricious

Even were APA review appropriate, the challenged grant terminations were

manifestly proper under settled APA precedents.

a. Under the APA, courts set aside agency action that is "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law." 5 U.S.C. 706(2)(A). The arbitrary-and-capricious "standard is deferential." *FCC* v. *Prometheus Radio Project*, 592 U.S. 414, 423 (2021). The court "ensures that the agency has acted within a zone of reasonableness," taking care not to "substitute its own policy judgment for that of the agency." *Ibid.* So long as the agency action "is rational, based on consideration of the relevant factors, and within the scope of the authority delegated to the agency by the statute," the action will be upheld. *Motor Vehicle Mfrs. Ass'n of the U.S., Inc.* v. *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983).

The grant terminations here fall well within that wide band of reasonableness. The Acting Secretary explained that DEI initiatives—which focus on specific groups—"are inconsistent with the Department's policy of improving the health and well-being of *all* Americans." App., *infra*, 59a (emphasis added). And the Acting NIH Director explained, "based on [his] expertise and experience," that DEI and gender-identities studies are "low-value and off-mission." *Id.* at 69a. He added that the categories underlying DEI can be "artificial and non-scientific" and, at worst, may be "used to support unlawful discrimination on the basis of race and other protected characteristics." *Ibid.* He further reasoned that gender-identity research—which targets a narrow slice of the population—does "nothing to enhance the health of many Americans" and ignores "biological realities." *Ibid.*

Those decisions reflect quintessential policy judgments on hotly contested issues that should not be subject to judicial second-guessing. It is hardly irrational for agencies to recognize—as members of this Court have done—that paeans to "diversity" often conceal invidious racial discrimination. *E.g.*, *Students for Fair Admis-*

sions, Inc. v. *President & Fellows of Harv. Coll.*, 600 U.S. 181, 257 (2023) (Thomas, J., concurring). And transgender issues are "an evolving field" involving "fierce scientific and policy debates." *United States* v. *Skrmetti*, 145 S. Ct. 1816, 1837 (2025). The Executive Branch reasonably took a side on those questions in line with the President's policy pronouncements and clearly articulated disagreement with his predecessor's approach. Exec. Order No. 14,151, § 1; Exec. Order No. 14,168, § 7.

The NIH then implemented those democratically accountable policy decisions. Staff worked with grant recipients to excise impermissible grant terms wherever possible. App., *infra*, 88a-89a. But where the grant solely funded initiatives inconsistent with the agency's stated priorities, the NIH sent the affected grant recipient a letter explaining why the NIH had chosen not to prioritize that research. *Id.* at 85a-86a. For example, a researcher offering "[a] novel approach for equitable characterization of gender" received a letter informing her that her "award no longer effectuates agency priorities" because it was impermissibly "based on gender identity." Gov't C.A. App. 414; see 25-cv-10814 D. Ct. Doc. 151, at 21. Such "reasonabl[e] expla[nations]" for the agency's decision are exemplars of *permissible* agency decision-making. *Prometheus Radio*, 592 U.S. at 423.

b. The district court's principal objection was that the NIH never defined the term "DEI." App., *infra*, 125a-134a. But there is no APA rule that agencies define every term in every internal guidance document, particularly when that guidance steers highly discretionary decisions over how to allocate limited agency resources. Thus, when another district court declared the President's direction to terminate "equity-related" grants impermissibly vague, a court of appeals stayed that preliminary injunction on appeal. *National Ass'n of Diversity Officers in Higher Educ.* v. *Trump*, 767 F. Supp. 3d 243, 277-280 (D. Md. 2025), stay granted, No. 25-1189 (4th Cir. Mar.

14, 2025). When the government provides "selective subsidies" which frequently rely on subjective criteria, perfect "clarity" "is not always feasible." *National Endowment for the Arts* v. *Finley*, 524 U.S. 569, 589 (1998).

Here, the NIH's guidance described the Administration's general priorities on research funding and instructed implementation on a grant-by-grant basis. App., *infra*, 69a-70a, 88a-90a, 104a-114a. As the record reflects, NIH staff then used their "scientific background" and knowledge of "their programs" to identify problematic grants. *Id.* at 65a n.8. If any grantee felt that her grant was miscategorized, the termination notice explained how to pursue an administrative appeal. *Id.* at 86a.

In any event, it is hardly a mystery that grants on topics like "structural racism and discrimination" and "daily diar[ies]" for "bisexual+ young adults" involve DEI and fall within the category of grants that the Administration views as highly problematic for a litany of policy reasons. 25-cv-10814 D. Ct. Doc. 151, at 5, 41 (capitalization omitted). The President's January 20 Executive Order on DEI repudiated the prior Administration's order that spent pages delineating the kinds of policies that the current Administration rejects. See Exec. Order 13,985. Agency guidance documents do not need to come with glossaries just to avoid APA invalidation.

The district court also cast aspersions on having "partisan appointed public officials" help draft termination letters and identify grants inconsistent with the Administration's priorities. App., *infra*, 127a. The court accused political appointees of "force-fe[eding] unworkable 'policy'" to the NIH and insinuated that there was something nefarious about employees of what the court labeled the "so-called Department of Government Efficiency" being copied on emails. *Id.* at 71a, 101a-102a, 125a. The court then dismissed NIH's explanation for the grant terminations because it struck the court as "look[ing] more like a political statement than reasoning about the

grants." *Id.* at 199a.

But courts may not set aside agency action under the APA just "because it might have been influenced by political considerations or prompted by an Administration's priorities." *Department of Commerce*, 588 U.S. at 781. "Under our Constitution, the 'executive Power'—all of it—is 'vested in a President.'" *Seila Law LLC* v. *CFPB*, 591 U.S. 197, 203 (2020) (citations omitted). That politically accountable officials would shift an agency's priorities after a change in administration to reflect the new President's policy priorities is a feature, not a bug, of democracy. And that a district court would consider shifting policy preferences or the involvement of political appointees as near-dispositive proof of an APA violation is grounds for reversal, not vindication.

Additionally, the district court criticized the NIH's use of "boilerplate language" in termination letters. App., *infra*, 89a, 91a, 129a. The *California* respondents made the same objection. Opp. at 1, 8, 31, *California*, *supra* (No. 24A910). But that is a reason to uphold the agency's decision under the APA, not to reject it, because it underscores that the agency properly treated like cases alike. See *National Cable & Telecomm. Ass'n* v. *Brand X Internet Servs.*, 545 U.S. 967, 981 (2005) ("Unexplained inconsistency is, at most, a reason for holding an interpretation to be an arbitrary and capricious change from agency practice under the Administrative Procedure Act."). The APA does not perversely require agencies to fiddle with verbiage when they implement a uniform policy globally on an even-handed basis.

For its part, the court of appeals opined that the government insufficiently considered grantees' reliance interests—a point to which the district court devoted two sentences. App., *infra*, 27a-29a, 133a. But the NIH invited grantees to request transition funds "to support an orderly phaseout of the project," mitigating any reli-

ance concerns. *E.g.*, Gov't C.A. App. 367. Moreover, the terms of the contracts do not support any claim of valid reliance interests. The grant contracts authorize termination when "an award no longer effectuates the program goals or agency priorities." 2 C.F.R. 200.340(a)(4). Grantees can hardly claim unfair surprise when the new Administration took a different view of the NIH's priorities.

At bottom, the district court disagreed with the Administration's view that federal science funding should not support DEI or gender ideology and accused "[t]he new Administration" of "weaponizing what should not be weaponized." App., *infra*, 52a. But the district court politicized what should not be politicized: the Judiciary. When courts criticize executive-branch officials for "their haste to appease the Executive," *id.* at 140a, and dismiss the President's goal of "'making America great'" as a "guise," *id.* at 53a (citation omitted), they impermissibly "substitute [their] own policy judgment for that of the agency." *Prometheus Radio*, 592 U.S. at 423.

B. The Other Factors Support A Stay

In deciding whether to grant emergency relief, this Court also considers whether the underlying issues warrant its review, whether the applicant likely faces irreparable harm, and, in close cases, the balance of the equities. See *Hollingsworth*, 558 U.S. at 190. Those factors overwhelmingly support relief here.

1. The issues raised by this case warrant this Court's review

The district court's order directs the NIH to continue paying $783 million in federal grants that are undisputedly counter to the Administration's priorities. This Court has already intervened to stay a materially identical order, *California*, 145 S. Ct. at 968, and the same course is even more warranted here given the district court's brazen refusal to follow controlling Supreme Court precedent.

The need for this Court's intervention is especially acute given lower courts'

ongoing disagreement over the proper venue for grant-termination suits. Notwithstanding this Court's guidance in *California*, the circuits are "divided" over when grant-termination suits belong in the Court of Federal Claims. Order at 3, *New York* v. *United States Dep't of Educ.*, No. 25-1424 (2d Cir. June 20, 2025). The Fourth Circuit has held that, when—as here—the Executive terminates grants "awarded by federal executive agencies to specific grantees from a generalized fund," challenges to that termination belong in the Court of Federal Claims. *Sustainability Inst.*, 2025 WL 1587100, at *2. A D.C. Circuit panel reached a similar conclusion, though the en banc court disagreed over four judges' dissent. *Widakuswara*, 2025 WL 1288817, at *4; see *Widakuswara*, 2025 WL 1521355, at *1; *id.* at *2 & n.* (Katsas, J., joined by Henderson, Rao & Walker, JJ., dissenting in part). Following *California*, numerous district courts have also held that they lack jurisdiction. See p. 5, n.2, *supra*.

By contrast, the First Circuit joined the Second and Ninth Circuits in allowing funding-termination suits to proceed in district court—with the Ninth Circuit denying en banc review at an early stage of the case over ten judges' dissent. App., *infra*, 23a-24a; Order at 3, *New York*, *supra*; *Community Legal Servs. in E. Palo Alto* v. *United States Dep't of Health & Human Servs.*, 137 F.4th 932, 937-939; *Community Legal Servs.*, 135 F.4th at 852-855 (Bumatay & VanDyke, JJ., joined by Callahan, Ikuta, Bennett, R. Nelson, Bade, Collins, Lee & Bress, JJ., dissenting from the denial of rehearing en banc). Numerous district courts have asserted jurisdiction in similar cases, relying on tenuous or nonexistent distinctions of *California*. See p. 4 n.1, *supra*. For example, one district court ordered the EPA to resume $180 million in "climate justice" grants on the dubious theory that *California* does not apply to claims seeking declaratory relief. *Green & Healthy*, 2025 WL 1697463, at *3, *14. Another court ordered the government to restore $2.8 billion in climate funding, characteriz-

ing plaintiffs as seeking "equitable relief" in the form of "reinstatement of their grants and the recovery of specific money"—even though that was the exact remedy sought in *California*. *Climate United*, 2025 WL 1131412, at *1, *11. And a third court ordered HHS to resume 23 States' share of $11 billion in COVID grants only by dismissing *California* as a "cursory" "three-page stay order." *Colorado*, 2025 WL 1426226, at *9, *24.

As the en banc D.C. Circuit has observed, the jurisdictional question is an "important issue" that has been "recurren[t]" in recent months. *Widakuswara*, 2025 WL 1521355, at *1. Likewise, the lower courts' holdings that grant terminations based on new policy priorities are reviewable and arbitrary and capricious reflect an impermissible intrusion into executive-branch policy-making that warrant this Court's intervention. See, *e.g.*, *Heckler* v. *Lopez*, 463 U.S. 1328, 1329 (1983) (Rehnquist, J., in chambers) (stay of order requiring Secretary of Health and Human Services "immediately to reinstate benefits to the applicants"). Moreover, this Court's review is clearly and urgently needed to stop lower courts from continuing to defy this Court's *California* decision.

2. The district court's order irreparably harms the government

As the court of appeals correctly acknowledged, the district court's order irreparably harms the government by obligating it to disburse grant funds that it may never recover. App., *infra*, 31a. The government has a strong interest in safeguarding the public fisc. See *Mathews* v. *Eldridge*, 424 U.S. 319, 348 (1976). In *California*, this Court thus found irreparable harm where the government risked paying millions in grants and "[n]o grantee 'promised to return withdrawn funds should its grant termination be reinstated.'" 145 S. Ct. at 969. Respondents likewise make no such promise here. App., *infra*, 31a. While the States identify tools by which the govern-

ment could attempt to claw back "improperly paid" funds, States C.A. Opp. 27, respondents would presumably argue that any funds issued while the district court's order remains in effect were proper and not recoverable. The high likelihood that respondents will continue to drain hundreds of millions of dollars from the Treasury absent a stay establishes clear irreparable harm.

Beyond that fiscal burden, the district court's order "improperly intrudes on a coordinate branch of the Government and prevents the Government from enforcing its policies." *CASA*, 145 S. Ct. at 2561 (cleaned up). The decisions below force the Administration to continue supporting research projects that are clearly antithetical to its policies and the deeply held values of countless Americans. That alone "is enough to justify interim relief." *Ibid.*

3. The balance of the equities strongly favors the government

The balance of the equities also supports a stay. Respondents' claims for terminated grant funds are monetary, contractual disputes that they may take up later in the Court of Federal Claims without any cognizable irreparable harm. See pp. 18-27, *supra*. The government, by contrast, has an overriding interest in ensuring that discretionary funding decisions align with the President's priorities.

The court of appeals deemed respondents' asserted injuries "non-monetary" because an "abrupt cutoff in funding" might permanently disrupt research and research careers. App., *infra*, 31a-32a. But most of the respondents—which include 16 States—plainly "have the financial wherewithal to keep their programs running." See *California*, 145 S. Ct. at 969. For those who do not, the government may authorize additional funds "to support an orderly phaseout of the project," including "to support patient safety and animal welfare." Gov't C.A. App. 367.

The court of appeals largely collapsed the public-interest factor with the mer-

its, asserting that "there is a substantial public interest 'in having governmental agencies abide by the federal laws that govern their existence and operations.'" App., *infra*, 33a (quoting *League of Women Voters of the U.S.* v. *Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016)). But, as explained, the grant terminations were entirely lawful and, in any event, not properly challenged here. See pp. 18-34, *supra*.

The court of appeals also invoked the importance of "funding for 'urgent public health issues'" and "the scientific and medical advancements of the United States." App., *infra*, 33a-34a. But the Administration has determined that the terminated projects, covering topics from intersectionality to puberty in transgender teens, do *not* meaningfully advance public health. That is a policy determination for the Executive Branch, not the Judicial Branch. Moreover, federal science funding is inherently finite. A stay would not end scientific research in America; it would allow the NIH to reallocate funds to projects that better align with current priorities and that, in the Administration's view, *actually* advance public health. Courts are ill-equipped to second-guess the NIH's judgment about which scientific research best serves the American people. See *Lincoln*, 508 U.S. at 193.

C. This Court Should Issue An Administrative Stay

The Solicitor General respectfully requests that this Court grant an administrative stay while it considers this application. The district court orally directed the government to reinstate respondents' grants over a month ago. App., *infra*, 159a-160a. Yet the court waited over two weeks to issue a reasoned written decision, and the court of appeals took two weeks after that to deny a stay. Meanwhile, the government has been compelled to restore $783 million of grant money for respondents to draw down—taxpayer money that the government may well never see again. Each day the district court's order remains in place, respondents can continue to liquidate

that money from the Treasury. Given that this Court has already addressed the jurisdictional question here in a decision the district court openly defied, an administrative stay is warranted.

CONCLUSION

This Court should stay the district court's preliminary injunction. In addition, the Solicitor General respectfully requests an immediate administrative stay of the district court's order pending the Court's consideration of this application.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

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