

As for Plaintiffs' Administrative Procedure Act claims, in *NIH* the Supreme Court concluded that federal district courts have jurisdiction under the APA to review and vacate unlawful policy-level decisions that involve grants, such as agency guidance documents. *NIH*, slip op. at 3 (Barrett, J.) (finding government not entitled to stay "insofar as they vacate the guidance documents"). As Justice Barrett explained, the fact "[t]hat the agency guidance discusses internal policies related to grants does not transform a challenge to that guidance into a claim 'founded ... upon' contract that only the [Court of Federal Claims] can hear." *Id.* Thus, this Court retains jurisdiction to evaluate Plaintiffs' claim that EPA's overarching decision to terminate the entirety of the Environment and Climate Justice Block Grant program was unlawful under the APA and accordingly can set aside that decision.

Further, the *NIH* opinion leaves open the opportunity for the restoration of grants following the vacatur of such an unlawful policy decision—stating that "vacating the guidance does not necessarily void decisions made under it," and notably citing *Bowen v. Massachusetts*, 487 U.S. 879 (1988) on this point. *NIH*, slip. op. at 4. In *Bowen*, the Supreme Court recognized that following vacatur of the Secretary of Health and Human Services' decision to refuse to reimburse certain funds, the Government would likely "abide by [the court's] declaration and pay Massachusetts the requested sum" concluding that this "mere byproduct" of the payment of money did not remove jurisdiction from federal district courts. *Bowen*, 487 U.S. at 909–10. Similarly, here, Plaintiffs would expect that if the Court determined that Defendants' broad high-level actions violated the APA, Defendants would automatically restore Plaintiffs' grants in keeping with their basic obligation to comply with federal law.

In sum, *NIH* makes clear that this Court has jurisdiction to issue a declaratory judgment that EPA's actions violated the APA. *NIH* does not foreclose that this declaratory relief could

result in the restoration of grants. And, regardless, this Court has jurisdiction apart from the APA to find Defendants' actions unconstitutional and order the restoration of Plaintiffs' grants.

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Respectfully submitted,

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