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The Honorable Tiffany M. Cartwright

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON**

STATE OF ARIZONA, et al.,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,

Defendants.

Civil Action No. 2:25-cv-02015-TMC

**DEFENDANTS’ OPPOSITION TO
PLAINTIFFS’ MOTION FOR
PRELIMINARY INJUNCTION**

TABLE OF CONTENTS

1

2 INTRODUCTION..... 1

3 BACKGROUND..... 2

4 LEGAL STANDARD..... 5

5 ARGUMENT..... 5

6 I. Months-Old Grant Terminations Present No Risk of Imminent

7 Irreparable Injury..... 5

8 II. Plaintiffs are Not Likely to Succeed on the Merits..... 11

9 A. This Court Lacks Jurisdiction to Review Termination of Plaintiffs’ Grants..... 11

10 B. Plaintiffs’ Effort to Reinstate the Solar for All Only Exposes Their

11 Lack of Standing..... 18

12 C. Plaintiffs’ Substantive Claims Lack Merit..... 19

13 1. The grant terminations do not violate the APA..... 19

14 2. Termination of SFA grants is consistent with OBBBA..... 22

15 3. Plaintiffs’ constitutional claims fail under Dalton..... 24

16 III. The Equities Weigh Against Emergency Relief..... 26

17 CONCLUSION..... 27

18

19

20

21

22

23

24

25

26

TABLE OF AUTHORITIES

Cases

Albrecht v. Comm. on Emp. Benefits of the Fed. Rsrv. Emp. Benefits Sys.,
357 F.3d 62 (D.C. Cir. 2004)..... 16

Am. Ass’n of Colleges for Teacher Educ. v. McMahon,
No. 25-1281, 2025 WL 1232337 (4th Cir. Apr. 10, 2025)..... 15

BBC Brown Boveri, Inc. v. Rainier Nat. Bank,
899 F.2d 1224, 1990 WL 40269 (9th Cir. Apr. 4, 1990)..... 22

Boaz Hous. Auth. v. United States,
994 F.3d 1359 (Fed. Cir. 2021)..... 12

Brookens v. Am. Fed’n of Gov’t Emps.,
315 F. Supp. 3d 561 (D.D.C. 2018)..... 7

California v. Texas,
593 U.S. 659 (2021)..... 18

Caribbean Marine Servs. Co. v. Baldrige,
844 F.2d 668 (9th Cir. 1988)..... 5

Chavez v. United States,
660 F. Supp. 3d 964 (S.D. Cal. 2023)..... 13

Citizens to Preserve Overton Park, Inc. v. Volpe,
401 U.S. 402 (1971)..... 20

City and County of San Francisco v. Trump,
897 F.3d 1225 (9th Cir. 2018)..... 25

City of Los Angeles v. Lyons,
461 U.S. 95 (1983)..... 7

Climate United Fund v. Citibank, N.A.,
154 F.4th 809 (D.C. Cir. 2025)..... passim

Coggeshall Dev. Corp. v. Diamond,
884 F.2d 1 (1st Cir. 1989)..... 19

Columbia Gulf Transmission LLC v. FERC,
106 F.4th 1220 (D.C. Cir. 2024)..... 21

1 *Corp. for Pub. Broad. v. Fed. Emergency Mgmt. Agency,*
 2 792 F. Supp. 3d 67 (D.D.C. 2025)..... 7

3 *Dalton v. Specter,*
 4 511 U.S. 462 (1994)..... 24

5 *Deckert v. Indep. Shares Corp.,*
 6 311 U.S. 282 (1940)..... 10

7 *Dep’t of Educ. v. California,*
 8 604 U.S. 650 (2025)..... passim

9 *Dep’t of the Army v. Blue Fox, Inc.,*
 10 525 U.S. 255 (1999)..... 11, 12

11 *Dist. 4 Lodge of the Int’l Ass’n of Machinists & Aerospace Workers Local Lodge 207 v.*
 12 *Raimondo,*
 13 18 F.4th 38 (1st Cir. 2021)..... 26

14 *Dunn & Black v. United States,*
 15 492 F.3d 1084 (9th Cir. 2007)..... 12

16 *E. Bay Sanctuary Covenant v. Biden,*
 17 993 F.3d 640 (9th Cir. 2021)..... 10

18 *East Palo Alto v. U.S. Dep’t of Health & Human Servs.,*
 19 155 F.4th 1099 (9th Cir. 2025)..... 16

20 *Ecology Ctr. v. Castaneda,*
 21 574 F.3d 652 (9th Cir. 2009)..... 19

22 *Ex Parte McCardle,*
 23 74 U.S. 506 (1868)..... 25

24 *FCC v. Fox Television Stations, Inc.,*
 25 556 U.S. 502 (2009)..... 20, 21

26 *FCC v. Prometheus Radio Project,*
 592 U.S. 414 (2021)..... 20

Garcia v. Google, Inc.,
 786 F.3d 733 (9th Cir. 2015)..... 5, 10

1 *Glob. Health Council v. Trump*,
 153 F.4th 1 (D.C. Cir. 2025) 24

2

3 *Goldie’s Bookstore, Inc. v. Superior Ct. of State of Cal.*,
 739 F.2d 466 (9th Cir. 1984)..... 9, 24

4

5 *Great-West Life & Annuity Ins. Co. v. Knudson*,
 534 U.S. 204 (2002)..... 13

6

7 *Harger v. Dep’t of Lab.*,
 569 F.3d 898 (9th Cir. 2009)..... 11, 12

8

9 *Herb Reed Enters., LLC v. Fla. Ent. Mgmt., Inc.*,
 736 F.3d 1239 (9th Cir. 2013)..... 7, 10

10

11 *HIAS, Inc. v. Trump*,
 985 F.3d 309 (4th Cir. 2021)..... 11

12

13 *Hometown Connections v. Noem*,
 No. 25-cv-885, 2025 WL 1103253 (D. Md. Apr. 14, 2025) 15

14

15 *In re Aiken County*,
 725 F.3d 255 (D.C. Cir. 2013)..... 26

16

17 *Labs, Inc. v. LinkedIn Corp.*,
 31 F.4th 1180 (9th Cir. 2022)..... 9

18

19 *Larson v. Domestic & Foreign Com. Corp.*,
 337 U.S. 682 (1949)..... 24

20

21 *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*,
 591 U.S. 657 (2020)..... 23

22

23 *Lujan v. Defs. of Wildlife*,
 504 U.S. 555 (1992)..... 18

24

25 *Lydo Enters., Inc. v. City of Las Vegas*,
 745 F.2d 1211 (9th Cir. 1984)..... 10

26

27 *Maryland v. King*,
 567 U.S. 1301 (2012)..... 26

28

29 *Mass. Fair Hous. Ctr. v. U.S. Dep’t of Hous. & Urb. Dev.*,
 No. 25-cv-30041, 2025 WL 1225481 (D. Mass. Apr. 14, 2025)..... 15

1 *Match-E-Be-Nash-She-Wish Band of Pottawatomí Indians v. Patchak*,
 567 U.S. 209 (2012)..... 17

2

3 *McGuire v. United States*,
 550 F.3d 903 (9th Cir. 2008)..... 12

4

5 *Megapulse, Inc. v. Lewis*,
 672 F.2d 959 (D.C.Cir.1982)..... 13, 16

6 *Munaf v. Geren*,
 553 U.S. 674 (2008)..... 5

7

8 *Nat’l Insts. of Health v. Am. Pub. Health Ass’n*,
 145 S. Ct. 2658 (2025)..... passim

9

10 *Nken v. Holder*,
 556 U.S. 418 (2009)..... 26

11

12 *Off. of Pers. Mgmt. v. Richmond*,
 496 U.S. 414 (1990)..... 24

13 *Or. Council for Humans. v. U.S. DOGE Serv.*,
 794 F. Supp. 3d 840 (D. Or. 2025)..... 11

14

15 *Red Shield Admin., Inc. v. Kreidler*,
 No. C21-5551, 2021 WL 3630506 (W.D. Wash. Aug. 17, 2021)..... 10

16

17 *RFE/RL, Inc. v. Lake*,
 772 F. Supp. 3d 79 (D.D.C. 2025)..... 11

18

19 *Rotkiske v. Klemm*,
 589 U.S. 8 (2019)..... 23

20 *Sacora v. Thomas*,
 628 F.3d 1059 (9th Cir. 2010)..... 19

21

22 *Star Alaska v. United States*,
 14 F.3d 36 (9th Cir. 1994)..... 13

23

24 *Steel Co. v. Citizens for a Better Env’t*,
 523 U.S. 83 (1998)..... 18

25 *Sustainability Inst. v. Trump*,
 No. 25-1575, 2025 WL 1587100 (4th Cir. June 5, 2025)..... 15

26

1 *Thakur v. Trump*,
 148 F.4th 1096 (9th Cir. 2025)..... 16

2

3 *Titaness Light Shop, LLC v. Sunlight Supply, Inc.*,
 585 F. App'x 390 (9th Cir. 2014)..... 9

4

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 136 F.3d 641 (9th Cir. 1998)..... 15, 16, 17

6 *U.S. Conf. of Cath. Bishops v. U.S. Dep't of State*,
 770 F. Supp. 3d 155 (D.D.C. 2025)..... 15

7

8 *United Aeronautical Corp. v. U.S. Air Force*,
 80 F.4th 1017 (9th Cir. 2023)..... 12

9

10 *Vera Inst. of Just. v. U.S. Dep't of Just.*,
 No. 25-cv-1643, 2025 WL 1865160 (D.D.C. July 7, 2025)..... 15

11

12 *Winter v. Nat. Res. Def. Council, Inc.*,
 555 U.S. 7 (2008)..... 5

13 *Yakima Valley Mem. Hosp. v. Wash. State Dep't of Health*,
 654 F.3d 919 (9th Cir. 2011)..... 25

14

15 **Statutes**

16 5 U.S.C. § 551..... 17

17 5 U.S.C. § 706..... 19

18 28 U.S.C. § 1491..... 12, 14

19 31 U.S.C. § 1532..... 6, 8

20 42 U.S.C. § 4370f..... 6, 8

21 42 U.S.C. § 7434..... 2, 3

22

23 Greenhouse Gas Reduction Fund,
 Pub. L. No. 117-169, § 60103, 136 Stat. 1818 (2022)..... 2

24

25 One Big Beautiful Bill Act,
 Pub. L. No. 119-21, § 60002, 139 Stat. 72 (2025)..... 1, 3

26

1 **Rules**

2 Fed. R. Civ. P. 65(c)..... 27

3 **Regulations**

4 2 C.F.R. § 200.1..... 3, 4, 7

5 2 C.F.R. § 200.340..... 23

6 2 C.F.R. § 200.344..... 3, 4, 10

7 2 C.F.R. § 200.513..... 21

8

9 **Other Authorities**

10 Funding of Replacement Conts.,
60 Comp. Gen. 591 (1981)..... 8

11 Navajo Nation Oil & Gas Co.,
B-270723, 1996 WL 174689 (Comp. Gen. Apr. 15, 1996)..... 8

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INTRODUCTION

The Court should deny Plaintiffs’ Motion for Preliminary Injunction, Dkt. # 64 (“Motion”) because Plaintiffs fail to allege any imminent or irreparable harm justifying such extraordinary relief. The events underlying Plaintiffs’ claims happened *months ago*. On July 4, 2025, the One Big Beautiful Bill Act, Pub. L. No. 119-21, § 60002, 139 Stat. 72, 154 (2025) (“OBBBA”), both repealed the statute that authorized the Solar for All (“SFA”) grant program and rescinded all unobligated administrative funding for EPA to oversee the program. At that point, the “program” Plaintiffs seek to restore, Compl. 33–34, Dkt. # 1, ceased to exist by act of Congress. All that remained were grants EPA had awarded earlier, and those grants were terminated a month later, on August 7, 2025—now almost four months ago. Shortly thereafter, EPA deobligated most of the SFA funds, which have since been held in an account where they will remain available through September 2031. Plaintiffs then waited more than three months to file this Motion, during which time EPA denied Plaintiffs’ administrative appeals. Because of Plaintiffs’ delay, their closeout deadlines will pass before briefing on the Motion is complete. Prospective emergency relief will not change any of this, and therefore no basis exists to grant it.

Although the Court need not reach the merits in this expedited posture, Plaintiffs’ claims fail on the merits too. Given Congress’s repeal of the SFA program, all that is left is a dispute over the termination of Plaintiffs’ grants, which the Court lacks jurisdiction to hear. *Nat’l Insts. of Health v. Am. Pub. Health Ass’n*, 145 S. Ct. 2658, 2660 (2025) (“*NIH*”); *Dep’t of Educ. v. California*, 604 U.S. 650, 650–51 (2025); *Climate United Fund v. Citibank, N.A.*, 154 F.4th 809, 816–17, 819–23 (D.C. Cir. 2025), *petition for reh’g en banc filed*, No. 25-5122 (D.C. Cir. 2025).

Attempting to avoid this jurisdictional bar, Plaintiffs purport to challenge the end of the program, rather than grant termination. But Plaintiffs cannot demonstrate any injury independent

1 from the loss of their grants and thus lack standing to seek any broader programmatic relief. At
2 any rate, there is no program to preserve going forward, because Congress repealed it.

3 Finally, the Motion fails because EPA’s terminations of the SFA grants were reasonable
4 following OBBBA’s repeal of the statute authorizing the SFA program and rescission of funds to
5 administer it. Plaintiffs’ statutory claims fail because nothing in OBBBA required EPA to
6 continue the grants. Plaintiffs’ constitutional claims mirror the statutory claims and fail for the
7 same reasons.
8

9 **BACKGROUND**

10 The Inflation Reduction Act of 2022 (“IRA”) authorized the Greenhouse Gas Reduction
11 Fund (“GGRF”). *See* Pub. L. No. 117-169, § 60103, 136 Stat. 1818, 2065–66 (codified as § 134
12 of the Clean Air Act (42 U.S.C. § 7434)) (“Section 134”). The GGRF appropriated \$27 billion to
13 the EPA Administrator to make grants aimed at reducing or avoiding greenhouse gas emissions
14 and other forms of air pollution. *Id.* § 7434(a)–(c). Congress required EPA to obligate the grant
15 funds no later than September 30, 2024. *Id.*
16

17 Congress specifically appropriated \$7 billion to EPA “to make grants” to eligible
18 recipients “to enable low-income and disadvantaged communities to deploy or benefit from zero-
19 emission technologies” *Id.* § 7434(a)(1). EPA called this subsection (a)(1) grant program
20 Solar for All (“SFA”). Mot. 3. Congress also appropriated \$30 million to EPA for “the
21 administrative costs necessary to carry out [GGRF] activities,” including the SFA program and
22 the remaining \$20 billion in grant programs authorized by the provision. 42 U.S.C. § 7434(a)(4).
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1 In April 2024, EPA announced its selection of 60 SFA grants recipients, including
 2 Plaintiffs. Mot. 3. EPA entered into agreements with grantees by August 2024,¹ obligating the
 3 entire \$7 billion by the September 30th deadline, Mot. 3–4, and EPA amended those agreements
 4 in December 2024 without requiring additional consideration, *e.g.*, Carillo Decl., Ex. 2 at 1, Dkt.
 5 # 67-1. EPA awarded each grant under materially identical terms, and all grantees received their
 6 awards in Automatic Standard Application for Payment (“ASAP”) accounts. Compl. ¶ 5.

7
 8 Less than one year later, on July 4, 2025, Congress enacted OBBBA. Section 60002 of
 9 OBBBA “repealed” Section 134 and “rescinded” all “unobligated balances of amounts made
 10 available to carry out that section,” which included the remainder of the \$30 million appropriated
 11 to EPA to administer the GGRF grant programs. Pub. L. No. 119-21, § 60002, 139 Stat. 72, 154.

12
 13 On August 7, 2025, EPA terminated all SFA grants. Mot. 7. EPA sent each SFA grantee,
 14 including Plaintiffs, a memorandum terminating its grant. Trembl Decl. ¶ 5. These memoranda
 15 explained that termination was based on OBBBA, which “repeals the underlying authority for
 16 the Solar for All program at Section 134 of the Clean Air Act, 42 U.S.C. 7434, and rescinds
 17 unobligated amounts to carry out Section 134.” *E.g.*, Nguyen Decl., Ex. 4 at 1, Dkt. # 88-1.

18 The termination memoranda also described the closeout process that would apply to the
 19 grants. Closeout is the “process” for determining that “all applicable administrative actions and
 20 all required work of the Federal award have been completed.” 2 C.F.R. § 200.1 (defining
 21 “closeout”). The termination memoranda “encouraged” grantees “to carefully review and
 22 discharge” all closeout responsibilities. *E.g.*, Nguyen Decl., Ex. 4 at 2, Dkt. # 88-1. Among
 23 other things, the memoranda noted closeout reports were due to EPA within 120 days of
 24

25
 26 ¹ The awards were issued to Plaintiffs’ respective government instrumentalities. Trembl. ¶ 4.

1 termination—by December 5, 2025. *See id.*; 2 C.F.R. § 200.344(b). Grant subrecipients, in turn,
2 owed their closeout reports to the grantees within 90 days of termination, by November 5, 2025.
3 *Id.* § 200.344(b). Similarly, grantees and subrecipients were required to “liquidate”—*i.e.*, pay—
4 “all financial obligations incurred under” the relevant award or subaward within 120 days and 90
5 days, respectively. *Id.* §§ 200.1 (defining “unliquidated financial obligation”), 200.344(c).
6

7 The termination memoranda additionally “recognize[d] that program participants may
8 have begun to rely on” program funds and may have “made preliminary budgets, projections,
9 outlays, and staffing decisions.” *E.g.*, Nguyen Decl., Ex. 4 at 1, Dkt. # 88-1. EPA therefore
10 provided assurance that such expenses would “be remedied and remediable by the close out
11 processes.” *Id.* Shortly after termination, EPA deobligated the majority of account balances in
12 grantees’ ASAP accounts, while leaving funding obligated to cover Plaintiffs’ allowable
13 pretermination and closeout costs. Trembl Decl. ¶¶ 8–9. All grant funds are held in a Treasury
14 account, where they will remain available until September 30, 2031, to satisfy any remaining
15 obligations for allowable costs under the SFA grant agreements. *Id.* ¶ 10.
16

17 Each Plaintiff submitted a dispute to EPA challenging the termination of its grant, which
18 EPA denied as moot at the end of October 2025. Mot. 10. Plaintiffs filed their Complaint on
19 October 16, 2025. Plaintiffs then waited until November 14, 2025, to file the Motion.
20 Defendants moved to transfer this lawsuit to the District of Columbia, to be consolidated with a
21 substantively identical lawsuit filed by Harris County. Dkt. # 97. Plaintiffs, joined by Nevada,
22 also filed a parallel lawsuit in the Court of Federal Claims seeking damages from grant
23 termination. *Md. Clean Energy Ctr. v. United States*, No. 25-cv-01738 (Fed. Cl. complaint filed
24 Oct. 15, 2025).
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LEGAL STANDARD

A preliminary injunction “is an extraordinary and drastic remedy.” *Munaf v. Geren*, 553 U.S. 674, 689 (2008) (citation omitted). To obtain a preliminary injunction, the movant “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

ARGUMENT

I. Months-Old Grant Terminations Present No Risk of Imminent Irreparable Injury.

Plaintiffs bear the burden of making a “clear showing” that “irreparable injury is *likely* in the absence of an injunction.” *Winter*, 555 U.S. at 22 (emphasis in original). To meet this standard, Plaintiffs “must *demonstrate*,” not “merely allege,” a threatened irreparable injury that is both immediate and concrete. *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (emphasis in original). Raising a “speculative” chain of possibilities, *id.* at 675, or identifying a mere “possibility” of harm, *Winter*, 555 U.S. at 22, is insufficient. Moreover, the threatened harm must be linked to the claims in the litigation, such that the claims can redress the harm. *See Garcia v. Google, Inc.*, 786 F.3d 733, 744 (9th Cir. 2015) (a “mismatch” between plaintiff’s claims and the “dangers she hopes to remedy” is fatal to a request for preliminary relief). The Motion fails every aspect of this standard.

First, Plaintiffs’ requested relief is not linked to the source of their purported harm: lost funding due to grant termination. Plaintiffs’ lawsuit ultimately asks to vacate a so-called “Program Termination Directive” and restore the SFA program. *See* Mot. 2; Compl. 33–34. Plaintiffs then frame their request for preliminary relief as necessary to ensure their requested permanent injunction remains “meaningful.” Mot. 2. Plaintiffs’ goal of vacating the alleged

1 “termination directive” and restoring the program fails for several reasons, including that
2 Congress repealed the program’s authorization. *See infra* Parts II.B, II.C.2. Even if Plaintiffs
3 could secure their requested permanent relief, that relief would have no effect on Plaintiffs.
4 Restoring the SFA program will not impact Plaintiffs because the program did not grant them
5 rights or interests, which instead stem entirely from their grant agreements. Similarly, vacating
6 the alleged “termination directive” will not affect Plaintiffs’ grant terminations. The Supreme
7 Court recently made this clear in *NIH*, when it declined to stay an order vacating NIH forward-
8 looking grant guidance, while simultaneously staying vacatur of grant terminations. 145 S. Ct. at
9 2660; *see also id.* at 2661 (Barrett, J., concurring) (“Vacating the guidance does not reinstate
10 terminated grants.”).² The same reasoning applies here. Vacating the alleged “termination
11 directive” will not reinstate Plaintiffs’ grants. Because this lawsuit cannot undo grant
12 termination, there is no basis to award preliminary relief to serve Plaintiffs’ fruitless claims.
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15 *Second*, Plaintiffs have not concretely demonstrated any threatened imminent harm. The
16 material events at issue in this litigation happened months ago: Congress enacted OBBBA five
17 months ago, Mot. 6; EPA terminated Plaintiffs’ SFA grants almost four months ago, Mot. 7; and
18 EPA deobligated and removed Plaintiffs’ access to 93 percent of the grant funds shortly
19 thereafter, Treml Decl. ¶ 8. The deobligated funds have since been maintained in a Treasury
20 account, where they will remain available until September 2031. *Id.* ¶ 10; *see also* 42 U.S.C. §
21 4370f. The other seven percent of the grant funds remain in Plaintiffs’ ASAP accounts. *See*
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24 ² There is no forward-looking guidance here. EPA will not issue new SFA grants because
25 OBBBA repealed grant-making authority, *see* 31 U.S.C. § 1532, and even under the now-
26 repealed Section 134, “the last day that Defendants could make new obligations for SFA” was
over a year ago, Mot. 22.

1 Treml. Decl. ¶ 9; Mot. 8. Plaintiffs have not shown any need for an injunction to maintain the
2 status quo with respect to the funds.

3 Likewise, Plaintiffs ask the Court to enjoin EPA from taking administrative steps that
4 have already occurred. EPA denied Plaintiffs' requests to undo the grant terminations as moot at
5 the end of October 2025, and the closeout deadline for Plaintiffs to liquidate obligations under
6 those grants was December 5, 2025. Whatever harm Plaintiffs suffered by EPA's adherence to
7 the administrative and closeout process already occurred and cannot justify the forward-looking
8 emergency relief that Plaintiffs seek. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 103 (1983)
9 (“[P]ast wrongs do not in themselves amount to that real and immediate threat of injury
10 necessary to make out a case or controversy.”); *Corp. for Pub. Broad. v. Fed. Emergency Mgmt.*
11 *Agency*, 792 F. Supp. 3d 67, 81 (D.D.C. 2025) (“[P]ast harm’ . . . does not justify forward-
12 looking relief.”) (quoting *Brookens v. Am. Fed’n of Gov’t Emps.*, 315 F. Supp. 3d 561, 567
13 (D.D.C. 2018)).

14 Plaintiffs employ invention and innuendo to circumvent the requirements of imminent
15 and irreparable harm. These tactics fail to meet their burden. *See Herb Reed Enters., LLC v.*
16 *Fla. Ent. Mgmt., Inc.*, 736 F.3d 1239, 1250 (9th Cir. 2013) (“cursory and conclusory” assertions
17 that are not “grounded in any evidence or showing” do not suffice to show irreparable harm).
18 Plaintiffs’ assertion that upcoming liquidation deadlines require them “to break agreements and
19 terminate employment contracts,” Mot. 24, is incorrect. Liquidating obligations simply means to
20 pay them, *see* 2 C.F.R. § 200.1 (defining “unliquidated financial obligation”)—it does not require
21 Plaintiffs to terminate agreements. Similarly, Plaintiffs’ representations that the deobligated SFA
22 grant funds “disappeared from [their] accounts without explanation” and that Defendants “have
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1 failed to assure Plaintiffs” that EPA will not reprogram them, Mot. 22, are, at best, mistaken.
 2 The termination memoranda sent to Plaintiffs months ago explained that the grants were
 3 terminated and that grantees could continue to request payment from their ASAP accounts for
 4 allowable pretermination and closeout costs, *e.g.*, Nguyen Decl., Ex. 4 at 1–2, Dkt. # 88-1, thus
 5 explaining why funds were both removed from and retained in ASAP accounts. As Plaintiffs
 6 acknowledge, Mot. 22, EPA since explained in another litigation that the funds were deobligated
 7 upon termination and all remaining SFA funds are in the same Treasury account, where they will
 8 remain available until September 30, 2031, per 42 U.S.C. § 4370f, to satisfy any remaining
 9 obligations for allowable costs under the SFA agreements, Ex. A at 7. EPA provided this same
 10 explanation to Plaintiffs before they filed their Motion, *see* Ex. A at 1, and is again providing it
 11 here, Trembl Decl. ¶¶ 8–10. Plaintiffs therefore have no basis for speculation about EPA
 12 reprogramming or repurposing the funds. The news articles and inapposite case law cited by
 13 Plaintiffs do not change that, as they have nothing to do with SFA funds or funds deobligated due
 14 to grant terminations. *See* Mot. 9, 23. And Plaintiffs’ belief that EPA prematurely deobligated
 15 the funds and is holding them in the wrong type of account, *see* Mot. 22, is incorrect.³

18 *Third*, any harm purportedly resulting from grant termination—for example, not
 19 completing projects, terminating sub-awards, and suspending or firing employees, *see* Mot. 24—

21 ³ OBBBA’s repeal of the statute authorizing SFA grants bars replacement grants. *See* 31 U.S.C. §
 22 1532. As the Comptroller General has explained, “[a]bsent the replacement contract doctrine, an
 23 agency which terminates a contract would be required to deobligate the prior year funds which
 24 support the terminated contract.” Navajo Nation Oil & Gas Co., B-270723, 1996 WL 174689, at
 25 *3 (Comp. Gen. Apr. 15, 1996); *see also* Funding of Replacement Contrs., 60 Comp. Gen. 591,
 26 596 (1981) (when a contract is terminated for the government’s convenience, “[t]he original
 funding obligation is extinguished upon termination” and “must be deobligated to the extent it
 exceeds termination costs”).

1 is not irreparable because it is economic. *See Climate United*, 154 F.4th at 829 (finding similar
 2 allegations of economic harm stemming from EPA’s termination of grants from the other GGRF
 3 programs was not irreparable); *see also, e.g., hiQ Labs, Inc. v. LinkedIn Corp.*, 31 F.4th 1180,
 4 1188 (9th Cir. 2022) (“[M]onetary injury is not normally considered irreparable.”) (citation
 5 omitted); *Goldie’s Bookstore, Inc. v. Superior Ct. of State of Cal.*, 739 F.2d 466, 471 (9th Cir.
 6 1984) (“Mere financial injury . . . will not constitute irreparable harm if adequate compensatory
 7 relief will be available in the course of litigation.”). Plaintiffs can close out their SFA grants
 8 while also seeking damages in their litigation before the Court of Federal Claims.⁴

9
 10 Recognizing economic harm does not suffice, Plaintiffs masquerade economic
 11 consequences as damage to Plaintiffs’ reputations with their partners and stakeholders. But
 12 Plaintiffs offer no evidence of anyone deriding Plaintiffs in the three months since their grants
 13 were terminated. *See* Mot. 24. To the contrary, Plaintiffs submit only perfunctory suppositions
 14 that reputational harm is *possible*, *see* Wang Decl. ¶ 42, Dkt. # 78; Mahony Decl. ¶ 37, Dkt. # 73,
 15 and public comments blaming the federal government, and not Plaintiffs, for uncertainty
 16 surrounding federal programs, *see* Carrillo Decl. ¶¶ 30–32, Dkt. # 67; *id.* Ex. 7 at 489, 519–22,
 17 527–28, 530, Dkt. # 67-1; *id.* Ex. 8 at 554–55. Plaintiffs’ speculation that EPA’s termination will
 18 somehow redound on *Plaintiffs’* reputations thus is undermined by Plaintiffs’ own evidence and
 19 does not support injunctive relief. *See Titaness Light Shop, LLC v. Sunlight Supply, Inc.*, 585 F.
 20 App’x 390, 391 (9th Cir. 2014) (“[A] finding of reputational harm may not be based on
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⁴ Plaintiffs control their compliance with closeout requirements and thus can avoid any self-inflicted risk of non-compliance. *See* Mot. 24.

1 ‘pronouncements [that] are grounded in platitudes rather than evidence.’”) (quoting *Herb Reed*
 2 *Enters.*, 736 F.3d at 1250).

3 *Finally*, Plaintiffs’ months-long delay in filing the Motion underscores the lack of any
 4 irreparable harm. *See Lydo Enters., Inc. v. City of Las Vegas*, 745 F.2d 1211, 1213 (9th Cir.
 5 1984) (“A delay in seeking a preliminary injunction is a factor to be considered in weighing the
 6 propriety of relief.”). OBBBA was enacted, the grants were terminated, and the lion’s share of
 7 funds were deobligated months ago. And Plaintiffs have long known the 120-day closeout
 8 deadline was coming. EPA specifically identified the deadline four months ago and “encouraged
 9 [Plaintiffs] to carefully review and discharge [their] closeout responsibilities.” *E.g.*, Nguyen
 10 Decl., Ex. 4 at 2, Dkt. # 88-1. EPA again notified Plaintiffs of the deadline on October 1, more
 11 than a month before Plaintiffs filed this Motion. *See, e.g., id.* Ex. 7 at 1. The 90-day deadline for
 12 subrecipient reports and liquidation passed before Plaintiffs filed the Motion. *See* 2 C.F.R. §
 13 200.344(b)–(c). And Plaintiffs’ 120-day closeout deadline will pass on December 5, 2025—
 14 before briefing on the Motion has concluded. Plaintiffs’ delay both moots their Motion and
 15 belies any manufactured emergency based on the closeout deadline. *See Red Shield Admin., Inc.*
 16 *v. Kreidler*, No. C21-5551, 2021 WL 3630506, at *6 (W.D. Wash. Aug. 17, 2021) (three-month
 17 delay caused “self-inflicted quandary” and “weigh[ed] against a finding of irreparable harm”);
 18 *see also Garcia*, 786 F.3d at 746 (three-month delay “undercut” irreparable harm).⁵
 19
 20
 21

22
 23 ⁵ The availability of a forum in which to seek a damages remedy, Plaintiffs’ months-long delay in
 24 filing, and Plaintiffs’ lack of dependence on SFA funds for survival make the cases cited by
 25 Plaintiffs inapposite. *See Deckert v. Indep. Shares Corp.*, 311 U.S. 282, 290 (1940) (insolvent
 26 defendant lacked adequate funds to pay a damages remedy); *E. Bay Sanctuary Covenant v.*
Biden, 993 F.3d 640, 677–78 (9th Cir. 2021) (no “vehicle for recovery” of damages and plaintiffs
 filed for preliminary relief the day the challenged government actions were issued); *HLAS, Inc. v.*
Trump, 985 F.3d 309, 326 (4th Cir. 2021) (local affiliates likely to close); *Or. Council for*

1 **II. Plaintiffs are Not Likely to Succeed on the Merits.**

2 Plaintiffs cannot demonstrate any likelihood of success on the merits. *First*, the Court
 3 lacks jurisdiction to remedy grant termination, because such claims are contractual and belong in
 4 the Court of Federal Claims under the Tucker Act. *Second*, Plaintiffs cannot avoid the
 5 jurisdictional bar by challenging EPA’s termination of the SFA program in general, because
 6 Plaintiffs lack standing to raise claims about the repealed program, apart from their challenge to
 7 their individual grant termination. *Third*, EPA’s decision to terminate SFA grants after OBBBA’s
 8 enactment was lawful and reasonable; EPA did not violate any provision of OBBBA; and
 9 Plaintiffs’ purported constitutional claims are just claims that OBBBA bars termination and
 10 therefore fail for the same reasons.
 11

12 **A. This Court Lacks Jurisdiction to Review Termination of Plaintiffs’ Grants.**

13 The only cognizable harm to Plaintiffs is EPA’s termination of their SFA grants. But the
 14 Court lacks jurisdiction to review those terminations. As recent Supreme Court decisions make
 15 abundantly clear, *see NIH*, 145 S. Ct. at 2660 and *California*, 604 U.S. at 651, challenges to grant
 16 terminations are contract claims that must be pursued in the Court of Federal Claims.
 17

18 Sovereign immunity “shields the Federal Government and its agencies from suit” unless
 19 Congress has expressly waived such immunity and consented to be sued. *Harger v. Dep’t of*
 20 *Lab.*, 569 F.3d 898, 903 (9th Cir. 2009) (quoting *Dep’t of the Army v. Blue Fox, Inc.*, 525 U.S.
 21 255, 260 (1999)). “Such waiver cannot be implied, but must be unequivocally expressed.”
 22

23 _____
 24 *Humans. v. U.S. DOGE Serv.*, 794 F. Supp. 3d 840, 857, 891 (D. Or. 2025) (loss of “stable
 25 humanities funding created by Congress 50 years ago” would cause “catastrophic” harm to
 26 plaintiffs “heavily or entirely” dependent on funding) (quotations omitted); *RFE/RL, Inc. v. Lake*,
 772 F. Supp. 3d 79, 85 (D.D.C. 2025) (halting use of funds would “result in the complete
 shuttering of the plaintiff’s business”).

1 *McGuire v. United States*, 550 F.3d 903, 910 (9th Cir. 2008) (citation omitted). “The Supreme
2 Court has called this a ‘high standard.’” *Harger*, 569 F.3d at 903–04 (quoting *Blue Fox*, 525
3 U.S. at 261). Unless a plaintiff “satisfies the burden of establishing that its action falls within an
4 unequivocally expressed waiver of sovereign immunity by Congress, it must be dismissed.”
5 *McGuire*, 550 F.3d at 910 (quoting *Dunn & Black v. United States*, 492 F.3d 1084, 1088 (9th Cir.
6 2007)).

7
8 Plaintiffs do not identify an unequivocal and express waiver of sovereign immunity for
9 their claims. Nor could they. The APA provides a limited waiver of sovereign immunity only for
10 claims against the United States “seek[ing] relief other than money damages,” *United*
11 *Aeronautical Corp. v. U.S. Air Force*, 80 F.4th 1017, 1022 (9th Cir. 2023) (quoting 5 U.S.C. §
12 702), and that waiver does not apply “if any other statute that grants consent to suit expressly or
13 impliedly forbids the relief which is sought,” *California*, 604 U.S. at 651 (same). “Where a
14 statute vests exclusive jurisdiction over a category of claims in a specialized court (*e.g.*, the
15 Court of Federal Claims), it ‘impliedly forbids’ an APA action brought in federal district court.”
16 *United Aeronautical*, 80 F.4th at 1022.

17
18 The Tucker Act “impliedly forbids” the relief sought here. Under the Tucker Act, the
19 “United States Court of Federal Claims shall have jurisdiction to render judgment upon any
20 claim against the United States founded” on “any express or implied contract with the United
21 States.” 28 U.S.C. § 1491(a)(1). This prohibition extends to claims founded on grants that are
22 implemented through “contracts to set the terms of and receive commitments from recipients.”
23 *Boaz Hous. Auth. v. United States*, 994 F.3d 1359, 1368 (Fed. Cir. 2021).

1 Importantly, “[t]his jurisdictional inquiry cannot turn on a plaintiff’s preferred
2 characterization of its claim, lest we upset the carefully modulated waiver of sovereign immunity
3 and grant of remedies for breach of contract embodied in the Tucker Act.” *Climate United*, 154
4 F.4th at 820 (quotation omitted). In other words, “courts do not allow a plaintiff’s artful pleading
5 to dictate whether a claim is . . . contractual in nature” for the purpose of determining if the
6 Tucker Act applies. *Chavez v. United States*, 660 F. Supp. 3d 964, 972 (S.D. Cal. 2023)
7 (quotations omitted). For example, “if an action arises primarily from a contractual undertaking,
8 jurisdiction lies in the Claims Court regardless of the fact that the loss resulted from the negligent
9 manner in which defendant performed its contract.” *Id.* (quotations omitted). Thus, regardless
10 of how Plaintiffs’ claims are styled—*i.e.*, as challenges “under the APA and Constitution,” *see*
11 Mot. 11—this court lacks jurisdiction if the claim is “at its essence” contractual, which is the
12 case here. *N. Star Alaska v. United States*, 14 F.3d 36, 37 (9th Cir. 1994) (quoting *Megapulse,*
13 *Inc. v. Lewis*, 672 F.2d 959, 967–68 (D.C.Cir.1982)).

14
15
16 The Supreme Court recently emphasized the preclusive scope of the Tucker Act in
17 litigation challenging grant terminations. *See NIH*, 145 S. Ct. at 2660; *California*, 604 U.S. at
18 650. In *California*, certain states obtained a temporary restraining order “enjoining the
19 Government from terminating various education-related grants” and requiring the Government to
20 pay grant obligations. 604 U.S. at 650. The Supreme Court stayed the district court order,
21 holding that “the Government is likely to succeed in showing the District Court lacked
22 jurisdiction” because “the APA’s limited waiver of immunity does not extend to orders ‘to
23 enforce a contractual obligation to pay money’ along the lines of what the District Court
24 ordered.” *Id.* at 651 (quoting *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 212
25
26

1 (2002)). “Instead, the Tucker Act grants the Court of Federal Claims jurisdiction over suits
2 based on ‘any express or implied contract with the United States.’” *Id.* (quoting 28 U.S.C. §
3 1491(a)(1)).

4 Removing any doubt, the Supreme Court reiterated this conclusion in *NIH*. There, the
5 district court purported to “vacat[e] the Government’s termination of various research-related
6 grants.” 145 S. Ct. at 2660. Relying on its reasoning in *California*, the Supreme Court stayed
7 the judgment vacating grant terminations. The Court explained that the APA “does not provide
8 [district courts] with jurisdiction to adjudicate claims based on [federal] grants or to order relief
9 designed to enforce any obligation to pay money pursuant to those grants.” *Id.* (quotations
10 omitted); *see also id.* at 2662 (Barrett, J., concurring) (“[M]y preliminary judgment is that the
11 plaintiffs’ challenges to the grant terminations belong in the CFC.”). The only judgment the
12 Supreme Court did not stay was the district court’s decision vacating NIH’s “[g]oing forward”
13 policy guidance—a decision which did not (and could not) reinstate the terminated grants. *Id.* at
14 2661 (Barrett, J., concurring).

15
16
17 Following *California* and *NIH*, the D.C. Circuit concluded that APA and regulatory
18 claims brought by other GGRF grantees challenging terminations of their grants fell under the
19 exclusive jurisdiction of the Tucker Act. *Climate United*, 154 F.4th at 818. In doing so, the court
20 considered whether the plaintiffs’ claims were “in essence” contractual under the two-pronged
21 analysis of *Megapulse*. First, the D.C. Circuit held that “the source of the grantees’ right to the
22 relief they seek is their agreements.” *Id.* at 821 (citing *California*, 145 S. Ct. at 968. Second, the
23 D.C. Circuit concluded that “the remedy the grantees seek is contractual in nature”: “[t]he
24 grantees requested an injunction barring EPA from terminating the grants.” *Id.* at 822. The D.C.
25
26

1 Circuit thus held that plaintiffs’ regulatory and APA claims are “essentially contractual,” and
 2 plaintiffs’ “artful pleading” could not make them otherwise. *Id.* at 823–24.⁶

3 The Tucker Act’s jurisdictional bar is also well-settled in the Ninth Circuit. In *Tucson*
 4 *Airport Authority v. General Dynamics Corp.*, 136 F.3d 641, 643 (9th Cir. 1998), a third-party
 5 plaintiff “sought declaratory and injunctive relief” under the APA, alleging the government’s
 6 failure “to assume its defense—as required by the Modification Center Contract” violated a
 7 federal statute and the U.S. Constitution. *Id.* at 643–45. First, the Ninth Circuit concluded that
 8 the Tucker Act barred plaintiff’s statutory claim, because that claim did not “exist independent of
 9 the Modification Center Contract,” *id.* at 647, and the relief sought was “at bottom, specific
 10 performance of [that contract],” *id.* at 645. Next, the Ninth Circuit concluded that the Tucker Act
 11 barred the plaintiff’s constitutional claims, as the claims were “premised on the notion that the
 12 United States has some contractual obligation to [the plaintiff] under the Modification Center
 13
 14

15
 16 ⁶ Many other courts have reached the same conclusion. *See Sustainability Inst. v. Trump*, No. 25-
 17 1575, 2025 WL 1587100, at *2 (4th Cir. June 5, 2025) (staying injunction where the grants “were
 18 awarded by federal executive agencies to specific grantees from a generalized fund”); *Vera Inst.*
 19 *of Just. v. U.S. Dep’t of Just.*, No. 25-cv-1643, 2025 WL 1865160, at *10–12 (D.D.C. July 7,
 20 2025) (dismissing APA grant termination claims); *U.S. Conf. of Cath. Bishops v. U.S. Dep’t of*
 21 *State*, 770 F. Supp. 3d 155, 163 (D.D.C. 2025) (denying TRO after concluding that the court
 22 lacked authority to “order the Government to pay money due on a contract”), *appeal dismissed*
 23 *voluntarily*, No. 25-5066, 2025 WL 1350103 (D.C. Cir. May 2, 2025); *Solutions in Hometown*
 24 *Connections v. Noem*, No. 25-cv-885, 2025 WL 1103253, at *8–10 (D. Md. Apr. 14, 2025)
 25 (denying plaintiffs’ TRO motion challenging termination of grants, concluding plaintiffs’ APA
 26 claims were “in essence contract claims”); *Mass. Fair Hous. Ctr. v. U.S. Dep’t of Hous. & Urb.*
Dev., No. 25-cv-30041, 2025 WL 1225481 (D. Mass. Apr. 14, 2025) (dissolving TRO because
 the Supreme Court’s *California* order is an “unmistakable directive that, for jurisdictional
 purposes, the proper forum for this case is the Court of Federal Claims”); *Am. Ass’n of Colleges*
for Teacher Educ. v. McMahon, No. 25-1281, 2025 WL 1232337 (4th Cir. Apr. 10, 2025)
 (staying a district court’s preliminary injunction addressing education-related grants in light of
 the Supreme Court’s *California* decision).

1 Contract.” *Id.* at 647. Accordingly, “[b]ecause the United States’s obligation is in the first
2 instance dependent on the contract, these claims are contractually-based.” *Id.* It therefore
3 affirmed the district court’s dismissal for lack of jurisdiction. This Court should reach a similar
4 conclusion here.⁷

5 Starting with “the source of the rights,” *Megapulse*, 672 F.2d at 968, Plaintiffs have no
6 claim to SFA funding except through their grants. Neither the APA, OBBBA, nor the
7 Constitution confers any substantive right on Plaintiffs to receive government funding.
8 Resolving whether EPA lawfully terminated Plaintiffs’ grants “turns entirely on the terms of” the
9 grants. *Albrecht v. Comm. on Emp. Benefits of the Fed. Rsr. Emp. Benefits Sys.*, 357 F.3d 62, 69
10 (D.C. Cir. 2004). Because Plaintiffs’ asserted rights “do not exist independent of” their grants.
11 *Tucson Airport Auth.*, 136 F.3d at 647, the “source of rights” is the grant agreements. *Id.*

12 As to the “relief sought,” *Megapulse*, 672 F.2d at 968, the heart of Plaintiffs’ challenges is
13 their desire to obtain continued disbursement of over \$2.5 billion in grants by reversing EPA’s
14

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16
17 ⁷ The Ninth Circuit’s decisions in *Thakur v. Trump*, 148 F.4th 1096, 1105 (9th Cir. 2025) and
18 *Community Legal Services in East Palo Alto v. U.S. Department of Health & Human Services*,
19 155 F.4th 1099, 1106 (9th Cir. 2025) (“*CLS*”) are distinguishable. In both cases, the Ninth
20 Circuit rejected the government’s Tucker Act arguments. However, in doing so, the court
21 reasoned that the plaintiffs in those cases had no contractual relationship with the government
22 and therefore did not seek an order requiring the government to pay an obligation under any
23 specific grant. Here, Plaintiffs indisputably had grants with the government, and the relief
24 sought would require EPA to pay funds previously obligated under those grants. Moreover, in
25 *CLS*, the plaintiffs challenged the government’s decision to end funding for an ongoing,
26 Congressionally-mandated program, and therefore the court viewed the plaintiffs’ claims as
statutory claims under the APA, rather than grant-termination claims. Here, Plaintiffs make no
claim that EPA had any obligation to them under an ongoing, Congressionally-mandated
program. Nor could they. GGRF was never ongoing. It provided an appropriation only through
September 30, 2024 for EPA to make grants under three GGRF programs, which EPA did. And
any continuing obligation EPA may have had was extinguished when Congress repealed the
authorization for the GGRF programs.

1 decision to terminate them. *See* Compl. 33–34; *see also* Mot. 22. Again, Plaintiffs’ only claim
2 to funding is through their grant agreements. Requiring EPA to undo termination and continue
3 the grants is indistinguishable from the contractual remedy of specific performance, which the
4 Court lacks jurisdiction to award. *See Tucson Airport Auth.*, 136 F.3d at 647 (Plaintiff “seeks
5 specific performance of the contract. The conclusion follows that these claims are contractually-
6 based.”); *see also NIH*, 145 S. Ct. at 2664 (Gorsuch, J., concurring) (“An order vacating the
7 government’s decision to terminate grants under the APA is in every meaningful sense an order
8 requiring the government to pay those grants.”).

9
10 Plaintiffs attempt to sidestep the Tucker Act’s jurisdictional bar and the Supreme Court’s
11 recent decisions in *California* and *NIH* by describing termination as a “policy” implemented
12 through three agency actions—the “H.R. 1 Interpretation,” the “Program Termination Directive,”
13 and the “Deobligative Directive.” Compl. ¶¶ 8, 10; Mot. 13. But the only agency action here
14 was EPA’s termination of grants, which does not amount to a rule, policy, or guidance, which *by*
15 *definition* must be forward-looking. *See, e.g.*, 5 U.S.C. § 551(4) (defining an agency “rule” to be
16 “an agency statement of general or particular applicability *and future effect* designed to
17 implement, interpret, or prescribe law or policy . . .”) (emphasis added). Grant termination is a
18 one-time act, which the Court lacks jurisdiction to review, regardless of Plaintiffs’ artful
19 pleading. *See Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S.
20 209, 215 (2012) (recognizing that 5 U.S.C. § 702 “prevents plaintiffs from exploiting the APA’s
21 waiver to evade limitations on suit contained in other statutes”). Plaintiffs’ Motion fails for this
22 reason alone.
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1 **B. Plaintiffs’ Effort to Reinstate the Solar for All Only Exposes Their Lack of**
 2 **Standing.**

3 For the reasons just explained, Plaintiffs cannot sue in this Court to challenge the
 4 termination of their grants. Aware of *NIH*, see Mot. 12, Plaintiffs bend over backwards to frame
 5 their case as challenging EPA’s decision to terminate the SFA program and its “directive” to
 6 deobligate most SFA grant funds, asking the Court to vacate those directives and to require EPA
 7 to “reinstate the SFA Program.” Compl. 33–34; see also, e.g., *id.* ¶¶ 1, 8, 10. Plaintiffs
 8 remarkably sidestep the very reason they filed suit (EPA terminated their grants) and the only
 9 legally cognizable injury they experienced (lost grant funds). In doing so, Plaintiffs walk into
 10 another limitation on this Court’s jurisdiction: standing.
 11

12 To establish Article III standing, a plaintiff must demonstrate not only that it has suffered
 13 a “personal injury fairly traceable to the defendant’s allegedly unlawful conduct” but also that the
 14 injury is “likely to be redressed by the requested relief.” *California v. Texas*, 593 U.S. 659, 668–
 15 69 (2021) (citations omitted). “To determine whether an injury is redressable, a court will
 16 consider the relationship between ‘the judicial relief requested’ and the ‘injury’ suffered.” *Id.* at
 17 671. “Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal
 18 court; that is the very essence of the redressability requirement.” *Steel Co. v. Citizens for a*
 19 *Better Env’t*, 523 U.S. 83, 107 (1998). “The party invoking federal jurisdiction bears the burden
 20 of establishing these elements.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).
 21

22 Plaintiffs cannot satisfy redressability, and therefore cannot demonstrate standing, for two
 23 reasons. *First*, an order requiring EPA to resurrect the SFA “program” is relief that this Court
 24 cannot give. OBBBA repealed the statute authorizing the SFA program and rescinded funds to
 25 carry out the program. Plaintiffs now ask this Court to effectively undo OBBBA and restore the
 26

1 now-repealed SFA program. Neither EPA nor the Court can restore the SFA program: Congress
2 has repealed it.

3 *Second*, “the judicial relief requested” cannot remedy Plaintiffs’ only injury: the loss of
4 grant funds. Even if granted, the program-related relief Plaintiffs have requested will not
5 reinstate Plaintiffs’ terminated grants. *See supra* Part I. Moreover, this Court cannot order EPA
6 to specifically perform those grants. *See supra* Part II.A; *see also Coggeshall Dev. Corp. v.*
7 *Diamond*, 884 F.2d 1, 3 (1st Cir. 1989) (“Federal courts do not have the power to order specific
8 performance by the United States of its alleged contractual obligations.”) (citing cases). Nor
9 does this Court have jurisdiction to order contract-related damages. *See supra* Part II.A.
10 Because the Court cannot redress Plaintiffs’ alleged injuries, Plaintiffs lack standing and cannot
11 prevail on the merits of their claims.
12

13 **C. Plaintiffs’ Substantive Claims Lack Merit.**

14 Aside from jurisdictional defects, Plaintiffs’ claims lack merit. OBBBA repealed Section
15 134, rescinded EPA’s administrative funding, and granted Plaintiffs no rights or interests. While
16 Congress did not direct EPA to terminate SFA grants, it did not mandate the grants’ preservation.
17 EPA’s decision to terminate SFA grants after Congress repealed the statutory authority and
18 rescinded administrative funding, was reasonable and did not violate either the APA, OBBBA, or
19 the Constitution.
20

21 1. *The grant terminations do not violate the APA.*

22 Review under the APA’s “arbitrary and capricious” standard, 5 U.S.C. § 706(2)(A), “is
23 highly deferential, presuming the agency action to be valid and affirming the agency action if a
24 reasonable basis exists for its decision.” *Sacora v. Thomas*, 628 F.3d 1059, 1068 (9th Cir. 2010)
25 (citation omitted); *see also Ecology Ctr. v. Castaneda*, 574 F.3d 652, 656 (9th Cir. 2009) (stating
26

1 that review “under the arbitrary and capricious standard ‘is narrow, and [we do] not substitute
2 [our] judgment for that of the agency.’”) (citation omitted). A court should only set aside an
3 agency decision if “there has been a clear error of judgement” “based on a consideration of the
4 relevant factors.” *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971).
5 Courts must “uphold [even] a decision of less than ideal clarity if the agency’s path may
6 reasonably be discerned.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 513–14 (2009)
7 (quotations omitted). The Court must “simply ensure[] that the agency has acted within a zone
8 of reasonableness,” and an agency decision must be upheld so long as it is “reasonable and
9 reasonably explained.” *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021).

11 EPA’s decision to terminate SFA grants was a contractual decision subject to review only
12 under contract law standards; to the extent this Court were to apply APA principles, it was also
13 “reasonable and reasonably explained.” *Prometheus*, 592 U.S. at 423. EPA explained that it “no
14 longer possesses either the substantive legal authority or the financial appropriations needed to
15 continue implementation, oversight or monitoring for waste, fraud, or abuse of these programs or
16 of Solar for All. Thus, any attempt to continue the program administration, in the absence of any
17 authorizing legislation or appropriated funds for that purpose, is no longer legally permissible.”
18 Nguyen Decl., Ex. 4 at 1, Dkt. # 88-1.

20 The lack of funding to “continue implementation, oversight or monitoring” is critical. In
21 *Climate United*, the D.C. Circuit found that EPA’s termination of grants under other GGRF
22 programs due to its “concerns about lack of oversight,” among other reasons, was reasonable.
23 154 F.4th at 828–29. Plaintiffs may prefer that EPA maintain SFA grants without oversight, but
24 Plaintiffs’ preference does not support their APA claims or allow the Court to “substitute its own
25
26

1 judgment for that of the agency.” *Columbia Gulf Transmission LLC v. FERC*, 106 F.4th 1220,
2 1230 (D.C. Cir. 2024).

3 Plaintiffs argue OBBBA did not eliminate EPA’s authority to administer SFA and cite
4 EPA’s request for additional administrative funding. *See* Mot. 16–17. But Plaintiffs cite EPA’s
5 March 2024 budget request, *before* OBBBA repealed the SFA authorization. Moreover, even if
6 OBBBA permitted EPA to maintain SFA grants, OBBBA did not limit EPA’s discretion to
7 terminate them. And while the original IRA authorized EPA to use other available funds to
8 administer the GGRF programs, it did not require EPA to spend other funds, instead leaving the
9 decision to EPA’s discretion. Continuing to administer the SFA grants after OBBBA would have
10 required EPA to shift funds away from other programs. EPA’s decision not to do so is, at
11 minimum, owed substantial deference.⁸

12
13 Finally, even if EPA’s terminations of SFA grants could be reviewed as a policy decision
14 under the APA, EPA “need not demonstrate to a court’s satisfaction that the reasons for the new
15 policy are *better* than the reasons for the old one.” *Fox Television Stations*, 556 U.S. at 515
16 (emphasis in original). Rather, “it suffices that the new policy is permissible under the statute,
17 that there are good reasons for it, and that the agency *believes* it to be better, which the conscious
18 change of course adequately indicates.” *Id.* If the agency’s decision unsettles any “serious
19 reliance interests,” the agency need only acknowledge and address those interests and explain
20 why it is nonetheless pursuing its chosen policy. *Id.* EPA did so here, including by committing
21 to proceed with the close-out process that is designed to mitigate any reliance harms through
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23
24

25 _____
26 ⁸ *See, e.g.*, 2 C.F.R. § 200.513(c) (explaining responsibilities for awarding agencies with respect to auditing requirements).

1 payment of allowable pretermination and closeout costs. Specifically, “EPA recognizes that
 2 program participants may have begun to rely on funds Due to the early nature of such
 3 expenditures, we expect any harms to interests suffered to be remedied and remediable by the
 4 close out processes outlined in the program grants and discussed below.” Nguyen Decl., Ex. 4 at
 5 1, Dkt. # 88-1. Accordingly, EPA’s actions did not violate the APA.
 6

7 *2. Termination of SFA grants is consistent with OBBBA.*

8 Purporting to rely on “plain language,” Plaintiffs argue that the grant terminations
 9 violated OBBBA. Mot. 13–15. But nothing in the text of OBBBA bars EPA from terminating
 10 grants. To overcome this, Plaintiffs rely on information beyond the statutory language, such as
 11 CBO’s finding that “the repeal and rescission together only saved [\$19 million].” Mot. 6. But
 12 CBO only estimated the immediate savings from the *rescission* of administrative funds. Grant
 13 terminations do not fall within the same category.⁹ Moreover, Congress did not merely rescind
 14 \$19 million of administrative funding and otherwise leave GGRF intact. Congress explicitly
 15 repealed Section 134. By repealing both the appropriation and the statutory provision
 16 authorizing the program, Congress removed GGRF from the United States’ policy agenda. And
 17 that, in turn, provided a reasonable basis for EPA to terminate the existing grants rather than
 18 shifting administrative funding away from grants and programs that remained under extant
 19 legislation.
 20
 21
 22

23 ⁹ Plaintiffs conflate rescission with termination. Contrary to Plaintiffs’ contention, *see* Mot. 15–
 24 19, EPA did not *rescind* their grant funds, it terminated the grants. A rescission “attempts to
 25 restore parties to the positions they would have occupied had no contract been made.” *BBC*
 26 *Brown Boveri, Inc. v. Rainier Nat. Bank*, 899 F.2d 1224, 1990 WL 40269, at *1 (9th Cir. Apr. 4,
 1990). The grant terminations, in contrast, did not restore the parties to status quo ante: Plaintiffs
 are entitled to close out their grants and receive allowable pretermination and closeout costs.

1 Under Plaintiffs’ reading of OBBBA, SFA grants issued under the repealed Section 134
2 are untouchable. Mot. 15–17. But OBBBA’s text includes no such requirement. At minimum,
3 OBBBA left EPA discretion regarding extant grants. “It is a fundamental principle of statutory
4 interpretation that absent provision[s] cannot be supplied by the courts. To do so ‘is not a
5 construction of a statute, but, in effect, an enlargement of it by the court.” *Rotkiske v. Klemm*,
6 589 U.S. 8, 14 (2019) (quotations and citations omitted). “This principle applies not only to
7 adding terms not found in the statute, but also to imposing limits on an agency’s discretion that
8 are not supported by the text.” *Little Sisters of the Poor Saints Peter & Paul Home v.*
9 *Pennsylvania*, 591 U.S. 657, 677 (2020). Here, OBBBA imposes no limits on EPA’s ability to
10 terminate SFA grants, and neither did Section 134. *See Climate United*, 154 F.4th at 827
11 (identifying no provision barring grant termination under the IRA). Plaintiffs’ statutory claim
12 fails because it adds terms to OBBBA and imposes limits on EPA not supported by the text.
13
14

15 In sum, following OBBBA, the grants no longer served any legislative agenda, and EPA
16 had no dedicated funds to administer the program, making termination of the SFA grants a
17 reasonable outcome. EPA determined that termination of SFA grants was reasonable, and it had
18 existing authority to terminate grants. 2 C.F.R. § 200.340(a)(4) (allowing agency to terminate a
19 grant when “an award no longer effectuates the program goals or agency priorities”).¹⁰
20 Accordingly, EPA’s termination of the grants did not violate OBBBA and cannot justify the
21 requested injunctive relief.
22
23
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25 ¹⁰ To the extent Plaintiffs claim that SFA grants precluded EPA from terminating pursuant to 2
26 C.F.R. § 200.340(a)(4), Mot. 17–18 n.20, that is a contractual dispute, which belongs in the
Court of Federal Claims.

1 3. *Plaintiffs’ constitutional claims fail under Dalton.*

2 Plaintiffs’ alleged constitutional claims merely repeat the alleged statutory and
3 contractual violations and thus fail to state any claim. “[C]laims simply alleging that the
4 [Executive Branch] has exceeded [its] statutory authority are not ‘constitutional’ claims.” *Dalton*
5 *v. Specter*, 511 U.S. 462, 473 (1994). “If all executive actions in excess of statutory authority
6 were *ipso facto* unconstitutional . . . there would have been little need [for] specifying
7 unconstitutional and ultra vires conduct as separate categories.” *Id.* at 472 (discussing *Larson v.*
8 *Domestic & Foreign Com. Corp.*, 337 U.S. 682, 691 n.11 (1949)).

9 Plaintiffs’ Appropriations Clause argument relies on an alleged violation OBBBA and the
10 original SFA appropriation in Section 134. Those alleged statutory violations cannot support a
11 constitutional claim. “Claims that agency officials acted in excess of their statutory authority do
12 not *ipso facto* allege violations of the ‘Separation of Powers.’” *Climate United*, 154 F.4th at 826.
13 Courts should “decline to adopt a principle that would convert every statutory challenge to
14 agency action into a constitutional claim.” *Id.* at 827; *see also Glob. Health Council v. Trump*,
15 153 F.4th 1, 14–15 (D.C. Cir. 2025) (finding that separation-of-power claims by grantees whose
16 funds were frozen could not proceed as a freestanding constitutional claim because grantees
17 “seek to enforce the statutes.”).

18 In any event, EPA followed the Appropriations Clause, which provides that “No Money
19 shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” U.S.
20 Const. art. I, § 9, cl. 7. This requires that “the payment of money from the Treasury must be
21 authorized by a statute.” *Off. of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 424 (1990). EPA
22 complied by making SFA grants. But EPA retained discretion to oversee and manage the specific
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1 grants and programs. EPA’s decision, *after Congress repealed the GGRF*, to terminate SFA
2 grants does not implicate the Appropriations Clause. Indeed, EPA would undermine
3 congressional intent by shifting funds from other, ongoing grants and programs to administer the
4 repealed SFA.

5 Nor do the grant terminations implicate the separation of powers provisions of the
6 Constitution, because OBBBA repealed Section 134. “[W]hen an act of the legislature is
7 repealed, it must be considered, except as to transactions past and closed,¹¹ as if it never existed.”
8 *Ex Parte McCardle*, 74 U.S 506, 514 (1868). The terminations effectuating Congress’ repeal of
9 the SFA program did not “thwart congressional will” but furthered it. *City and County of San*
10 *Francisco v. Trump*, 897 F.3d 1225, 1231–32 (9th Cir. 2018), cited by Plaintiffs, is a poor
11 analogy. There, the Ninth Circuit considered whether an executive order barring sanctuary
12 jurisdictions from receiving federal grants violated the separation of powers. Here, in contrast,
13 EPA awarded SFA grants under Section 134, then terminated the grants following the statute’s
14 repeal. EPA is not acting against congressional will because “[a] statute that Congress snuffed
15 out of existence by repeal leaves no residual clear statement of authorization,” and no longer
16 evinces congressional will. *Yakima Valley Mem. Hosp. v. Wash. State Dep’t of Health*, 654 F.3d
17 919, 934 (9th Cir. 2011). Congress could have included a savings clause to perpetuate SFA
18 grants, but chose not to. *See id.* Plaintiffs point to lawmakers’ statements regarding the grants,
19 Mot. 16, but OBBBA repealed Section 134 without saying more. Thus, there is no “policy
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24 ¹¹ Plaintiffs misconstrue the grant terminations as “claw[ing] back” “amounts lawfully obligated
25 to Plaintiffs. Mot. 16. EPA agrees that the repeal of Section 134 did not erase Plaintiffs’ grant
26 agreements from existence, but EPA is terminating the grants pursuant to the terms of those
grants.

1 disagreement” between EPA and Congress, rendering *In re Aiken County* inapplicable. 725 F.3d
2 255, 260 (D.C. Cir. 2013). Accordingly, Plaintiffs’ constitutional claims cannot succeed.

3 **III. The Equities Weigh Against Emergency Relief.**

4 Plaintiffs cannot establish that the balance of equities and the public interest favor
5 emergency relief. These final two factors merge where relief is sought from the government.
6 *Nken v. Holder*, 556 U.S. 418, 435 (2009). In arguing that the public interest weighs in their
7 favor, Plaintiffs primarily rely on the argument that they are likely to prevail and no public
8 interest supports the perpetuating unlawful agency action. Mot. 25. But that is just a repackaged
9 version of Plaintiffs’ merits arguments, which are unlikely to succeed, and does not provide an
10 independent basis for relief. This is especially true given Plaintiffs’ nonexistent showing of
11 irreparable harm.
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13 Meanwhile, contrary to Plaintiffs’ assertions that the government will suffer no
14 cognizable harm if a preliminary injunction is granted, “[a]ny time a [government] is enjoined by
15 a court from effectuating statutes enacted by representatives of its people, it suffers a form of
16 irreparable injury.” *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)
17 (citation omitted); *see also Dist. 4 Lodge of the Int’l Ass’n of Machinists & Aerospace Workers*
18 *Local Lodge 207 v. Raimondo*, 18 F.4th 38, 47 (1st Cir. 2021) (citing same language from *King*
19 in a decision granting a stay pending appeal of a preliminary injunction against a federal agency
20 rulemaking). This is especially true here, where an injunction would contradict Congress’s
21 repeal of all authority and administrative funding for the SFA program. EPA is legally entitled to
22 make decisions and disbursements to effectuate that congressional intent, including by
23 terminating SFA grants. Any injunction interfering with the agency’s ability to advance that
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1 policy cannot be repaired after the fact. *Climate United*, 154 F.4th at 830 (“injunction harms the
2 government and the public interest by preventing the Executive Branch from properly and
3 prudently managing billions of dollars in public funds” and the harm “from an erroneous
4 injunction” is irreparable when the government cannot recover funds spent down during
5 litigation).¹²
6

7 **CONCLUSION**

8 For the foregoing reasons, Defendants ask this Court to deny the Motion.

9 Dated: December 5, 2025

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24 ¹² If the Court grants any preliminary relief that requires EPA to disburse money, Defendants
25 respectfully requests the Court to require Plaintiffs to post bond or other security in the same
26 amount. *See* Fed. R. Civ. P. 65(c) (requiring “security in an amount that the court consider
proper to pay the costs and damages sustained by [Defendants, if] found to have been wrongfully
enjoined or restrained.”).

LOCAL RULE 7(e)(6) CERTIFICATION

I certify that this memorandum contains 8,315 words in compliance with the Local Civil Rules. This certificate was prepared in reliance on the word-count function of the word-processing system (Microsoft Word) used to prepare the document.

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