

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ASSOCIATION FOR EDUCATION
FINANCE AND POLICY, INC.; THE
INSTITUTE FOR HIGHER EDUCATION
POLICY,

Plaintiffs,

v.

LINDA MCMAHON, in her official
capacity as Secretary of Education; U.S.
DEPARTMENT OF EDUCATION,

Defendants.

Civil Action No. 25-999-TNM

**REPLY MEMORANDUM IN FURTHER SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

Adam R. Pulver (DC Bar No. 1020475)
Karla Gilbride (DC Bar No. 1005886)
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
apulver@citizen.org

Counsel for Plaintiffs

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INTRODUCTION

Congress mandated that the Institute of Education Sciences (IES) carry out a variety of extremely specific research and dissemination functions. Plaintiffs—who rely on IES’s performance of those functions to do their work—have produced evidence showing that Defendants terminated IES’s performance of many of those functions through a series of actions in February and March 2025. Specifically, Plaintiffs have shown that Defendants: (1) halted the performance of several research and dissemination activities, including activities mandated by statute, when they terminated 90 contracts, en masse, on February 10 and 11, 2025; (2) terminated the statutorily mandated Regional Educational Laboratories program (for which there is a line-item appropriation) on February 13, 2025; (3) initiated a reduction-in-force as to 90% of IES employees, without considering how the agency could perform its statutorily mandated activities with the remaining employees; and (4) terminated the remote access program for restricted-use data, effective June 1, 2025. Plaintiffs ask the Court to suspend these actions while this litigation unfolds and to order Defendants to resume the activities that Congress directed IES to perform.

Defendants do not dispute that the identified activities have been halted, and they do not offer any evidence that IES is actually complying with its statutory obligations. Defendants also do not engage with evidence showing that the challenged actions were not the products of reasoned decisionmaking and failed to consider important factors, including reliance interests. Rather, Defendants focus on various doctrines of jurisdiction and reviewability—taking the position that a federal agency’s actions to terminate the performance of specific, statutorily mandated functions is shielded from judicial review. But none of those doctrines bars the plaintiffs in this case—who, unlike those in other cases, lack contractual or employment relationships with the federal government—from obtaining relief from this Court requiring the resumption of statutorily mandated activities. And because Defendants have taken discrete actions that run afoul of

Congressional pronouncements, causing irreparable harm to Plaintiffs, the Court should grant such relief.

ARGUMENT

I. This court has jurisdiction over Plaintiffs’ claims.

A. Plaintiffs have standing to bring their claims.

Plaintiffs in this case are the Association for Education Finance and Policy (AEFP), a membership association of education researchers and practitioners, and the Institute for Higher Education Policy (IHEP), a nonprofit higher education research and advocacy organization. Both plaintiffs bring claims based on direct harms to their organizations, and AEFP also brings claims in a representational capacity based on harms to members. *See* Pls. Mem. (ECF 6-1) at 18–24. Informational injuries are among the harms providing a basis for both organizational and associational standing. *Id.*

1. Plaintiffs do not invoke a diversion-of-resources theory of standing.

Defendants’ opposition separates its standing discussion into three categories: organizational, associational, and informational. *See* Opp’n (ECF 16) 7–13. In so doing, Defendants seem to misunderstand the nature of organizational standing present in this case.

Organizational standing is “the label assigned to the *capacity* in which the organization contends it has been harmed; it is not a separate *type* of injury.” *EPIC v. Pres. Adv. Comm’n on Election Integrity*, 878 F.3d 371, 381 (D.C. Cir. 2017) (Williams, J., concurring). “If an organization *qua* organization is injured, it has a right to the redress thereof just like a natural plaintiff.” *Indus. Energy Consumers of Am. v. FERC*, 125 F.4th 1156, 1167 (D.C. Cir. 2025) (Henderson, J., concurring). Organizational standing—that is, standing to sue for redress of injuries experienced by the organization itself—“has a pedigree going back to the founding.” *Id.*

What Defendants address in challenging “organizational standing” is a specific kind of

injury on which an organization can rely to show standing: an injury to the organization’s interests that causes that organization to divert resources—what is often referred to as *Havens* standing. *See* Opp’n 6–7 (citing *EPIC*, 878 F.3d at 378). The two-pronged test described by Defendants comes into play when an organizational plaintiff asserts a *Havens*-type injury. *See Conn. Parents Union v. Russell-Tucker*, 8 F.4th 167, 175 (2d Cir. 2021) (recognizing that diversion-of-resources standard for organizational injury applies to an “organization that is *not* directly regulated or affected by a challenged law or regulation”). Here, neither Plaintiff asserts a *Havens*-type injury. Accordingly, the test addressed by Defendants does not apply.

2. IHEP has standing to challenge the termination of its access to restricted-use data.

Where a plaintiff is “an object of the action (or forgone action) at issue,” “there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561–62 (1992). IHEP, which was granted a license that allowed it to access restricted-use data remotely, *see* Voight Decl. (ECF 6-10) ¶ 17, is “an object of the action” terminating access to that data effective June 1, 2025. IHEP’s standing to challenge that action is no different from any other plaintiff’s challenge to the termination or denial of a license. *See, e.g., Parker v. District of Columbia*, 478 F.3d 370, 376 (D.C. Cir. 2007) (“We have consistently treated a license or permit denial pursuant to a state or federal administrative scheme as an Article III injury.”).

3. IHEP and AAFP have informational standing as to all of their claims.

“The law is settled that ‘a denial of access to information’ qualifies as an injury in fact ‘where a statute (on the claimants’ reading) requires that the information be publicly disclosed and there is no reason to doubt their claim that the information would help them.’” *Env’tl. Def. Fund v. EPA*, 922 F.3d 446, 452 (D.C. Cir. 2019) (quoting *Friends of Animals v. Jewell*, 824 F.3d 1033,

1040–41 (D.C. Cir. 2016)). As Plaintiffs have explained, these elements are satisfied as to both AEFP and IHEP as organizations, and as to AEFP members. Pls. Mem. 18–24.

Defendants make two cursory arguments in response. First, they say that “many of Plaintiffs’ members have not demonstrated that they do not have access to current data or information that they seek from the Institute.” Opp’n 11. This ignores facts in the record, including AEFP Member Kevin Gee’s statement that he currently cannot access restricted-use data *at all* because Defendants have not responded to his requests about renewing his license, which expired in January. *See* Gee Decl. (ECF 6-8) ¶ 14. Moreover, contrary to Defendants’ suggestion, an informational injury does not require a *complete* deprivation of access to information. Delays and difficulties in accessing information also support informational injury. *See, e.g., Byrd v. EPA*, 174 F.3d 239, 243–44 (D.C. Cir. 1999). Regardless, Plaintiffs have established informational injury with non-speculative evidence that, imminently, they will be completely denied access to information as a result of the challenged actions. *See Union for Concerned Scientists v. DOE*, 998 F.3d 926, 930 (D.C. Cir. 2021) (recognizing that non-speculative increased risk of future denial of access to information can serve as basis for informational injury).

Beyond the complete denial of restricted-use data to IHEP after June 1, 2025, IHEP, AEFP, and AEFP members will also all be denied the information that would have been collected by terminated data collections like the National Postsecondary Student Aid Study, the Early Childhood Longitudinal Study, Kindergarten: 2024, and the National Assessment of Educational Progress 17-year-old assessment. IHEP, AEFP, and AEFP members have explained how they would have relied on this data in their work, and “there is no reason to doubt their claim that the information would help them.” *Env’tl. Def. Fund*, 922 F.3d at 452. *See* Harris Decl. (ECF 6-6) ¶ 7; Gee Decl. ¶ 12–13; Stange Decl. (ECF 6-9) ¶ 14; Voight Decl. ¶ 12. That the information is not

yet in Defendants' possession does not distinguish this case from *FEC v. Akins*, 524 U.S. 11, 21 (1998), where the Supreme Court held that plaintiffs challenging an agency's failure to collect information had standing based on the resulting "inability to obtain information" from the agency.

Second, Defendants assert that "in many cases [Plaintiffs] cannot connect [their informational injury] to a statutory violation rather than an exercise of proper discretion." Opp'n 11. But Plaintiffs' opening memorandum cites eleven statutory provisions that require IES to collect and disseminate all of the information that they are being deprived of as a result of the challenged actions. *See* Pls. Mem. 18–19. Even if Defendants had attempted to explain otherwise, their argument goes to the merits, not to standing. And for purposes of standing, the Court must assume that Plaintiffs are correct on the merits. *See Ctr. for Biological Diversity v. U.S. Int'l Dev. Fin. Corp.*, 77 F.4th 679, 685 (D.C. Cir. 2023).

4. AEFP has associational standing based on injuries to its members.

AEFP's members have suffered additional cognizable harm as a result of Defendants' actions. Although Defendants say that these injuries "rely on speculation," Opp'n 12–13, AEFP members have explained that the ongoing delays in the data risk review process have forced them to shelve, change, or postpone research. *See* Pls. Mem. 22 (collecting evidence). This is based on the months-long uncertainty—resulting in, at best, lengthy delays, already in existence, as confirmed by the record. *See, e.g.,* Voight Decl. ¶ 21 (noting that a request that would typically be resolved in 5 to 10 business days has been pending since February). This delay and uncertainty, whether or not their submissions will *eventually* be approved, causes harm.

Moreover, that IES is not currently acting on AEFP members' grant proposals is not speculative. AEFP Member Kevin Gee explained how IES's own "website gives indications that review of the proposal is not actually underway," Gee Decl. ¶ 10, and Defendants have ceased the

program by which they conducted the statutorily mandated peer review of grant applications.¹ These facts show that Defendants have terminated the review process.

Finally, *Clapper v. Amnesty International, USA*, 568 U.S. 398 (2013), cited by Defendants, has no relevance to AEFM Member Cara Jackson's termination. Jackson has attested to her understanding of why she was terminated. *See* Jackson Decl. (ECF 6-5) ¶ 11. Defendants have provided no reason to doubt that understanding, and the connection between the elimination of the position of an individual who was working on specific grants and contracts, to the recent termination of those grants and contracts, is not "highly attenuated." Opp'n 12.

B. The Tucker Act does not apply here.

When Congress vested IES with mandatory duties, it largely did not specify whether IES was required to carry out those duties via ED employees, or whether IES could use contractors to carry out that role. By the same token, Plaintiffs do not seek a say in whether IES's research and dissemination activities are performed by ED employees directly or by contractors. Their injuries, and their claims, arise from the fact that these activities are not being carried out by anyone. Defendants argue that, because IES chose to use contractors to perform some of its statutory duties, its failure to carry out those duties cannot be challenged through the APA, but, under the Tucker Act, can be challenged only via a contract claim in the Court of Federal Claims. Opp'n 13–14. As noted in a concurring statement in *Widakuswara v. Lake*, however, where Congress has "created a freestanding statutory entitlement," "the government cannot prevent enforcement of statutes through the APA merely by incorporating the statutes into contracts." No. 25-5144, 2025 WL 1288817, *4 n.5 (D.C. Cir. May 3, 2025) (unpublished order), pet. for reh'g en banc pending (citing

¹ USASpending.gov, Contract Summary, Award ID 91990022C0066, https://www.usaspending.gov/award/CONT_AWD_91990022C0066_9100_-NONE_-NONE-.

Megapulse, Inc. v. Lewis, 672 F.2d 959, 968 (D.C. Cir. 1982)).

The Tucker Act does not “deny a court jurisdiction to consider a claim that is validly based on grounds other than a contractual relationship with the government.” *Megapulse*, 672 F.2d at 968. Whether an action is one to enforce a contractual obligation “depends both on the source of the rights upon which the plaintiff bases its claims, and upon the type of relief sought (or appropriate).” *Id.* Here, unlike in *Widakuswara*, Plaintiffs do not have a contractual relationship with the government, and their claims are not based on a contractual relationship. Rather, they are based on rights derived from statutes, including the Education Sciences Reform Act and the Higher Education Opportunity Act. In addition, whereas the Court of Federal Claims can award only money damages, Plaintiffs do not seek monetary relief. Rather, they ask the Court to hold unlawful and set aside specific agency actions. That relief is “precisely the relief that is afforded—indeed, *required*—by and routinely granted under the APA,” even if “after a court sets aside agency action, a natural consequence may be the release of funds withheld pursuant to that action,” *AIDS Vaccine Advocacy Coal. v. U.S. Dep’t of State*, No. CV 25-00400 (AHA), 2025 WL 752378, at *8 (D.D.C. Mar. 10, 2025). This conclusion is commanded by *Bowen v. Massachusetts*, 487 U.S. 879 (1988), where the Court held that a district court had jurisdiction to set aside an agency’s determination that certain services were not health-care services and thus were nonreimbursable under Medicaid. 487 U.S. at 910. In so doing, it rejected the argument that such relief was monetary, and thus only available in the Court of Claims—even though “it [w]as likely that the Government will abide by this declaration and reimburse Massachusetts the requested sum.” *Id.* So too here, an order that Defendants’ termination of the programs and activities at issue here was unlawful, and that Defendants therefore must resume those programs and activities, as requested in Plaintiffs’ Proposed Order (ECF 12-3) ¶ 2, would “not order [any] amount to be paid,” or “purport to be

based on a finding that the Federal Government owed” anyone “any amount of money.” *Id.* See also *Widakuswara*, 2025 WL 1288817, at *5 n.8 (noting district court’s order of agency to “resume [its] statutorily required programming levels” was not stayed).

Although Defendants rely on the Supreme Court’s stay order in *Department of Education v. California*, 145 S. Ct. 966 (2025), that order did not purport to overrule *Megapulse* or *Bowen*. In *California*, a group of states challenged the termination of their federal grants, and the district court issued a temporary restraining order enjoining those terminations and directing the government to “continue paying obligations as they accrue.” *Id.* at 968. The Supreme Court, in a brief 5-4 decision granting a stay of that order, held that the government was “likely to succeed in showing the District Court lacked jurisdiction to order the payment of money under the APA” because “the 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.” *Id.* (quoting *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 212 (2002)). In addition, the claims were based on “the terms and conditions of each individual grant award.” *California v. Dep’t of Educ.*, 132 F.4th 92, 96–97 (1st Cir. 2025). Similar facts were presented in each of the other cases Defendants cite, Opp’n 14, including in this Court’s decision in *U.S. Conference of Catholic Bishops v. U.S. Department of State*, No. 1:25-CV-00465 (TNM), 2025 WL 763738 (D.D.C. Mar. 11, 2025), where the plaintiff asked this Court to order “the Government to keep paying up” pursuant to the terms of an agreement between the parties. *Id.* at *5. But where, as here, a plaintiff is a stranger to any contracts, is not seeking to enforce contractual terms, and does not seek an order commanding the payment of funds, *California* does not suggest that its claims remain within the jurisdiction of federal district courts. See *Cnty. Legal Servs. in E. Palo Alto v. HHS*, No. 25-CV-02847-AMO, 2025 WL 1168898, at *3 (N.D. Cal. Apr. 21, 2025) (rejecting argument that the

Tucker Act barred claims by a party with no contractual relationship with the government).

C. Federal-sector employment laws do not divest this Court of jurisdiction.

Just like Defendants' decision to halt IES's performance of its statutory functions is not insulated from challenge under the APA because it was accomplished by terminating dozens of contracts to do that work, the decision is not insulated from review because it was accomplished by eliminating 90% of IES's staff. Defendants are incorrect that Plaintiffs' claims challenging Defendants' shut-down of IES's research and dissemination activities are precluded by the Civil Service Reform Act (CSRA) and the Federal Service Labor-Management Relations Statute (FSL-MRS).

In determining whether a specialized review scheme ousts district courts of jurisdiction, the dispositive question is “whether the particular claims brought were ‘of the type Congress intended to be reviewed within this statutory structure.’” *Axon Enterpr., Inc. v. FTC*, 598 U.S. 175, 186 (2023) (citing *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 208, 212 (1994)). Here, as Defendants acknowledge, the CSRA and FSL-MRS “together provide a comprehensive ‘scheme of administrative and judicial review’ for resolving both disputes between employees and their federal employers and disputes brought by unions representing those employees.” Opp’n 16. This action is not such a dispute: Plaintiffs are not employees or unions, and there is no evidence that Congress sought to channel claims by non-employee researchers alleging that agency actions violated the Educational Sciences Research Act, Higher Education Opportunity Act, and the other specified statutes, to any of the federal employment agencies. To the contrary, each of the three *Thunder Basin* factors—with which Defendants do not engage—confirms that review processes in those agencies do not impact this Court’s jurisdiction.

First, “precluding district court jurisdiction” would “foreclose all meaningful review of the claim[s]” raised here. *Axon*, 598 U.S. at 186 (quoting *Thunder Basin*, 510 U.S. at 212–13).

Plaintiffs, who are not federal employees, cannot bring claims through the CSRA and FSL-MRS's administrative mechanisms, but *no one* can bring claims through those channels that, in the guise of a “reduction-in-force,” Defendants have terminated IES's performance of statutorily mandated activities. *See, e.g.*, Compl. (ECF 1) ¶¶ 92, 94, and 98. Nor can anyone bring a claim to the Office of Special Counsel, the Merits Systems Protection Board, or the Federal Labor Relations Authority that Defendants acted arbitrarily and capriciously by slashing IES's staff without considering the reliance interests of researchers and other interested parties. This case is thus unlike *Block v. Community Nutrition Institute*, 467 U.S. 340, 347 (1984), relied upon by Defendants, Opp'n 20, where no one disputed that *someone* could take advantage of the administrative scheme and raise a claim that the orders at issue violated the Agricultural Marketing Agreement Act of 1937—even if the plaintiff consumers could not. The CSRA, the only statute that Defendants address in any detail, *id.* at 17, allows aggrieved employees to challenge before the Office of Special Counsel a “personnel action” on the grounds that it “violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301.” 5 U.S.C. § 2302(b)(12), *cited at* Opp'n 17. None of the statutes that Plaintiffs invoke here is such a law. And the reference to section 2301(b)(2) to *employees'* “constitutional rights,” Opp'n 17, does not provide a mechanism for the pursuit of *ultra vires* claims like the one raised by Plaintiffs here—which seek to vindicate the constitutional separation of powers, not the rights of public employees.

As to the second *Thunder Basin* factor, Plaintiffs' claims are “wholly collateral to [the] statute's review provisions.” 510 U.S. at 212. Before the MSPB, an employee could argue that a reduction-in-force could have been subject to collective bargaining, or that the employing agency did not comply with reduction-in-force procedures. *See, e.g., James v. Von Zemenschky*, 284 F.3d 1310, 1314–21 (Fed. Cir. 2002). Here, Plaintiffs' claims go to the 90% reduction-in-force

generally, “not to anything particular about how” it was carried out. *Axon*, 598 U.S. at 193. Their claims are “‘collateral’ to any [agency actions] from which review might be sought.” *Id.* (quoting *Free Enterprise Fund v. PCAOB*, 561 U.S. 477, 490 (2010)). The fact that, in a different case alleging different legal violations brought by different parties, administrative agencies may be able to provide relief that overlaps with that sought in district court does not affect this court’s jurisdiction, as *Axon* confirms. *See Axon*, 598 U.S. at 192–93 (finding collateralism factor satisfied where plaintiffs sought a halt to FTC proceedings—relief that the FTC could also have granted).

Finally, there is no doubt that Plaintiffs’ claims are “outside the [federal employment agencies’] expertise.” *Thunder Basin*, 510 U.S. at 212. Plaintiffs’ claims “raise ‘standard questions of administrative’ and constitutional law,” and the statutory obligations Plaintiffs invoke are “distant from [those agencies’] competence and expertise.” *Axon*, 598 U.S. at 194 (quoting *Free Enterprise Fund*, 561 U.S. at 491).

II. Plaintiffs are likely to succeed on the merits of their APA claims.

A. The challenged actions are reviewable under the APA.

The APA provides for review of “final agency action for which there is no other adequate remedy in a court,” 5 U.S.C. § 704, “except to the extent that [] statutes preclude judicial review; or [] agency action is committed to agency discretion by law,” *id.* § 701(a). Here, Plaintiffs seek review of four agency actions: (1) the termination of programs by canceling contracts en masse, announced on February 10, 2025; (2) the termination of the Regional Educational Laboratory program; (3) the cessation of IES activities by the reduction-in-force; and (4) the termination of the remote access program for restricted-use data. Pls. Mem. 24. Defendants’ arguments that these actions are unreviewable under the APA lack merit.

1. Plaintiffs do not challenge an executive order.

Defendants assert that Plaintiffs’ claims are (impermissibly) “at bottom ... challenge[s] ...

to the executive orders directing the termination of contracts and reorganization of the Department,” Opp’n 23–24, referring to Executive Order 14222, signed on February 26, 2025 (what Defendants call the “Contract Executive Order,” *id.* at 2), and Executive Order 14242, signed on March 20, 2025 (what Defendants call the “Department Executive Order,” *id.* at 3). Plaintiffs are not challenging these orders. The contract terminations at issue preceded the Contract Executive Order by weeks, and all of the challenged actions preceded the Department Executive Order by at least a week. As the challenged actions preceded the Executive Orders temporally, those Orders cannot be the bases for those actions, and they are irrelevant to Plaintiffs’ claims.

2. The challenged actions are discrete.

While Defendants assert that Plaintiffs “do not identify a discrete and circumscribed agency action that the Department has taken,” Opp’n 22, their brief has little trouble identifying such actions. As Defendants state, “Plaintiffs challenge a host of individual actions—the cancellation of Institute contracts, a reduction in Institute staff, and the end of the Institute’s remote access program.” *Id.* at 23. These “individual actions” are reviewable under the APA. There is nothing “abstract” about Defendants’ termination of IES’s remote access to restricted data program, termination of specific studies like ECLS-K:2024 and NPSAS, termination of the Regional Educational Laboratories, or elimination of 90% of IES staff positions. *See Nat’l Treasury Emps. Union v. Vought*, No. CV 25-0381 (ABJ), 2025 WL 942772, at *13 (D.D.C. Mar. 28, 2025) (“There is nothing abstract about firing employees, cutting off the funding stream, terminating contracts, or stopping all work.”), *stay denied in relevant part*, No. 25-5091 (D.C. Cir. Apr. 11, 2025), *as modified* (D.C. Cir. Apr. 28, 2025).

Plaintiffs’ claims do not resemble the claims at issue in *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55 (2004). For one, in that case, the plaintiffs did not challenge any

affirmative agency actions under 5 U.S.C. § 706(2); they challenged an agency's *inaction* under 5 U.S.C. § 706(1). The Supreme Court held that section 706(1) could not be used to challenge “[g]eneral deficiencies in compliance” with a “broad statutory mandate.” 542 U.S. at 66–67. Here, by contrast, Plaintiffs are challenging affirmative actions and requesting that those actions be evaluated under the well-trod standards of section 706(2) and specific statutory mandates. The challenged actions are not different in kind than the actions that courts regularly review under the APA. For example, courts frequently review decisions about data collections and research studies under the APA. *See, e.g., Department of Commerce v. New York*, 588 U.S. 752 (2019) (applying the APA’s arbitrary and capricious standard to the decision to include a question on the Census); *Am. Legion v. Derwinski*, 54 F.3d 789, 795–801 (D.C. Cir. 1995) (reviewing a decision to halt a study); *AvMed, Inc. v. Becerra*, No. CV 20-3385 (JDB), 2021 WL 2209406, at *6–17 (D.D.C. June 1, 2021) (reviewing a decision to halt data collection); *Nat’l Womens Law Ctr. v. OMB*, 358 F. Supp. 3d 66, 84 (D.D.C. 2019) (holding that a stay of the collection of pay data was a final agency action); *Fishing Rights Alliance, Inc. v. Nat’l Marine Fisheries Serv.*, No. 8:09-CV-1544-T-30AEP, 2011 WL 3898016, *13–16 (M.D. Fla. Sept. 6, 2011) (assessing whether an agency complied with statutory requirements to conduct a survey). And there is nothing unusual about APA review of agency actions that alter how individuals and organizations can obtain agency data, like the termination of the remote access to restricted-use data program. *See, e.g., Am. Small Bus. League v. Johnson*, No. C 10-00986 WHA, 2010 WL 3490223, at *3 (N.D. Cal. Sept. 3, 2010) (considering business groups’ challenge to changes to a search interface for public contracting data). These discrete actions can be reviewed by this Court.

3. The challenged actions are final.

Resting on a mischaracterization of Plaintiffs’ claims, Defendants next dispute the finality

of the actions challenged here. Defendants assert that “Plaintiffs’ motion claims that the Department’s actions reflect a decision to terminate the Institute [that] is a final agency action.” Opp’n 24 (citing Pls. Mem. 24). In fact, Plaintiffs’ motion identified four specific actions that constitute final agency actions and explained how those actions meet the two-part finality standard under *Bennett v. Spear*, 520 U.S. 154 (1997). Pls. Mem. 24–25. Defendants characterize the actions as “the initiation, not the consummation, of the agency’s decision-making process regarding the reorganization of the Department.” Opp’n 24. But Plaintiffs are not challenging “the reorganization of the Department”; they are challenging specific acts taken by Defendants. Thus, whether the Defendant has finished making all of its decisions regarding the reorganization of the Department is irrelevant. As to the particular actions challenged here, there is nothing that indicates anything other than finality: The programs at issue have been terminated; the employees have received their reduction-in-force notices, and the remote access program will end on June 1.

The two emails Defendants point to do not indicate otherwise. First, pointing to an email that NCES sent to restricted-use license holders “correcting” an earlier email stating that disclosure risk reviews were paused, Defendants assert that “the disclosure risk reviews remain ongoing as of March 31, 2025.” Opp’n 24 (citing B. Doe Decl. (ECF 6-3) Ex. 2). But Plaintiffs are not (yet) challenging the termination of the disclosure risk review process. They have pointed to the delays in the disclosure risk review process—and statements made by IES in connection with those delays—as evidence of the harm caused by, and the arbitrary and capricious nature of, other specific actions. *See, e.g.*, Pls. Mem. 20, 22, 32, 42. Second, Defendants point to an email noting that, *before* making the decision to terminate the remote access to data program, they had been making plans to transition its remote access to data program to a new platform. Opp’n 24–25 (citing Voight Decl., Ex. 1). That point has no bearing on the fact that Defendants have now

announced they “must end [their] existing remote access program,” effective June 1, 2025, and that “no new applications for remote access will be accepted.” Voight Decl., Ex. 1. They have not announced any replacement program, and, even if they had, an intention to replace the program would not change the finality of the termination of the existing program. As a result of Defendants’ action, as of June 1, researchers like IHEP who only have access to restricted data through the remote-access program will no longer have any access to that data. There is nothing “of a merely tentative or interlocutory nature” about that action. *Bennett*, 520 U.S. at 178.

4. No adequate alternative remedy exists.

Defendants briefly argue that section 704 of the APA bars this action, because “CSRA and FSL-MRS remedies” and the Tucker Act provide Plaintiffs with adequate alternative remedies. Opp’n 25–26. Those statutes, however, provide *Plaintiffs* with no remedies at all. As non-federal employees and non-parties to the contracts by which IES carried out its statutory responsibilities, Plaintiffs cannot invoke any of those statutory schemes. Moreover, the remedies available to *others* under those statutory schemes are not “of the same genre” as those sought in this case. *El Rio Santa Cruz Neighborhood Health Ctr., Inc. v. HHS*, 396 F.3d 1265, 1275 (D.C. Cir. 2005). For one, they do not provide anyone with the means to enforce compliance with the statutory mandates of the Education Sciences Reform Act, Higher Education Opportunity Act, and other statutes that impose mandatory duties on IES. In addition, none of those schemes provide a mechanism for setting aside the termination of the remote data access program, the Regional Educational Laboratories program, or any of the research studies terminated by Defendants.

B. Plaintiffs are likely to show that the challenged actions were not the result of reasoned decisionmaking.

“An action is arbitrary and capricious when the agency relies on inappropriate factors, fails to consider important aspects of the problem, or ignores relevant evidence.” *Int’l Dark-Sky*

Ass'n, Inc. v. FCC, 106 F.4th 1206, 1213 (D.C. Cir. 2024). The “cut first, ask questions later” approach taken by Defendants in carrying out each of the actions challenged here is indicative of arbitrary and capricious action. Pls.’ Mem. 27–33. Defendants terminated the remote access to restricted-use data program without considering the reliance interests of remote license holders or how the termination of that program was reconcilable with the mandates of 44 U.S.C. § 3582(a) and 20 U.S.C. § 9575. They terminated contracts without considering how the programs they implemented were necessary to fulfilling the agency’s statutory obligations, without considering how they were necessary for the functioning of *other* programs that were not being canceled, without considering the wastefulness of terminating longitudinal studies mid-stream, without considering the reliance interests of researchers who were relying on those programs, and without considering how more tailored modifications could more effectively achieve policy goals with less harm. *See* Pls. Mem. 28, 30–32. And Defendants eliminated 90% of the agency’s staff without considering how the agency could perform its work with the remaining staff. *Id.* at 28–29.

The arbitrary and capricious nature of Defendants’ action is apparent even without an administrative record. Defendants have already scrambled to *un-cancel* one of the contracts that they had hastily canceled—the ED Facts contract, which is necessary for the conduct of the National Assessment of Educational Progress. *See* Pls. Mem. 9, 12. IES employees who oversaw programs have attested that neither they nor any other IES employees were consulted before programs were terminated. *See* A. Doe Decl. (ECF 6-2) ¶¶ 6–8; Young Decl. (ECF 6-7) ¶¶ 7–8. Websites maintained by IES have gone on the fritz. *See, e.g.*, Stange Decl. ¶ 14; Voight Decl. ¶¶ 10, 16. And, perhaps most damningly, weeks *after* they terminated contracts and/or staff that worked on the restricted-use data program, Defendants commenced an attempt to, in their words, “assess the level of program support required to continue this vital service and comply with

applicable law.” Voight Decl., Ex. 2. The agency’s recognition that it is only *now* undertaking analysis as to how to comply with statutory requirements reflects that it did not do so before acting.

Defendants respond by asking for deference and point, without citation, to “the presence of inefficiency and waste at the Department.” Opp’n 27. But the statement in their opposition cites no evidence that the elimination of inefficiency or waste was the basis for the challenged actions. *Id.* Even within the limited scope of arbitrary-and-capricious review, “courts may not accept ... counsel’s post hoc rationalizations for agency action.” *Motor Vehicle Mfrs. Ass’n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 50 (1983). Moreover, even if the Secretary considers a program wasteful or inefficient, the Secretary cannot terminate it without considering whether it is required by law. And a Secretarial determination that an existing program is inefficient does not obviate the requirement that agencies consider reliance interests before acting. *See DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30–31 (2020).

Defendants also assert that “[c]ourts lack the power to ‘dictat[e] to the agency the methods[] [and] procedures it’ uses to complete its statutory obligations.” Opp’n 28 (quoting *Vt. Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 545 (1978); alterations in original)). But this sentence misrepresents the relevant language in *Vermont Yankee*, which is a portion of a longer quote from *FPC v. Transcontinental Gas Pipe Line Corp.*, 423 U.S. 326 (1976), addressing the scope of courts’ authority to dictate procedures on remand after concluding that an agency had relied on an inadequate record:

[A] reviewing court may not, after determining that additional evidence is requisite for adequate review, proceed by dictating to the agency the methods, procedures, and time dimension of the needed inquiry and ordering the results to be reported to the court without opportunity for further consideration on the basis of the new evidence by the agency.

FPC, 423 U.S. at 583, *quoted in Vermont Yankee*, 435 U.S. at 544–45. Judicial review of the actions that an agency has taken to determine whether they comply with principles of reasoned decisionmaking does not run afoul of *Vermont Yankee* or any other precedent.

Finally, Defendants assert that “the reduction in force and end of the remote access program incorporate the type of actions that are ‘committed to agency discretion by law.’” Opp’n 28 (quoting 5 U.S.C. § 701(a)(2)). But they have come nowhere close to meeting their burden to establish this “very narrow exception” to the strong presumption of reviewability, an exception that “applies only ‘in those rare instances where statutes are drawn in such broad terms that in a given case there is no law to apply.’” *Campaign Legal Ctr. v. FEC*, 952 F.3d 352, 359 (D.C. Cir. 2020) (quoting *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971)); *see Cody v. Cox*, 509 F.3d 606, 610 (D.C. Cir. 2007) (recognizing that the agency bears the burden). Defendants do not identify any statute that commits the challenged actions to agency discretion. And Defendants are incorrect that *Lincoln v. Vigil*, 508 U.S. 182, 192 (1993), establishes that section 701(a)(2) is satisfied whenever counsel asserts that “the point” of an agency’s action is “to improve efficiency.” Opp’n 29. If that were true, the narrow section 701(a)(2) exception would swallow the presumption in favor of judicial review. The language from *Lincoln* on which Defendants rely was specific to challenges to “the allocation of funds from a lump-sum appropriation.” 508 U.S. at 192. As relevant to Plaintiffs’ arbitrary and capricious claim, the reasoned decisionmaking standard of the APA provides a meaningful standard to apply.

C. Defendants make no relevant argument in response to Plaintiffs’ claims that the actions are contrary to IES’s organic statutes.

In their opening memorandum, Plaintiffs explained how terminating IES’s performance of certain activities was contrary to specific statutory provisions. *See* Pls. Mem. 33–34 (arguing Defendants’ actions violated, among others, 20 U.S.C. §§ 1015a(k), 3332(b)(3), 9545(b), 9575,

9622(b)(2)(F)). They also argued that terminating the remote access to restricted-use data program was contrary to 44 U.S.C. § 3582(a) and 20 U.S.C. § 9575. *Id.* at 40. Defendants have made no argument that these actions were consistent with these statutes, instead discussing only the two executive orders not pertinent here and Defendant McMahon’s statement, issued contemporaneously with the reduction-in-force announcement, that the agency would “continue to deliver on all statutory programs that fall under the agency’s purview.” Opp’n 27 (citing RIF Press Release).² But her statement does not override the evidence that Defendants’ actions have halted compliance with the law. *Cf. PFLAG, Inc. v. Trump*, No. CV 25-337-BAH, 2025 WL 685124, at *18 (D. Md. Mar. 4, 2025) (recognizing that “courts have repeatedly rejected the argument that simply including ‘consistent with applicable law’ or a similar boilerplate phrase inoculates an otherwise unconstitutional executive order from judicial review”).

D. Plaintiffs are likely to prevail on their claims that Defendants violated appropriations laws.

Plaintiffs’ appropriations-related claims allege that Defendants’ failure to spend appropriated funds violate the Impoundment Control Act, 2 U.S.C. § 683, and Anti-Deficiency Act, 31 U.S.C. § 1512(c)(1). Defendants do not dispute that they are not spending the funds appropriated to IES—including a *specific* \$ 53,733,000 appropriation for the Regional Educational Laboratories, a program that Defendants completely terminated on February 13, 2025. *See* Pls. Mem. 35; A. Doe Decl. (ECF 6-2) ¶ 6. Rather, their sole argument as to these claims is that any and all “funding decisions by the Department are committed to the agency’s discretion by law.”

² While Defendants argue that the section 701(a)(2) exception to reviewability applies to Plaintiffs’ arbitrary and capricious claims (Count III of the complaint), Opp’n 27, and to their claims based on appropriations laws (Counts IV and V of the complaint), *id.* at 30–31, they do *not* raise that argument in response to Plaintiffs’ claims that Defendants’ actions violated specific statutes (Count II of the complaint).

Opp'n 30.

As with their invocation of section 701(a)(2) elsewhere, Defendants have failed to meet their burden. The cases on which Defendants rely do not establish that judicial review relating to appropriations is categorically barred by section 701(a)(2). To the contrary, in *Milk Train, Inc. v. Veneman*, 310 F.3d 747 (D.C. Cir. 2002), while the D.C. Circuit held that certain language in a 1999 appropriations law was so broad as to trigger the section 701(a)(2) exception to judicial review for compliance with that provision, it went on to hold that there *was* jurisdiction to review compliance with a related provision in a 2000 appropriations law. *Id.* at 751–52. And in *Lincoln*, the Supreme Court did not hold that the allocation of funds from lump-sum appropriations were *completely* unreviewable, explicitly recognizing that section 701(a)(2) barred review only so “long as the agency allocates funds from a lump-sum appropriation to meet permissible statutory objectives,” and expressly recognizing that Congress “may always circumscribe agency discretion to allocate resources.” 508 U.S. at 193. The Impoundment Control Act and the Anti-Deficiency Act are examples of such limitations on discretion, as recognized by the D.C. Circuit in *In re Aiken County*, 725 F.3d 255, 261 n.1 (D.C. Cir. 2013), and those statutes provide meaningful standards that the Court can apply in assessing compliance.

III. Plaintiffs are likely to succeed on their ultra vires claim.

As to Plaintiffs' ultra vires claim, beyond incorporating by reference their arguments as to Plaintiffs' APA claims, Defendants' only argument is that the claim is barred by the Supreme Court's decision in *Dalton v. Specter*, 511 U.S. 462, 473 (1994), because it is “purely statutory.” Opp'n 32. But, as the D.C. Circuit has explained, “*Dalton*'s holding merely stands for the proposition that when a statute entrusts a discrete specific decision to the President and contains no limitations on the President's exercise of that authority, judicial review of an abuse of discretion

claim is not available.” *Chamber of Com. of U.S. v. Reich*, 74 F.3d 1322, 1331 (D.C. Cir. 1996), *quoted in Am. Forest Res. Council v. United States*, 77 F.4th 787 (D.C. Cir. 2023).

Here, though, the relevant statutes do not entrust Defendants with discretion to terminate IES’s performance of its functions. “Nor are plaintiffs solely alleging that defendants in this case exceeded any statutory authority accorded to the agency under” statute by failing to comply with mandatory duties, but that they violated “the separation of powers inherent in the Constitution” by usurping Congress’s determination that IES and its functioning is worthwhile.” *NTEU*, 2025 WL 942772, at *8. As the *NTEU* court concluded, *Dalton* does not bar such claims.

IV. Plaintiffs AEFPP, AEFPP members, and IHEP will suffer irreparable harm absent a preliminary injunction.

The challenged actions have already begun to, and will continue to, cause harm to AEFPP, AEFPP members, and IHEP, by making them unable to continue their own research and other work—a harm that cannot be remedied at a later date. Defendants’ assertion that the diversion of resources spent in locating and obtaining “alternative” sources of information and methods of accessing data does not constitute irreparable harm, Opp’n 34, misunderstands the record, which makes clear that no suitable alternatives to the functions terminated by Defendants exist. As to the termination of the remote access to restricted-use data program, Plaintiffs’ declarants have explained why cold-room access does not provide suitable alternatives. *See* Voight Decl. ¶ 19; Stange Decl. ¶ 12. Plaintiffs’ declarants have also explained that there are no adequate substitutes for the data previously collected, maintained, and disseminated by IES. *See, e.g.*, Evans Decl. (ECF 6-4) ¶ 14; Harris Decl. ¶ 9; Gee Decl. ¶¶ 11–15; Stange Decl. ¶ 15; Voight Decl. ¶¶ 7, 12; Kurlaender Decl. (ECF 6-11) ¶ 13. And the halt to processing applications for access to existing data and delayed processing of data disclosure reviews that have resulted from a lack of IES staff cannot be rectified by any alternative.

None of these harms can be rectified at the end of this litigation, despite Defendants’ suggestion that the Court “could order restoration of the Institute’s research and information.” Opp’n 43. No order of this Court at the end of this litigation will turn back time to allow the collection of, for example, kindergartners who have reached second grade. It is not speculative that longitudinal studies have less value if they are missing one or more years of data; the inclusion of data collected from the same people at multiple data points is what makes longitudinal studies valuable. *See, e.g.,* Judith Cashmore & Patrick Parkinson, *The Use and Abuse of Social Science Research Evidence in Children’s Cases*, 20 Psychol. Pub. Pol’y & L. 239, 243 (2014). Nor is it speculative that Defendants’ actions will cause computer systems to degrade—Plaintiffs have produced evidence explaining that this has already occurred. *See, e.g.,* Stange Decl. ¶ 14 (discussing unreliability of DataLab since contract was terminated); Voight Decl. ¶ 16 (same); *id.* ¶ 10 (discussing technical problems with IPEDS data collection).

That Plaintiffs did not move for preliminary injunctive relief until mid-April is of no moment. Whether a delay in filing a request for preliminary relief undercuts the existence of irreparable harm turns “not [on] the length of the delay but the context of the delay.” *Eco Tour Adventures, Inc. v. Zinke*, 249 F. Supp. 3d 360 (D.D.C 2017) (discussing *Fund for Animals v. Frizzell*, 530 F.2d 982, 987 (D.C. Cir. 1975)). As to the termination of the remote access to restricted-use data program, no irreparable harm will accrue until June 1—thus seeking injunctive relief in April does not evince a nonchalance to ongoing harm. As to the remaining challenged actions, this case is not one where Plaintiffs have long “had knowledge of the pending nature of the alleged irreparable harm.” *Dallas Safari Club v. Bernhardt*, 453 F; Supp. 3d 391, 403 (D.D.C. 2020) (citing *Fund for Animals*, 530 F.2d at 987). As courts have recognized, any delay in seeking preliminary relief “is not particularly probative” where “the magnitude of potential harm becomes

apparent gradually.” *Tex. Children’s Hosp. v. Burwell*, 76 F. Supp. 3d 224, 245 (D.D.C. 2014) (quoting *Arc of Cal. v. Douglas*, 757 F.3d 975, 990 (9th Cir. 2014)). Here, when Defendants took actions in February and March, “the totality of the harm would not necessarily have been immediately apparent.” *Id.* While DOGE announced the mass termination of contracts on its website and on X in mid-February, Defendants did not concurrently announce the termination of the specific impacted programs. To figure out exactly which IES programs were terminated required sifting through technical federal contracting data and carefully monitoring various IES webpages. For example, Defendants did not remove the banner indicating that NPSAS:24 was underway until sometime between March 12 and March 19, 2025.³ And, as of May 4, 2025 Defendants have not indicated the termination of ECLS-K:2024 on the website for that program.⁴ Moreover, as long as there was staff at IES, there remained the possibility that the statutorily mandated activities would soon be restarted. That possibility disappeared when 90% of the agency was placed on administrative leave on March 21, 2025. Plaintiffs were never formally advised that review of pending grant applications was terminated due to the elimination of peer review programs, but were left to figure it out on their own. *See, e.g.*, Gee Decl. ¶¶ 9–10. Problems with the reliability of IES websites took some time to emerge, and be noticed, and Defendants issued a variety of conflicting communications about the status of the restricted-use data program throughout February and March. *See, e.g.*, B. Doe Decl. ¶¶ 3–4. Given this context, the timing of this action does not call into question the irreparable harms identified by Plaintiffs.

³ Compare <https://web.archive.org/web/20250312230301/https://nces.ed.gov/surveys/npsas/index.asp> (archived version of NPSAS site from Mar. 12, 2025) with <https://web.archive.org/web/20250319064708/https://nces.ed.gov/surveys/npsas/index.asp> (Mar. 19, 2025 version of page).

⁴ *See* NCES, Early Childhood Longitudinal Studies (ECLS) Program, Kindergarten Class of 2023-24 (ECLS-K:2024), <https://nces.ed.gov/ecls/kindergarten2024.asp>.

V. The balance of equities and the public interest support the grant of a preliminary injunction.

Defendants' brief argument as to the remaining equitable factors, Opp'n 37, is tied to Presidential actions that, as explained above, are not relevant to this action. To the extent that Defendants' argument is about the Executive Branch's policy priorities more generally, vague policy priorities cannot provide a basis for withholding injunctive relief where, as here, they are contrary to the enactments of Congress. *See Jacksonville Port Auth. v. Adams*, 556 F.2d 52, 59 (D.C. Cir. 1977) (recognizing the "overriding public interest both in the particular facet determined by Congress..., and in the general importance of an agency's faithful adherence to its statutory mandate.").

VI. After issuing a preliminary injunction, the Court should not impose either a bond or a stay.

Finally, Defendants briefly ask this Court, if it determines preliminary injunctive relief is appropriate, to require Plaintiff to post security, and to stay any relief ordered pending any hypothetical appeal that may be authorized by the Solicitor General, or "at a minimum" a seven-day administrative stay. Opp'n 38–39. Neither condition on relief is appropriate.

First, Federal Rule of Civil Procedure 65(c) "vest[s] broad discretion in the district court to determine the appropriate amount of an injunction bond," *DSE, Inc. v. United States*, 169 F.3d 21, 33 (D.C. Cir. 1999), "including the discretion to require no bond at all," *P.J.E.S. ex rel. Escobar Francisco v. Wolf*, 502 F. Supp. 3d 492, 520 (D.D.C. 2020) (quoting *Simms v. District of Columbia*, 872 F. Supp. 2d 90, 107 (D.D.C. 2012)). A bond is not necessary to prevent harm here, since, to the extent Plaintiffs' requested relief require the expenditure of money at all, that money has already been appropriated by Congress explicitly for use to fund IES activities, and cannot be used for any other purposes. Moreover, "[r]equiring a bond as a condition of obtaining an injunction against unlawful executive action under the circumstances presented here would risk deterring

other litigants from pursuing their right to judicial review of unlawful executive action,” and thus “would ‘contravene the interests of justice.’” *League of United Latin Am. Citizens v. Exec. Off. of the President*, No. CV 25-0946 (CKK), 2025 WL 1187730, at *62 (D.D.C. Apr. 24, 2025) (quoting *Aviel v. Gor*, No. CV 25-778 (LLA), 2025 WL 1009035, at *12 (D.D.C. Apr. 4, 2025)); *see also NRDC v. Morton*, 337 F. Supp. 167, 168 (D.D.C. 1971) (imposing nominal bond where substantial security “would have the effect of denying the plaintiffs their right to judicial review of administrative action”).

Second, Defendants’ request for a stay pending appeal does not address any of the relevant factors for such a stay and, in any event, is premature. *See Nat’l Council of Nonprofits v. OMB*, No. CV 25-239 (LLA), 2025 WL 597959, at *19 n.14 (D.D.C. Feb. 25, 2025); *United Ass’n of Journeymen & Apprentices of Plumbing & Pipefitting Indus., AFL-CIO v. Thornburgh*, No. CIV. A. 90-2342, 1991 WL 171463, at *1 (D.D.C. Aug. 21, 1991). If, after reviewing any forthcoming opinion and order, Defendants “believe that a stay pending appeal is warranted, they may make a request consistent with Federal Rule of Appellate Procedure 8,” *Nat’l Council of Nonprofits*, 2025 WL 597959, at *19 n.14, at which point Plaintiffs could file a meaningful response.

CONCLUSION

For the foregoing reasons, and those stated in Plaintiffs’ opening memorandum, this Court should grant Plaintiffs’ motion for a preliminary injunction and (1) order Defendants’ to take steps to restore the activities canceled as a result of their mass contract termination; (2) order the restoration of the IES employees who were placed on administrative leave *en masse* to active work status; and (3) suspend the termination of the remote access program for restricted-use data.

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Respectfully submitted,

/s/ Adam R. Pulver
Adam R. Pulver (DC Bar No. 1020475)
Karla Gilbride (DC Bar No. 1005886)
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
apulver@citizen.org

Attorneys for Plaintiffs