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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

17 ALLISON M. GILL,
18 Plaintiff,
19 v.

20 UNITED STATES DEPARTMENT
21 OF JUSTICE; TODD BLANCHE, *in*
22 *his official capacity as Attorney*
23 *General*; ANTI-WEAPONIZATION
24 FUND; and UNITED STATES OF
25 AMERICA,
26 Defendants.

Case No. 3:26-cv-03283-CAB-DDL

**PLAINTIFF'S REPLY TO
OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

Date Filed: September 18, 2026

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INTRODUCTION

The Court should grant Plaintiff Allison M. Gill’s motion for summary judgment. Defendants attempt to throw jurisdictional sand in the gears, but when Ms. Gill filed this action, this Court had jurisdiction to resolve her claim that Defendants had established the so-called Anti-Weaponization Fund (Fund) without following the notice-and-comment process required by the Administrative Procedure Act (APA). The decision by then-Acting Attorney General Todd Blanche to rescind the Fund Establishment Order to secure Senate confirmation did nothing to free the Department of Justice (DOJ) from its contractual obligation to President Trump to establish the Fund and, thus, was insufficient to moot Ms. Gill’s claim. On the merits, Defendants offer no substantial justification for their failure to follow rulemaking procedures when establishing the Fund. Because Defendants violated the APA, the Court should grant Ms. Gill appropriate relief.

ARGUMENT

I. THIS COURT HAS JURISDICTION TO DECIDE MS. GILL’S NOTICE-AND-COMMENT CLAIM.

A. Ms. Gill has Article III standing.

As explained in Ms. Gill’s opening memorandum (SJ Mem. at 8), Article III standing “look[s] at the facts as they exist at the time the complaint was filed.” *Slayman v. FedEx Ground Package Sys., Inc.*, 765 F.3d 1033, 1047 (9th Cir. 2014) (internal quotation marks omitted). And when a plaintiff “asserts a procedural violation,” she “need only demonstrate that compliance with [the procedure] *could* protect [her] concrete interests.” *Ctr. for Biological Diversity v. EPA*, 168 F.4th 1164, 1175 (9th Cir. 2026) (internal quotation marks omitted).

Defendants’ response fails to grapple with these bedrock principles. According to Defendants, Ms. Gill lacks standing to pursue her notice-and-comment claim because she “simply assumes that the APA’s notice-and-comment

1 requirement applies.” SJ Opp. at 12. But that assumption is what is required when
2 evaluating standing: “For standing purposes, [the courts] accept as valid the merits
3 of appellees’ legal claims.” *Fed. Election Comm’n v. Cruz*, 596 U.S. 289, 298
4 (2022).

5 Defendants also argue that Ms. Gill lacks a concrete interest protected by the
6 notice-and-comment procedure because Defendants only took a “preliminary step”
7 in establishing the Fund, which “never even materialized into a concrete proposal”
8 and “is now not happening at all.” SJ Opp. at 12–13. But the “preliminary step” that
9 Defendants took was to promulgate substantive rules—including the amount of the
10 fund, the composition of the board, and the Fund termination date—that could be
11 promulgated only pursuant to notice-and-comment rulemaking. *See* SJ Mem. at 9–
12 10. That Defendants did not adopt *additional* rules in violation of the APA does not
13 deprive Ms. Gill of standing to seek redress for the procedural injury she suffered
14 by the promulgation of the initial Fund Rules. And Defendants’ assertion that the
15 Fund is “now not happening” goes to mootness, discussed below, not to standing.

16 Defendants’ heavy reliance on *Trump v. California*, 609 U.S. ___, 2026 WL
17 2473573 (Aug. 24, 2026), is misplaced. *California* concerned a constitutional
18 challenge by states to President Trump’s executive order directing federal agencies
19 to take various actions to regulate elections. *Id.* at *1. In the context of staying a
20 lower-court injunction of the executive order pending appeal, the Supreme Court
21 held that the government was likely to succeed on its standing and ripeness
22 arguments because federal agencies had not yet implemented the executive order.
23 *See id.* (discussing “downstream action” that the Department of Homeland Security
24 “might take in the future”); *id.* at *4 (discussing a rule that the executive order
25 required the Postal Service to issue but had not yet issued). Unlike in *California*,
26 Ms. Gill’s challenge here is procedural, not substantive, and the actions she
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1 challenges had already occurred “[a]t the time this suit was filed—the time when
2 standing is measured.” *Id.*

3 Defendants are thus wrong to analogize this case to *California* by
4 characterizing Ms. Gill’s injury as “based on predictions on how the Fund would
5 have operated.” SJ Opp. at 10. Her injury arises from the denial of her procedural
6 right to notice and an opportunity to comment on rules that implemented the May
7 18, 2026, settlement agreement, rules that affect her concrete interest in her claim
8 for compensation. And contrary to Defendants’ characterization, the Fund Rules did
9 not simply “allow[] the process of establishing the Fund to begin.” *Id.* Rather, they
10 defined key terms, allocated \$1.776 billion to the Fund, and established other rules
11 that would govern how the Fund would operate, *see* Doc. 13-2 at 1, as required by
12 the settlement agreement, Doc. 13-1 at 3. *See also* Doc. 14-4 at 2 (recognizing that
13 the Attorney General established “The Anti-Weaponization Fund” to “provide a
14 systematic process to hear and redress claims of others who suffered weaponization
15 and lawfare.”).

16 Moreover, contrary to Defendants’ contention, SJ Opp. at 11, the Attorney
17 General’s order was not an “internal directive” like the executive order in
18 *California*. That is, his order did not direct some other official to take action—it
19 embodied the Attorney General’s action. And the fact that Defendants established
20 rules that would apply to the Fund in the future, SJ Opp. at 11, does not obviate the
21 need for notice-and-comment process, because all rules have “future effect.”
22 5 U.S.C. § 551(4). In short, *California* does not call Ms. Gill’s standing into
23 question.

24 **B. This case is ripe.**

25 Responding very briefly to Ms. Gill’s ripeness showing, *see* SJ Opp. 13–14,
26 Defendants suggest that the case is not ripe because of ambiguity over the question
27 whether the Fund Rules are subject to notice-and-comment procedures. They fail,
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1 however, to identify any ambiguity. In particular, they do not contend that further
2 factual development is needed to elucidate whether the APA’s exceptions to the
3 notice-and-comment requirement for interpretive rules or policy statements apply.
4 *See* SJ Opp. at 13; SJ Mem. at 12 n.5 (citing cases). And they do not attempt to
5 refute Ms. Gill’s argument that her notice-and-comment claim is purely legal and
6 fit for review. *See* SJ Mem. at 12–13. This case is ripe.

7 **C. Ms. Gill’s claim is not moot.**

8 As explained in the opening memorandum, *see* SJ Mem. at 14, “the
9 Government, not [the plaintiff], bears the burden to establish that a once-live case
10 has become moot,” *West Virginia v. EPA*, 597 U.S. 697, 719 (2022), and the
11 government’s “voluntary cessation of a challenged practice will moot a case only if
12 [it] can show that the practice cannot reasonably be expected to recur,” *FBI v. Fikre*,
13 601 U.S. 234, 241 (2024). Defendants agree with this standard. *See* SJ Opp. at 16
14 (acknowledging that the “key question” is “whether ‘the challenged conduct cannot
15 reasonably be expected to start up again’” (quoting *White v. Lee*, 227 F.3d 1214,
16 1243 (9th Cir. 2000))). Defendants are wrong, however, that they have satisfied their
17 “formidable burden” of demonstrating mootness. *Fikre*, 601 U.S. at 241 (2024)
18 (internal quotation marks omitted).

19 At the outset, Defendants do not mention, much less attempt to distinguish,
20 *Planned Parenthood Great Northwest, Hawaii, Alaska, Indiana, Kentucky v.*
21 *Labrador*, 122 F.4th 825 (9th Cir. 2024), which the opening memorandum
22 discussed. *See* SJ Mem. at 15. There, the court rejected Idaho Attorney General’s
23 mootness claim because he had “not repudiated” his interpretation of the Idaho law
24 that the plaintiff was challenging and remained “free to return to his old ways.”
25 *Planned Parenthood*, 122 F.4th at 841 (quoting *United States v. W.T. Grant Co.*,
26 345 U.S. 629, 632 (1953)). Defendants do not admit error in issuing the Fund Rules
27 without notice and comment, and they remain “free to return to [their] old ways” if
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1 this lawsuit were dismissed. *Id.* Indeed, through the agreement with President
2 Trump, they have obligated themselves to do so.

3 Defendants instead invoke the “loose framework” set out in *Rosebrock v.*
4 *Mathis*, 745 F.3d 963, 973 (9th Cir. 2014), for evaluating whether a policy change
5 moots a challenge to agency action. But the *Rosebrock* factors also point against
6 mootness here. The first factor asks whether an agency’s policy change is “broad in
7 scope, and unequivocal in tone.” *Id.* Here, Defendants have not repudiated their
8 underlying contractual obligation to President Trump to establish the Fund, an
9 obligation that the Attorney General has said remains “enforceable.” Doc. 14-6 at
10 11. Indeed, after Defendants filed their opposition in this case, DOJ, on behalf of
11 the federal agency defendants in the Florida lawsuit, appealed that court’s order
12 preventing them from “referring to the purported ‘settlement agreement,’ or using,
13 offering, admitting, or citing any of its provisions in any judicial, administrative,
14 regulatory, arbitration, or any other official proceeding as evidence of a ‘settlement’
15 reached in this matter.” *See Trump v. IRS*, No. 1:26-cv-20609, 2026 WL 2015525,
16 at *17 (S.D. Fla. July 13, 2026), *appeal pending*, *Trump v. Thirty-Five Former*
17 *Federal Judges*, No. 26-12692 (11th Cir.); *see also* Doc. 18 at 1.¹ Far from being
18 “unequivocal” about the Fund, Defendants have been cagey about their continuing
19 obligation to the President under the settlement agreement.

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22 ¹ Defendants suggest that the agency defendants in *Trump v. IRS* appealed to
23 contest that court’s sanction of the Attorney General and Associate Attorney
24 General, and the “court’s legally incorrect statements” about DOJ’s settlement
25 authority. *See* Doc. 19. The notice of appeal, however, was not filed on behalf of the
26 Attorney General or Associate Attorney General, and thus the matter of sanctions
27 against them is not encompassed in the appeal. *See PlayNation Play Sys., Inc. v.*
28 *Velex Corp.*, 939 F.3d 1205, 1211 (11th Cir. 2019). And statements not embodied
in an order or judgment are not reviewable on appeal. *Keating v. City of Miami*, 598
F.3d 753, 761 (11th Cir. 2010) (“an appellate court ‘reviews judgments, not
statements in opinions.’” (quoting *California v. Rooney*, 483 U.S. 307, 311 (1987))).

1 The second *Rosebrock* factor considers whether the defendant has “addressed
2 all of the objectionable measures” taken against the plaintiff. 745 F.3d at 973
3 (cleaned up). Defendants have not done so. In particular, they have not admitted
4 error in failing to follow notice-and-comment procedures.

5 The third factor asks whether the plaintiff’s lawsuit was the “catalyst” for the
6 policy change. *Id.* at 974. Although the rescission of the Fund Rules may have been
7 motivated by a desire to have this lawsuit and others declared moot, *see* SJ Mem. at
8 15, Defendants do not suggest that this lawsuit was a catalyst for its action. *See also*
9 Doc. 14-8 at 29 (describing the lawsuit as “frivolous”).

10 The fourth and fifth *Rosebrock* factors consider how long the new policy has
11 been in place and whether agency officials have engaged in conduct challenged by
12 the plaintiff after the new policy was adopted. 745 F.3d at 972. Under *Rosebrock*,
13 courts “are less inclined to find mootness where the ‘new policy ... could be easily
14 abandoned or altered in the future.’” *Id.* (quoting *Bell v. City of Boise*, 709 F.3d 890,
15 901 (9th Cir. 2013)). Here, the “new policy” treating the Fund as “dead” has not
16 been in place for a lengthy period of time and could easily be reversed at “some
17 more propitious moment.” *Fikre*, 601 U.S. at 243. Moreover, the absence of
18 “procedural safeguards” is “a factor that countenances against mootness.”
19 *Rosebrock*, 745 F.3d at 974. Here, Defendants can reestablish the Fund through the
20 same mechanism by which the Fund was established—an order from the Attorney
21 General issued without notice and an opportunity to comment.

22 Defendants invoke the “presumption of regularity” in which courts presume
23 that officials will “properly discharge their official duties.” SJ Opp. at 15 (quoting
24 *Cruz v. Bondi*, 146 F.4th 730, 739 (9th Cir. 2025)). But applied here, that
25 presumption suggests that Defendants will honor their unrepudiated contractual
26 commitments to President Trump under the settlement agreement. Although
27 Defendants argue that President Trump cannot obtain “specific performance” of the
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1 settlement agreement, *id.* at 16–17, President Trump’s legal remedy for breach of
2 the settlement agreement is irrelevant. What matters is whether Defendants can
3 reasonably be expected to honor their contractual commitments to President Trump.
4 Given the presumption of regularity, and the fact that Defendants “are unable to
5 advance any legal position or interpretation—however legitimate or well-
6 reasoned—contrary to that held by ... President Trump,” *Trump v. IRS*, 2026 WL
7 2015525, at *10, the answer to that question is that Defendants can “reasonably be
8 expected to do again in the future what [they are] alleged to have done in the past.”
9 *Fikre*, 601 U.S. at 242.

10 **II. THE FUND RULES ARE LEGISLATIVE RULES SUBJECT TO**
11 **NOTICE-AND-COMMENT PROCEDURES.**

12 **A. The Fund Rules are final agency action.**

13 Ms. Gill’s opening memorandum explained that the Fund Rules satisfy the
14 two-part test for final agency action: They mark the consummation of the agency’s
15 decisionmaking process as to how to implement the settlement agreement, and they
16 are not purely advisory because they establish directives that have real legal
17 consequences for the Fund and for claimants. SJ Mem. at 17. Although the Fund
18 Rules are not the complete set of rules that would be required before the Fund could
19 process and pay claims, agency action “may be final though it is not the very last
20 step in the administrative process.” *Mountain States Tel. & Tel. Co. v. FCC*, 939
21 F.2d 1021, 1027 (D.C. Cir. 1991).

22 Defendants argue that a rule cannot be final unless it requires a “party to
23 change their behavior.” SJ Opp. at 18. Not so. In *Bennett v. Spear*, the Supreme
24 Court concluded that the agency actions at issue were final without identifying any
25 change in the plaintiff’s behavior. 520 U.S. 154, 178 (1997). Rather, it was enough
26 that the action “alter[ed] the legal regime to which the action agency is subject.” *Id.*
27 Here, the Fund Rules bind DOJ and the Fund—as well as potential claimants like
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1 Ms. Gill, who have no ability to avoid the legal regime by, for instance, extending
2 the Fund’s termination date or allocating more money to the Fund.

3 Neither of the two cases on which Defendants rely suggest otherwise. In
4 *Delaware Valley Regional Center LLC v. DHS*, 106 F.4th 1195 (D.C. Cir. 2024),
5 the plaintiffs challenged an agency’s “Q&A” and Policy Manual that explained how
6 the agency would process petitions for visas for foreign investors. *Id.* at 1203. The
7 plaintiffs argued that those publications violated the statute, 8 U.S.C. § 1153(b)(5),
8 by foreclosing certain business plans from being considered. *Id.* Relying on the
9 government’s representation that the plaintiffs’ business plans were not foreclosed,
10 the D.C. Circuit concluded that the Q&A and Policy Manual were not final because
11 they only “made explicit an existing requirement” and “thus do not impose any new
12 ‘concrete consequences’” on the plaintiffs. *Id.* at 1204; *see id.* at 1205 (explaining
13 that the “Q&A and the Policy Manual merely ... articulate the normal process for
14 seeking an immigration benefit.”). By contrast, the Fund Rules do not make explicit
15 legal requirements that previously existed; they prescribe brand new policies to
16 carry out the terms of the settlement agreement.

17 Defendants’ reliance on *Centro de Trabajadores Unidos v. Bessent*, 167 F.4th
18 1218 (D.C. Cir. 2026), is similarly misplaced. There, the court held that an
19 interagency memorandum of understanding (MOU) that implemented 26 U.S.C.
20 § 6103(i)(2) was not final agency action because, “[l]ike the agency statements in
21 *Delaware Valley Regional Center*, the MOU merely explain[ed] how [the agency]
22 will administer a process established by statute and ma[de] explicit existing
23 requirement[s].” 167 F.4th at 1236 (cleaned up). Again, here, the Fund Rules do not
24 “clarify” any “explicit existing requirement[s]” in any statute. *Id.* (quoting *Del.*
25 *Valley Reg’l Ctr.*, 106 F.4th at 1204).

B. The Fund Rules are legislative rules that may be issued only after notice and opportunity for comment.

Defendants acknowledge the bedrock administrative law principle that legislative rules can be issued only after the agency provides notice and an opportunity to comment. *See* SJ Opp. at 19. They assert, though, that the Fund Rules are not legislative rules because they constitute a “general statement of policy” that is exempt from notice-and-comment requirements. SJ Opp. at 20; *see* 5 U.S.C. § 553(b)(A). But as Ms. Gill’s opening memorandum explained, the Fund Rules are not policy statements because they do not “provide guidance to agency officials in exercising their discretionary powers” and do not “preserv[e] ... flexibility.” SJ Mem. at 21 (citations omitted). Because Defendants do not suggest that the agency or any official were free to disregard the decisions made in the Fund Rules, there is no basis for their contention that the Fund Rules are policy statements.

Defendants also argue that participation in the Fund would be “voluntary” and that there are no “regulated entities” subject to the Fund Rules. SJ Opp. at 20. The APA, however, does not limit a “rule” to agency statements that regulate entities or establishes a non-voluntary program. *See* 5 U.S.C. § 551(4) (defining rule as “an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy”). In any event, the Fund Rules do impose requirements on Ms. Gill by, for example, forcing her to compete with other claimants for a fixed sum of money calculated by Defendants and requiring her to submit a claim before December 2028.

None of the cases on which Defendants rely suggests otherwise. In *National Mining Ass’n v. McCarthy*, 758 F.3d 243 (D.C. Cir. 2014), the court held that the challenged action was a policy statement because it was “meaningless” and had “no legal impact,” and because the agency’s document said as much. *Id.* at 252. In the other two cases, the courts held that the challenged rules were policy statements because they did not limit agency officials’ discretion. *See Gill v. DOJ*, 913 F.3d

1 1179, 1186 (9th Cir. 2019); *Profs. & Patients for Customized Care v. Shalala*, 56
2 F.3d 592, 600–01 (5th Cir. 1995). Although Defendants assert that Fund officials
3 would have exercised “considerable discretion,” SJ Opp. at 22, they have not
4 identified a single statement set out in the Fund Rules that those officials would have
5 had discretion to disregard. That is because the Fund Rules are binding on them and,
6 hence, are legislative rules for which notice and an opportunity to comment were
7 required.

8 **III. THE COURT SHOULD GRANT MS. GILL RELIEF.**

9 In her opening memorandum, Ms. Gill explained that the Court should vacate
10 the DOJ Notice and should exercise its discretion to grant declaratory and injunctive
11 relief to ensure that Defendants cannot resurrect the Fund without undertaking the
12 notice-and-comment process required by the APA. Defendants’ argument against
13 declaratory relief mirrors its argument that the Court lacks jurisdiction to adjudicate
14 this case. SJ Opp. at 22. Because the Court should reject those jurisdictional
15 arguments, it should also award declaratory relief.

16 Defendants’ argument against injunctive relief likewise rests on their
17 assertion that they will not reestablish the Fund. *Id.* The Court should reject that
18 argument for the same reason it should reject Defendants’ mootness argument.
19 Moreover, absent judicial relief, Defendants would remain free to reestablish the
20 Fund in secret, without any public notice, to carry out their contractual duties under
21 the settlement agreement with President Trump. Defendants have not suggested
22 otherwise. In these circumstances, injunctive relief is warranted to prevent the
23 irreparable harm that would occur if Defendants begin paying claims without
24 complying with their notice-and-comment obligations.

25 **CONCLUSION**

26 For the foregoing reasons and those set out in the motion, this Court should
27 grant Plaintiff’s motion for summary judgment.
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1 Dated: September 18, 2026

Respectfully submitted,

2 PUBLIC CITIZEN LITIGATION GROUP

3 /s/ Nandan M. Joshi

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