

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CRISTOSAL HUMAN RIGHTS, *et al.*,

Plaintiffs,

v.

PETER MAROCCO, *et al.*,

Defendants.

Case No. 1:25-cv-857-LLA

MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

This Court’s recent preliminary-injunction order in *Aviel v. Gor*, ECF No. 23, No. 1:25-cv-778 (D.D.C. Apr. 4, 2025), is the only thing forestalling Defendants’ determination to eviscerate an entire independent agency. Congress created the Inter-American Foundation more than 50 years ago to perform critical development work in the Western Hemisphere and took the unusual step of mandating that, as a matter of federal law, the agency “shall have perpetual succession unless sooner dissolved by an Act of Congress.” 22 U.S.C. § 290f(e). But after President Trump decreed the Inter-American Foundation to be “unnecessary,” administration officials launched a full-scale hostile takeover of the agency, usurping the power of its bipartisan, presidentially appointed and Senate-confirmed Board of Directors; purporting to fire its president and chief executive officer; impounding its congressionally appropriated funding; shuttering its website; canceling its contracts and development grants; moving to fire virtually all of its employees; and purporting to install Defendant Peter Marocco as the Acting Chair of the Foundation’s Board and as its president. These actions have caused chaos at the agency and inflicted existential harms on the Foundation’s grantees—community-development organizations across Latin America and the Caribbean that depend on a reliable flow of funding from the Foundation’s grants, and the expert advice and professional services provided by the Foundation’s staff and contractors, to perform vital work aimed at reducing the factors that drive mass migration in the region.

This is not a simple contract dispute about whether the terms of any particular grant agreement have been violated. Instead, Plaintiffs challenge Defendants’ attempt to effectively dismantle an entire agency. Defendants cannot abolish by executive fiat an agency created by Congress. They likewise lack authority to impound funds Congress appropriated, reaffirmed in the recently enacted continuing resolution, and directed the Foundation to spend to carry out its mission. These actions flout separation of powers principles and violate numerous provisions of the U.S. Constitution, including

the Appropriations Clause, the Spending Clause, the Presentment Clause, and the Take Care Clause. Marocco's purported appointment as Acting Chair of the Board also violates the Federal Vacancies Reform Act. And Defendants' decisions to choke off the Foundation's funding and support of its grantees, and to cancel wholesale all of its contracts and grants, constitute arbitrary and capricious agency action, and agency action unlawfully withheld, in violation of the Administrative Procedure Act.

Defendants' unlawful actions pose a grave threat to Plaintiffs and to the community members that rely on Plaintiffs' projects. Prompt final judgment is needed to halt Defendants' continuing disregard for the rule of law, and Plaintiffs are entitled to judgment on each claim.

BACKGROUND

I. The Inter-American Foundation Act

Congress created the Inter-American Foundation in 1969 as a unique foreign-assistance agency supporting social and economic development in Latin America and the Caribbean. The Foundation's activities are carried out "primarily in cooperation with private, regional, and international organizations," 22 U.S.C. § 290f(b), as opposed to government-to-government funding mechanisms. The Foundation has invested in nearly 6,000 community development projects in 35 countries, focused on addressing the root causes of migration by promoting economic stability, reducing violence, and strengthening democratic governance. *See generally* Locally-led Development, Inter-American Foundation, <https://www.iaf.gov/what-we-do/locally-led-development/>. These projects work to build peaceful and safe communities, expand economic opportunities through job creation and entrepreneurship, strengthen civic engagement, and enhance social and economic inclusion. By empowering local communities to solve their own problems, the Foundation's work has been one of the United States' most effective and powerful tools to strengthen and build local

communities in developing nations throughout the Western Hemisphere—a key effort to address the root causes of mass migration.¹

Congress created the Foundation as a “body corporate,” 22 U.S.C. § 290f(a), to carry out its legislatively directed purposes to “(1) strengthen the bonds of friendship and understanding among the peoples of this hemisphere; (2) support self-help efforts designed to enlarge the opportunities for individual development; (3) stimulate and assist effective and ever wider participation of the people in the development process; [and] (4) encourage the establishment and growth of democratic institutions, private and governmental, appropriate to the requirements of the individual sovereign nations of this hemisphere.” *Id.* § 290f(b).

Congress took steps to ensure the Foundation’s ability to function flexibly and independently. Of particular importance, Congress affirmed that “[t]he Foundation . . . shall have perpetual succession unless sooner dissolved by an Act of Congress.” *Id.* § 290f(e). It is governed by a nine-member Board of Directors (“Board”), members of which are chosen by the President with the advice and consent of the Senate. *Id.* § 290f(g). Board members serve staggered six-year terms but are eligible to remain in office if a replacement has not been confirmed at the expiration of their terms. *Id.* Congress specified that the Board come from a mix of “private life” and officers or employees of certain public agencies; that its membership be balanced between the political parties; and that “individuals appointed to the Board shall possess an understanding of and sensitivity to community level development processes.” *Id.* The duly appointed “Board shall direct the exercise of all the powers of the Foundation.” *Id.* § 290f(i). Day-to-day administration is entrusted to a president and chief

¹ George Ingram, Brookings Inst., Locally Driven Development: Overcoming the Obstacles 34 (2022), <https://www.brookings.edu/wp-content/uploads/2022/05/Locally-Driven-Development.pdf>.

executive officer “who shall be appointed by the Board of Directors on such terms as the Board” determines. *Id.* § 290f(h).

Congress recently reiterated the Foundation’s importance. Last year, Congress appropriated \$47 million “[f]or necessary expenses to carry out the functions of the Inter-American Foundation.” Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, div. F, tit. III, 138 Stat. 460, 746. These funds are “to remain available until September 30, 2025.” *Id.* And they may not be used to “implement a reorganization, redesign, or other plan” that would “expand, eliminate, consolidate, or downsize” the Foundation, “including the transfer to other agencies” of its “authorities and responsibilities,” unless the Foundation first consults with the Appropriations Committee in each chamber and “include[s] a detailed justification.” *Id.* § 7063(a), (b), 138 Stat. at 843-44. Indeed, even after the events challenged herein, Congress chose to continue the Foundation’s funding in the recently enacted continuing resolution. *See* Full-Year Continuing Appropriations and Extensions Act (“Continuing Resolution”), 2025, Pub. L. No. 119-4, § 1101(a)(11) (2025).

II. Defendants’ Actions to Dismantle the Foundation

On February 19, 2025, President Trump signed an executive order with the purpose “to dramatically reduce the size of the Federal Government” by “commenc[ing] a reduction in the elements of the Federal bureaucracy that the President has determined are unnecessary.” Exec. Order No. 14217, *Commencing the Reduction of the Federal Bureaucracy* (“Dismantling EO”), 90 Fed. Reg. 10577. The Dismantling EO targets four independent agencies, including the Foundation. It provides that all “non-statutory components and functions of the” targeted agencies “shall be eliminated to the maximum extent consistent with applicable law, and such entities shall reduce the performance of their statutory functions and associated personnel to the minimum presence and function required by law.” *Id.* at 10577. It also directs the “head of each unnecessary governmental entity” to submit a report to the Director of the Office of Management and Budget “confirming compliance” and

indicating whether any of its components or functions are statutorily mandated. *Id.* The Dismantling EO further directs the OMB Director, “to the extent consistent with applicable law,” to reject funding requests from the “unnecessary” agencies “to the extent they are inconsistent with this order.” *Id.*

The day after President Trump signed the Dismantling EO, DOGE descended on the Foundation. Two U.S. DOGE Service representatives in their twenties—Ethan Shaotran and Nate Cavanaugh—appeared at the Foundation’s offices. *See* Ex. 1, Aviel Decl., ¶¶ 5-6. The Foundation’s duly appointed president, Sara Aviel, and other members of leadership met with the DOGE representatives, whose stated purpose was obtaining access to the Foundation’s technology and systems. *Id.* at ¶ 6. Aviel and her team were aware of the Dismantling EO; they attempted to work with DOGE to demonstrate that the Foundation had cut costs and was functioning as an efficient and successful agency. *Id.* at ¶¶ 5-6.

Shaotran and Cavanaugh returned the following day with another DOGE representative, a lawyer named Jacob Altik. *Id.* at ¶ 7. Altik claimed to have reviewed the Foundation’s organic statute and determined that its minimum statutory presence required only the existence of a Board, a president/CEO, an office in Washington, D.C., and one or two grants. *Id.*

The DOGE representatives demanded that Aviel call an immediate, Friday afternoon Board meeting to secure the Board’s alignment with DOGE’s interpretation of the Foundation’s minimum statutory presence. *Id.* at 8. Aviel pushed back, stating that it would be very difficult, if not impossible, to convene a Board meeting without more notice and that certain legal requirements govern Board meetings. *Id.* DOGE representatives were undeterred and indicated an intent to terminate the Board members if they would not ratify DOGE’s interpretation of the Foundation’s minimum statutory presence. *Id.* Aviel asked DOGE for a written explanation of its assessment that the Foundation’s minimum statutory presence consisted of only a Board, a president, a D.C. office, and one or two grants. *Id.* Cavanaugh responded with an email, sent from a GSA email address and copying Altik,

containing six bullet points—each of which contained a copied-and-pasted provision from the Foundation’s organic statute in which Congress used the word “shall.” *Id.*; *see also* Aviel Decl. Ex. A.

On a follow-up call the following Monday, February 24, DOGE representatives pressed Foundation leadership to sign memoranda of understanding with the General Services Administration that would grant Shaotran and Cavanaugh full access to Foundation systems under the guise of technical support. *Id.* at ¶ 10. Aviel declined to sign the requested memoranda, but the DOGE representatives continued their campaign to gain unfettered access to the Foundation’s computer systems. *Id.*

On or about February 26, 2025, President Trump summarily fired all four existing members of the Foundation’s Board. *See Temporary Presidential Designation of Acting Board Members of the Inter-American Foundation and the United States African Development Foundation*, 49 Op. O.L.C. ___, at *3 (Mar. 14, 2025) (“OLC Op.”). That same day, Aviel received a one-line email from Trent Morse, the Deputy Director of Presidential Personnel, asserting that she had been fired from her position as president and CEO of the Foundation. Aviel Decl. ¶ 11; *see also* Ex. B. President Trump then designated Defendant Peter Marocco to be Acting Chair of the Foundation’s Board. *See* OLC Op. at *3; Aviel Decl. Ex. C. In an email sent “[o]n behalf of President” Trump, Morse acknowledged that neither the FVRA nor the Foundation’s organic statute gave the President authority to appoint an acting Board member, but nonetheless asserted “inherent authority under Article II” to do so. Aviel Decl. Ex. C.

On Friday, February 28, Marocco purported to hold an “emergency closed session of the board of directors ... to discuss personnel issues.” 90 Fed. Reg. 11546 (Feb. 28, 2025). Shaotran and Cavanaugh were present. The “transcript” of this meeting—the substance of which spans only about a dozen lines of informal notes—reveals that Marocco claimed that “there’s no time to give public notice of” the meeting because “President Trump’s EO says this agency needs to be reduced to

statutory minimum (and we need to send a report to OMB).”² Marocco then claimed “a majority of the board” (meaning only himself) voted to hold the meeting immediately, despite the fact that it was minutes before 5 p.m. on a Friday, no one was there to let him in to Foundation offices, and the General Counsel had not certified that the meeting could be closed to the public as required under 22 C.F.R. § 1004.6(d). *Id.* Marocco claimed that the meeting could nonetheless be closed because it “relate[d] solely to the personnel rules and practices of the agency.” *Id.* Finally, as “Chairman and only member of the board,” Marocco “designat[ed] [himself] as the acting CEO and President” of the Foundation, and also attempted to fire Aviel even though she purportedly had been fired already by the Presidential Personnel Office. *Id.*; *see also* Notice, ECF No. 21-1, *Aviel v. Gor*, No. 1:25-cv-778.

Prior to her termination, Aviel had received notice through another member of the Foundation leadership team that the Treasury Department planned unilaterally to cancel the Foundation’s contracts by close of business on February 27. Aviel Decl. ¶ 14. After Aviel was fired, DOGE representatives found a backdoor method to effectuate these actions. The Foundation’s contracts long had been processed and paid through the Administrative Resource Center (“ARC”), run by the Treasury Department’s Bureau of Fiscal Service. Under the direction of Marocco, purporting to be the Foundation’s president, DOGE accessed ARC and acted unilaterally to cancel virtually all of the Foundation’s contracts. *Id.* DOGE then used the Foundation’s own systems to send termination communications on March 4 to all of the Foundation’s active grantees, with the exception of a single grant. *Id.* ¶ 16. DOGE unlawfully canceled roughly 400 active grants in 27 countries, each of which was focused on promoting economic prosperity, advancing democratic governance, and/or fostering peace and security. *Id.* ¶ 2. The Foundation currently has tens of millions of dollars in

² IAF Board Transcript – February 28, 2025, <https://drive.google.com/file/d/1opNCP4BHPx1oqF1i8jbnMV4HinyYVvt/view>.

congressionally appropriated funds that Defendants’ actions have prevented the agency from spending to fulfill its legislatively directed mission.

DOGE also locked the majority of Foundation employees out of their IT systems and email accounts on March 4 and shuttered the agency’s public-facing website. *Id.* ¶ 15. DOGE then placed nearly all of the Foundation’s employees on administrative leave that same day. *Id.* Employees next were given notice that they were subject to a widescale reduction in force (“RIF”) that DOGE intended to use to terminate nearly all of the Foundation’s roughly three-dozen employees effective April 4. *Id.* Marocco subsequently appointed Dominic Bumbaca as president of the Foundation. *Id.*³

III. Litigation Concerning the Foundation

Aviel filed suit to challenge her unlawful termination as president and CEO of the Foundation on March 17, 2025, and filed a motion for temporary restraining order and preliminary injunction that same day, ECF Nos. 1, 5, *Aviel v. Gor*, No. 1:25-cv-778 (D.D.C.). Plaintiffs in this action filed suit March 21, 2025, and sought a preliminary injunction that same day. ECF Nos. 1, 6. Plaintiffs allege that Defendants’ actions to shutter the Foundation violate the separation of powers (Count I); are *ultra vires* because they exceed any lawful authority under the Congressional Budget and Impoundment Control Act of 1974 (“Impoundment Act”), Pub. L. No. 93-344, Title X, 88 Stat. 332, the Anti-Deficiency Act, Pub. L. No. 97-258, 96 Stat. 877 (1982), the Further Consolidated Appropriations Act, the 2025 Continuing Resolution, and the Federal Vacancies Reform Act (“FVRA”), 5 U.S.C. §§ 3345-3349e (or, in the alternative, the Appointments Clause) (Count II); and

³ Media reports reveal that Marocco has left his position at the State Department. *See, e.g.*, Edward Wong, *Pete Marocco, Who Helped Gut Foreign Aid for Trump, Leaves State Department*, N.Y. Times, Apr. 14, 2015, <https://www.nytimes.com/2025/04/14/us/politics/pete-marocco-usaid-trump-state-department.html>. His status as a purported acting Foundation board member (at least absent this Court’s injunction in *Aviel v. Gor*) is unclear, however. At most, if Marocco has also vacated the Board seat he purportedly held, it could impact the need for injunctive relief against him, but it would not affect the need for injunctive relief against any purported successor to that role, *see* Fed. R. Civ. Pro. 25, or against those who acted in concert with him, and would not moot the need for declaratory relief finding all actions taken in his purported Board capacity unlawful and therefore null and void.

violated the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701, 706 (Count III). Compl.

¶¶ 90–123. This Court held a consolidated hearing on the motions in both cases on April 2, 2025.

On April 4, 2025, this Court granted Aviel’s requested preliminary injunction, returning her to service as president of the Foundation, enjoining Defendants from continuing to exercise the powers of the Foundation absent confirmation of new Board members through the advice-and-consent process, and effectively preventing the separation from federal service of Foundation employees. ECF No. 22, *Aviel v. Gor*, No. 1:25-cv-778 (“Aviel Op.”). Through a notice filed April 7, 2025, in response to this Court’s order to show cause, *see* ECF No. 20, Plaintiffs in this matter notified the Court that a ruling on their preliminary-injunction motion is not needed at this time and agreed that expedited summary judgment briefing is the most expeditious manner to resolve this case.⁴

IV. Plaintiffs and Other Grantees that Depend on Foundation Funding

Plaintiffs are nine of the more than 400 organizations whose grants were canceled by Defendants. Consistent with Congress’s directive, each has “plan[ned], initiat[ed], assist[ed], finance[ed], administer[ed], and execut[ed] programs and projects designed to promote the achievement” of the Foundation’s purposes. 22 U.S.C. § 290f(c). Among other things, plaintiffs work to address internal displacement driven by criminal gangs in El Salvador, Guatemala, and Honduras, Bullock Decl. ¶ 5, ECF No. 6-8; combat violence against women and in schools in Peru, Reátegui Decl. ¶¶ 3–5, ECF No. 6-11; extend credit to rural women in southern Mexico, Porta Decl. ¶ 3, ECF No. 6-3; and teach small farmers sustainable agricultural techniques to help increase their yields in El Salvador, Gámez Decl. ¶ 3, ECF No. 6-2. Each has had great success with Foundation funds. *See, e.g.*, Bullock Decl. ¶¶ 6–8; Reátegui Decl. ¶ 5; Ortiz Decl. ¶¶ 5–7, ECF No. 6-7; Chaux Decl. ¶ 5, ECF No. 6-10.

⁴ Plaintiffs noted, however, that the government has sought a stay of this Court’s order from the D.C. Circuit, and have reserved the right to renew their request for a ruling on their preliminary-injunction motion should the status of the Court’s order materially change.

On March 4, 2025, each Plaintiff received a materially identical letter from Morocco informing them that their Foundation grants had been canceled. *See, e.g.*, Bullock Decl. ¶ 9, Ex. A. The letter stated that each Plaintiff's grant was "inconsistent with the agency's priorities." *Id.* It further stated that the "President's February 19, 2025 executive order mandates that the [Foundation] eliminate all non-statutorily required activities and functions." *Id.* It did not provide any other explanation. The letter instructed Plaintiffs to send any remaining "unspent funds to the IAF, in accordance with the termination clause and local law, within fifteen (15) days or as soon as practicable." *Id.* And it told them to send a final programmatic and financial report to the Foundation by April 2, 2025. *Id.*

The termination of the Foundation's grants has caused each plaintiff grave harm. Several have already laid off staff and several will have to shut down entirely without Foundation funding. *See e.g.*, Chaux Decl. ¶ 8; Porta Decl. ¶ 5; Ortiz Decl. ¶¶ 6, 10, 11; Mendoza Decl. ¶¶ 6–7, ECF No. 6-5.

LEGAL STANDARDS

A party moving for summary judgment must show that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "[I]n cases challenging agency action, '[t]he entire case on review is [ordinarily] a question of law, and only a question of law.'" *Ctr. for Biological Diversity v. McAleenan*, 404 F. Supp. 3d 218, 233 (D.D.C. 2019) (quoting *Marshall Cnty. Health Care Auth. v. Shalala*, 988 F.2d 1221, 1226 (D.C. Cir. 1993)). "[I]n the context of *ultra vires* and constitutional separation of powers claims, there are no questions of fact" because these claims present "pure question[s] of law." *Id.* (quotation marks omitted). With respect to suits under the APA, a district court likewise "sits as an appellate tribunal" because such cases involve "question[s] of law." *Am. Bioscience, Inc. v. Thompson*, 269 F.3d 1077, 1083 (D.C. Cir. 2001); *see also James Madison Ltd. by Hecht v. Ludwig*, 82 F.3d 1085, 1096 (D.C. Cir. 1996) (noting that district courts reviewing agency actions "operate instead as appellate courts resolving legal questions").

ARGUMENT

I. This Court Has Jurisdiction Over Plaintiffs’ Claims

A. Plaintiffs have established Article III standing

“The irreducible constitutional minimum of standing” requires a plaintiff to show an “injury in fact” that is “fairly traceable to the challenged action of the defendant” and that “will be redressed by a favorable decision.” *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 560-61 (1992) (cleaned up). Plaintiffs easily satisfy each prong.

1. *Plaintiffs are suffering concrete injuries*

The injury in fact required to demonstrate standing must be both “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.” *Id.*, 504 U.S. at 560 (internal quotation and citation omitted). And a concrete injury must be “real,” not “abstract,” and must personally and individually affect the plaintiff. *Spokeo v. Robins*, 578 U.S. 330, 340 (2016).

Defendants’ unlawful efforts to abolish the Foundation have inflicted concrete harms on Plaintiffs. For several, the magnitude of harm threatens their very existence. See e.g., Chaux Decl. ¶ 8; Porta Decl. ¶ 5; Ortiz Decl. ¶¶ 6, 10, 11; Mendoza Decl. ¶¶ 6–7. Defendants’ cancelation of Plaintiffs’ grants has inflicted a “pocketbook injury [which] is a prototypical form of injury in fact,” *Collins v. Yellen*, 594 U.S. 220, 243 (2021), so there can be no dispute here that Plaintiffs each have suffered an Article III injury. See *AIDS Vaccine Advoc. Coal. v. U.S. Dep’t of State*, No. 1:25-400, 2025 WL 752378, at *6 (D.D.C. Mar. 10, 2025) (noting that government “conceded” that pocketbook injury caused by cessation of foreign-aid funding “is ‘recognized as an Article III injury’”) (quotation omitted).

Defendants’ actions have also significantly impaired each Plaintiff’s ability to accomplish its primary mission. Each Plaintiff has submitted a declaration averring that, as a result of Defendants’ lawless actions, they have lost funding on which they rely to perform critical services and that, absent restoration of that funding, they face catastrophic harm. For example, plaintiff Corpocaminos may

have to close its doors as a result of the loss of Foundation funds. Chaux Decl. ¶¶ 8–9. Corpocaminos is the first community-led technical college in southwestern Colombia, and has used Foundation funds to pay for physical and technological infrastructure, books, and computers. *Id.* at ¶ 5. Foundation funding has also been used to help bring two of Corpocaminos’s academic programs into compliance with government standards. *Id.* Colombian law also requires entities like Corpocaminos to maintain funding from sources other than tuition fees, so Corpocaminos may lose its accreditation and be forced to close without Foundation funding. *Id.* at ¶ 8.

Other plaintiffs face similarly existential threats. Plaintiff Acción Cultural Popular Hondureña (“ACPH”) is owed more than \$100,000 under the terms of its grant. Zepeda Decl. ¶ 10, ECF No. 6-6. Foundation funds represent 70 percent of ACPH’s overall budget. *Id.* at ¶ 11. As a result of the abrupt cancelation of funds, it has been forced to lay off all of its staff that worked in Valle de Sula, one of the most important regions in which it operates. *Id.* ACPH soon will be forced to suspend its youth skills training program, which has successfully trained nearly 600 people for jobs in a diverse array of industries, including electrical technicians, graphic designers, cell phone repair, and computer scientists. *Id.* at ¶¶ 6, 12. The end of Foundation funds will also severely hamper ACPH’s ability to help communities prepare for, and respond to, natural disasters. *Id.* at ¶¶ 8, 13.

The loss of its Foundation grant will force Plaintiff EIFODEC to shut down its “Building an Inclusive World” project. Mendoza Decl. ¶ 7. Under this program, EIFODEC trains disabled children and youth, teaching them occupational and daily-life skills, and trains the families of persons with disabilities to care for and support the independence of their loved ones. *Id.* at ¶ 3. The cancelation of Foundation funds will force EIFODEC to end this project and lay off staff. *Id.* at ¶¶ 6–7.

And the list goes on. Plaintiff Sociedad Cooperativa Las Mujeres Rurales de la Frontera Sur is still owed more than \$225,000 of the \$237,780 guaranteed under its grant agreement. Porta Decl. ¶ 5. It has had to lay off seven employees already. *Id.* Without its grant funding, it will be unable to extend

credit to 600 women in rural Mexico to start their own businesses. *Id.* Plaintiff Asociación Instituto Salvadoreño de Educación Cooperativa y Agricultura Orgánica will be unable to continue and expand its agricultural training program, under which it teaches sustainable agricultural techniques to small family farms, which in turn enables significant expansion of their farms. Gámez Decl. ¶¶ 3, 4, 6. Plaintiff Fundación Renace will be unable to continue helping several small business associations prepare bids for government contracts, affecting the food security and economic livelihood of more than 1,000 people. Chavez Decl. ¶ 4, ECF No. 6-9. Plaintiff Cristosal Human Rights will be unable to continue providing essential legal, humanitarian, and mental-health services to 372 individuals. Bullock Decl. ¶ 12. Indeed, it has already spent nearly \$75,000 of other funds to cover expenses incurred under the terms of its grant. *Id.* ¶ 10. Plaintiff Alternativas y Capacidades will have to shut down its Social Laboratory for Youth-led Initiatives program, which currently is training 40 young leaders on the Yucatán Peninsula and helping them start community-led social projects. Ortiz Decl. ¶¶ 6, 10, 11.

Plaintiffs also have suffered injury through the loss of significant non-monetary benefits they derived from their partnerships with the Foundation, its staff, and its contractors. Plaintiffs (and other Foundation grantees) are very small, grassroots organizations with limited resources that leveraged Foundation support to create robust, results-driven development programs. Foundation staff provided Plaintiffs with organizational and administrative support that they otherwise lacked. *E.g.*, Gámez Decl. ¶ 9. Foundation staff also provided critical technical support and advice, as well as assistance with improving Plaintiffs' monitoring systems and strategies. *See, e.g.*, Bullock Decl. ¶ 13. Auditors contracted by the Foundation provided Plaintiffs with accounting, documentation, and legal-compliance assistance. *E.g., id.* These services have been critical to Plaintiffs' growth and have enabled them to access additional funding from other sources. *See id.; see also* Ortiz Decl. ¶ 13; Reátegui Decl. ¶ 10; Chavez Decl. ¶ 5; Zepeda Decl. ¶ 14; Porta Decl. ¶ 6; Chaux Decl. ¶ 11; Mendoza Decl. ¶ 9; Gámez Decl. ¶ 9. Several Plaintiffs participated in Foundation-sponsored exchanges, allowing them

to learn best practices from organizations with similar missions throughout Latin America and the Caribbean. *See, e.g.*, Reátegui Decl. ¶ 9; Ortiz Decl. ¶ 12. The loss of these critical resources constitute concrete harms, separate and distinguishable from Plaintiffs’ lost funding.

Moreover, because Defendants have demonstrated⁵ that they have no intention of replacing the roughly 400 canceled grants with new awards going forward, Plaintiffs are injured through the loss of an ability to compete for future awards. It is well-established that “being denied an opportunity to compete” for federal grant funds is an injury for purposes of Article III. *W. Va. Ass’n of Cmty. Health Ctrs., Inc. v. Heckler*, 734 F.2d 1570, 1574 (D.C. Cir. 1984). Defendants’ refusal to spend money appropriated by Congress to the Foundation will deny Plaintiffs any opportunity to compete for future development grants. Indeed, several Plaintiffs were in the process of securing additional funds from the Foundation when Defendants shut the Foundation down. Plaintiff Asociación Las Pregoneras was negotiating a two-year, \$267,000 extension, an agreement that needed only the Foundation President’s signature before taking effect. Reátegui Decl. ¶ 7. Similarly, Plaintiff Cristosal was in the process of applying for a supplemental grant agreement that would have allowed it to continue providing services for an additional two years. Bullock Decl. ¶ 11.

At bottom, Plaintiffs’ injuries stem not only from the cancelation of their own grants, but from Defendants’ actions to shutter the agency writ large and obstruct its functioning at the most basic level. Plaintiffs have standing to challenge Defendants’ illegal dissolution of the Foundation, including its termination of Foundation staff and its mass cancelation of contracts and grants.

2. *Defendants’ unlawful actions have caused Plaintiffs’ injuries*

Causation is established where a plaintiff’s injury is “fairly ... trace[able]” to the defendant’s conduct, rather than the result of some independent action by a “party not before the court.” *Simon v.*

⁵ *See* Aviel Op. at 21 (“To argue that the IAF remains functioning when it has one employee, one grant, and little else is comically difficult to believe.”).

E. Ky. Welfare Rts. Org., 426 U.S. 26, 41-42 (1976). Here, Plaintiffs satisfy this prong because the loss of their relationships with the Foundation—including not only their own funding awards but also all of the critical non-monetary support discussed above—is directly traceable to Defendants’ efforts to dismantle the Foundation. That is self-evident on the face of the Executive Order on which Defendants’ actions are based. The Dismantling EO explicitly states that the Foundation is “unnecessary” and that “non-statutory components and functions ... shall be eliminated.” 90 Fed. Reg. 10577. Defendants effectuated that EO by taking a series of steps to effectively shutter the agency, including terminating virtually all of its staff, firing its president, and canceling virtually all of the Foundation’s contracts and grants. Plaintiffs’ injuries stem directly from these actions, which not only cut off Plaintiffs’ funding but also made it impossible for them to benefit from other forms of support from the Foundation.

It matters not that Defendants could have canceled Plaintiffs’ grants for other, lawful reasons: The Supreme Court has repeatedly held that a “litigant challenging governmental action as void on the basis of the separation of powers is not required to prove that the Government’s course of conduct would have been different in a ‘counterfactual world’ in which the Government had acted with constitutional authority.” *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 211 (2020) (quoting *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 512 n.12 (2010)). Besides, as shown above, Plaintiffs’ injuries stem from the loss of the Foundation as a functioning agency—not only the loss of their own awards—and *those* harms plainly flow from the determination to shutter the Foundation as “unnecessary,” *see* Dismantling EO.

3. *Plaintiffs’ requested relief would remedy their injuries*

For the same reasons, Plaintiffs’ harms would be redressed by the relief sought in their Complaint. *See Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024) (“[C]ausation and redressability [] are often ‘flip sides of the same coin.’”) (citation omitted). Plaintiffs’ requested

declaratory and injunctive relief would restore the Foundation as a functioning agency, as Congress intended when codifying that it “shall have perpetual succession,” 22 U.S.C. § 290f(e)(1), and would thus fully redress the multitude of injuries Defendants’ slash-and-burn approach has inflicted. It is of no consequence that a lawfully appointed Board could direct a lawfully appointed president to cancel some, or even all, of Plaintiffs’ grants through a lawful process under the Foundation’s originating statute at a later date. It is “sufficient that the challenger sustains injury from an executive act that allegedly exceeds the official’s authority.” *Seila Law*, 591 U.S. at 211 (cleaned up). More importantly, so long as the Foundation remains a functioning agency, as Congress intended, with the ability to access and disburse its congressionally appropriated funding, Plaintiffs remain able to compete for future awards and benefit from the ability to have a relationship with the Foundation. That is enough for Article III.

B. Plaintiffs’ Claims Belong in District Court, Not the Court of Federal Claims

This Court has jurisdiction over all of Plaintiffs’ claims. Defendants have indicated their intent to move for dismissal of Plaintiffs’ complaint on the ground that, in their view, this Court “lack[s] jurisdiction to order the payment of money under the APA because the Tucker Act grants the Court of Federal Claims jurisdiction over suits based on ‘any express or implied contract with the United States.’” *See* ECF No. 22, Joint Status Report at 5 (Apr. 9, 2025) (quoting *Dep’t of Educ. v. California*, 145 S. Ct. 966, 968 (2025) (per curiam)). That argument relies on a mischaracterization of Plaintiffs’ relationships with the Foundation and the nature of their claims.

Defendants’ argument fails for three reasons. *First*, Plaintiffs’ agreements with the United States are not contracts. The Tucker Act confers “exclusive jurisdiction over breach of contract claims against the United States seeking more than \$10,000 in damages on the Court of Federal Claims.”

Crowley Gov't Servs., Inc. v. Gen. Servs. Admin., 38 F.4th 1099, 1106 (D.C. Cir. 2022) (citation omitted).⁶ But for the Court of Federal Claims to have jurisdiction under the Tucker Act, “a contract must contain ‘the four required elements of offer, acceptance, consideration, and proper government authority.’” *Am. Near E. Refugee Aid v. U.S. Agency for Int’l Dev.*, 703 F. Supp. 3d 126, 132 (D.D.C. 2023) (citation omitted); *see also Trauma Serv. Grp. v. United States*, 104 F.3d 1321, 1326 (Fed. Cir. 1997) (similar). Significantly, the consideration that the government receives must be “‘tangible’ and ‘direct,’ rather than ‘generalized’ or ‘incidental.’” *Am. Near E. Refugee Aid*, 703 F. Supp. 3d at 132 (quoting *St. Bernard Parish Gov’t v. United States*, 134 Fed. Cl. 730, 736 (2017), *aff’d on other grounds*, 916 F.3d 987 (Fed. Cir. 2019)). That conclusion is consistent with federal law, which requires agencies to use grants or cooperative agreements when “carry[ing] out a public purpose,” 31 U.S.C. §§ 6304(1), 6305(1), and requires them to use contracts when procuring “property or services for the direct benefit or use of the United States Government,” *id.* § 6303(1). *See generally Harlem Globetrotters Int’l, Inc. v. United States*, 168 Fed. Cl. 31, 38 (2023) (the “mere fact” that an agency makes a monetary grant is “not itself sufficient to prove or disprove the existence of a contract” between the agency and the grant recipient).

Consistent with this distinction, judges in this district and the Court of Federal Claims have routinely held that agreements like the ones here are not contracts for purposes of the Tucker Act. For example, in *American Near East Refugee Aid*, the Court held that an agreement under which a nonprofit organization constructed and renovated water and sanitation infrastructure in Palestine was a “non-tangible, generalized benefit.” 703 F. Supp. 3d at 134. Similarly, in *St. Bernard Parish*, the Court

⁶ Defendants’ anticipated argument may be wrong for another reason. The D.C. Circuit has noted that there is a “strong case” that, after the Supreme Court’s decision in *Bowen v. Massachusetts*, 487 U.S. 879 (1988), the Tucker Act does not preclude plaintiffs from bringing “contract actions for specific relief” under the APA in district court. *Transohio Sav. Bank v. Director, Office of Thrift Supervision*, 967 F.2d 598, 612 (D.C. Cir. 1992) *abrogated on other grounds by Perry Capital LLC v. Mnuchin*, 864 F.3d 591 (D.C. Cir. 2017). But it declined to overrule its decisions holding that the Tucker Act is the exclusive forum where such claims may be pursued. *Id.* at 613. Because this Court is bound by the D.C. Circuit’s decisions, Plaintiffs note this argument only for purposes of preserving it on appeal.

of Federal Claims held that an agreement under which a parish cleared sediment from Louisiana watersheds in the wake of Hurricane Katrina did not give the federal government “direct benefits.” 134 Fed. Cl. 735. And it contrasted the benefits the federal government received in that case with those that it had received in another case that were “direct”: “a service fee, enhancement of access to a nearby military base and areas and facilities for [the federal government’s] use.” *Id.* (discussing *Anchorage v. United States*, 119 Fed. Cl. 709, 713–715) (2015)).

Here, the benefit the United States receives from providing grants through the Foundation is plainly “non-tangible” and “generalized.” *Am. Near E. Refugee Aid*, 703 F. Supp. 3d at 134. Like an agreement to improve Palestinians’ water and sanitation infrastructure or an agreement to clean up sediment in Louisiana, the federal government receives no direct benefit from helping rural women in southern Mexico access credit, *see* Porta Decl. ¶ 3, or teaching small farmers in El Salvador sustainable agricultural techniques, Gámez Decl. ¶¶ 3–4. Instead, the “principal purpose” of the United States’ relationship with Plaintiffs is to “carry out a public purpose of support or stimulation authorized by law of the United States,” 31 U.S.C. § 6304(1)—*i.e.*, Congress’s goal of “provid[ing] support for developmental activities designed to achieve conditions in the Western Hemisphere under which the dignity and the worth of each human person will be respected and under which all men will be afforded the opportunity to develop their potential, to seek through gainful and productive work the fulfillment of their aspirations for a better life, and to live in justice and peace,” 22 U.S.C. § 290f(b). The text of the agreements further confirms that they are not contracts. Each refers to the recipient as a “[g]ranttee,” and the monies they receive as “Grant funds.” *E.g.*, ECF No. 15-1, at 7 (agreement with Plaintiff Fundación Renace). The award letter to each Plaintiff also states that the Foundation has “approved a grant” of a specified amount. *Id.* at 2. And the agreement allows either party to terminate the agreement “upon written notice to the other”—without having to pay any compensation for doing so. *Id.* at 9.

Second, even if Plaintiffs’ agreements could be considered contracts (and they are not), the D.C. Circuit has “explicitly rejected the ‘broad’ notion ‘that any case requiring some reference to or incorporation of a contract is necessarily on the contract and therefore directly within the Tucker Act.’” *Crowley*, 38 F.4th at 1107 (quoting *Megapulse, Inc. v. Lewis*, 672 F.2d 959, 967–68 (D.C. Cir. 1982)). To do so would “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. Instead, in determining whether the Tucker Act requires a claim to be brought in the Court of Claims, the D.C. Circuit asks whether the action is “*at its essence* a contract claim.” *Id.* at 967. That analysis “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.* at 968.

Here, both the source of Plaintiffs’ rights and the type of relief they seek demonstrate that Plaintiffs’ claims are not contractual. With respect to the source of a plaintiff’s rights, the D.C. Circuit has instructed courts to “make rational distinctions between actions sounding genuinely in contract and those based on truly independent legal grounds.” *Id.* at 969–970. Among other things, that analysis considers whether the “plaintiff’s asserted rights and the government’s purported authority arise from statute, whether the plaintiff’s rights exist prior to and apart from rights created under contract, and whether the plaintiff seeks to enforce any duty imposed upon the government by the relevant contracts to which the government is a party.” *Crowley*, 38 F.4th at 1107 (cleaned up).

Plaintiffs’ rights do not “sound[] genuinely in contract.” *Megapulse*, 672 F.2d at 969–970. Plaintiffs do not argue that Defendants violated any particular term of their agreements. Instead, they challenge Defendants’ efforts to dismantle the Foundation and impound its funds. And each of the considerations that the D.C. Circuit identified in *Crowley* demonstrates that Plaintiffs’ challenge is based on “truly independent legal grounds.” *Id.* Their asserted rights “arise from statute,” *Crowley*, 38 F.4th at 1107—the FVRA, the Impoundment Act, the Anti-Deficiency Act, the relevant appropriations

statutes, and the APA—or from the Constitution. *See* Compl. ¶¶ 90–123. As the D.C. Circuit has repeatedly explained, where a plaintiff’s claims “require[] primarily an examination of the statutes the [government] has purportedly violated, not of [the plaintiff’s] contract” with the government, the source of the plaintiff’s rights is not contractual. *Crowley*, 38 F.4th at 1109; *see also Md. Dep’t of Hum. Res. v. Dep’t of Health & Hum. Servs.*, 763 F.2d 1441, 1449 (D.C. Cir. 1985) (Tucker Act does not apply where claims “arise under a federal program and turn on the interpretation of statutes and regulations rather than on the interpretation of the agreement negotiated by the parties”). Similarly, the rights Plaintiffs invoke here—the right not to be subjected to actions that violate the Constitution and various statutes, or actions that are arbitrary and capricious—exist “prior to and apart” from their rights under the contract. *Crowley*, 38 F.4th at 1107. And Plaintiffs do not seek to enforce any “duty imposed upon the government” by the grant agreements. *Id.* Instead, they seek to enforce the duties that the Constitution, the Impoundment Act, the Anti-Deficiency Act, the FVRA, and the APA impose on Defendants. *See also Perry Capital LLC v. Mnuchin*, 864 F.3d 591, 619 (D.C. Cir. 2017) (Tucker Act does not apply where a plaintiff does not “seek to enforce any duty imposed upon” the government by the “only relevant contracts to which [the government] is a party”); *Me. Cmty. Health Options v. United States*, 590 U.S. 296, 323–324 (2020) (“The Tucker Act yields when ... the Administrative Procedure Act [] provides an avenue for relief” (citations omitted)). Indeed, in another case challenging the denial of congressionally appropriated foreign-aid funds, the federal government conceded that the Tucker Act does not divest district courts of jurisdiction over separation-of-powers claims. *See* Hr’g Tr. at 87, *AIDS Vaccine Advoc. Coal.*, No. 25-00400 (D.D.C. Mar. 8, 2025), ECF 56.

Nor do Plaintiffs seek contractual damages. The “crux of this inquiry” is whether the plaintiff “effectively seeks money damages in the suit.” *Crowley*, 38 F.4th at 1107. As long as the complaint “only requests non-monetary relief that has considerable value independent of any future potential for monetary relief and as long as the sole remedy requested is declaratory or injunctive relief that is not

negligible in comparison with the potential monetary recovery,” it does not “in essence seek monetary relief.” *Id.* at 1107–1108 (cleaned up). That is the case here. In their complaint, Plaintiffs sought declaratory and injunctive relief ordering Defendants to comply with their constitutional and statutory obligations and preventing Morocco from purporting to exercise power he does not have. *See* Compl. pp. 29–30. Such an order would give Plaintiffs a “host of non-monetary benefits.” *Crowley*, 38 F.4th at 1111. They would once again receive technical and administrative support from Foundation employees and contractors, which would allow them to continue to leverage funds from other sources. *See, e.g.*, Chaux Decl. ¶ 11. They would be able to learn from other, similar organizations in the region as a result of Foundation-sponsored exchanges. *See, e.g.*, Reátegui Decl. ¶ 9; Ortiz Decl. ¶ 12. And most importantly, the declaration and injunction Plaintiffs seek would clarify that Defendants do not have the authority to dismantle the agency and would render void the actions taken by Defendants without lawful authority. As the D.C. Circuit has explained, there is “considerable value” in knowing whether a government agency “has the authority” to take specific actions, and allowing a plaintiff to “provide services ... free of [that agency’s] alleged interference.” *Id.* (citation omitted); *see also Me. Cmty. Health Options*, 590 U.S. at 326 (“prospective declaratory and injunctive relief to clarify the extent of the Government’s ongoing obligations” to a party is not “money damages”). Each of these forms of relief is “not negligible in comparison to any potentially monetary recovery [Plaintiffs] may seek in Claims Court.” *Crowley*, 38 F.4th at 1113. Indeed, the equitable relief that Plaintiffs seek here that would fully remedy their injuries could not be awarded in the Court of Claims, which lacks the authority to enter injunctive relief. *See Bowen v. Massachusetts*, 487 U.S. 879, 906 (1988) (“[T]he Court of Claims has no power to grant equitable relief.”).

To be sure, if Plaintiffs succeed on their claims, they may receive funds as a result of the Court’s declaration that Defendants lack the authority to dismantle the Foundation and impound its funds, and an injunction preventing Defendants from taking such actions. But the Tucker Act’s

jurisdictional requirements do not apply “merely because a plaintiff hints at some interest in a monetary reward from the federal government or because success on the merits may obligate the United States to pay the complainant.” *Crowley*, 38 F.4th at 1108 (cleaned up); *see also Bowen*, 487 U.S. at 893 (the mere “fact that a judicial remedy may require one party to pay money to another is not a sufficient reason to characterize the relief as ‘money damages’”). The Supreme Court has long recognized the distinction between “an action at law for damages—which is intended to provide a victim with monetary compensation for an injury to his person, property, or reputation—and an equitable action for specific relief—which may include an order providing for the reinstatement of an employee with backpay, or for the recovery of specific property or monies, ejectment from land, or an injunction either directing or restraining the defendant officer’s actions.” *Bowen*, 487 U.S. at 893 (cleaned up). It “simply is not the case” that an order requiring the government to “pay expenses it should have paid all along and would have borne in the first instance” had it followed the law—which is part of the relief Plaintiffs seek here—is one for “damages.” *Id.* at 894 (cleaned up).

Indeed, the D.C. Circuit has repeatedly rejected an argument similar to the one Defendants are likely to advance here. For example, in *Maryland Department of Human Resources*, the federal government determined that Maryland had misspent \$207,350 in funds received under Title XX of the Social Security Act. 763 F.2d at 1443. Maryland challenged that conclusion, and the D.C. Circuit rejected the argument that the Tucker Act deprived the district court of jurisdiction. *Id.* at 1448–1449. Relevant here, the court saw “no reason to assume” that the dispute before it was a “contract within the meaning of the Tucker Act,” even though “principles of contract law undoubtedly have a role to play in such disputes.” *Id.* That was because “unlike normal contractual undertakings, federal grant programs originate in and remain governed by statutory provisions expressing the judgment of Congress concerning desirable public policy.” *Id.* (cleaned up). Similarly, in *Megapulse*, the D.C. Circuit rejected the argument that the claim there—that the federal government had violated the Trade Secrets

Act—was a contract claim because the relief sought was “tantamount to specific performance.” 672 F.2d at 970. It was “not willing to follow” the government’s logic that “an agency action may not be enjoined, even if in clear violation of a specific statute, simply because that same action might also amount to a breach of contract.” *Id.* at 971; *see also Esch v. Yeutter*, 876 F.2d 976, 984 (D.C. Cir. 1989) (request for an injunction “against an arbitrary or capricious administrative denial of subsidy payments” is “certainly not an action for money damages”) (citation omitted).

Third, Defendant’s anticipated Tucker Act argument ignores the full range of harms Plaintiffs seek to remedy. Defendants will presumably argue that Plaintiffs’ claims are contractual because—according to the government—the source of Plaintiffs’ rights is monies owed to them under their grant agreements. For the reasons explained above, that premise is wrong. But even if it were right, the Tucker Act would not prevent Plaintiffs from proceeding in this Court to remedy harms completely disconnected from their agreements: the loss of all of the nonmonetary supports they receive from the Foundation and the ability to apply for new grant funds that would be available but for Defendants’ impoundment of Foundation funds. *See, e.g.,* Reátegui Decl. ¶ 7; Bullock Decl. ¶ 11. Those harms are cognizable. *See W. Va. Ass’n of Cmty. Health Ctrs.*, 734 F.2d at 1574 (“once [a party] demonstrate[s] that they would qualify to receive these funds, they need not shoulder the additional burden of demonstrating that they are certain to receive funding”). So even under Defendants’ theory, these Plaintiffs may pursue their claims in this Court.

Finally, the Supreme Court’s recent decision in *Department of Education v. California*, does not compel a different result. In that case, several states challenged the federal government’s attempt to cancel various education-related grants. 145 S. Ct. at 968. The district court issued a temporary restraining order enjoining the attempted cancelation, reasoning that the states were likely to succeed on their claims that the cancelation was arbitrary and capricious. *Id.* The federal government asked the Supreme Court to stay the district court’s order pending appeal, and the Court granted that request.

Id. Among other things, the Court held that the federal government was likely to succeed on its argument that the states’ claims had to be brought in the Court of Federal Claims because the states effectively sought “to enforce a contractual obligation to pay money.” *Id.* (quoting *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 212 (2002)). It further noted that the states had the “financial wherewithal to keep their programs running.” *Id.* at 969.

California does not control here for several reasons. First, the district court only granted relief with respect to the states’ arbitrary and capricious claim under the APA, so the Court’s ruling—to the extent it had any applicability—would be limited to that claim only. *See id.* Second, the *California* plaintiffs did not allege that the termination of the education grants interfered with their ability to compete for future grants. *See* Compl. ¶¶ 161–186, *California v. U.S. Dep’t of Educ.*, No. 1:25-cv-10548 (D. Mass. Mar. 6, 2025), ECF No. 1. Third, the plaintiffs’ challenge turned, at least in part, on the terms of the particular grants at issue and the individual termination decisions themselves. *See, e.g., id.* ¶¶ 166, 183. Fourth, *California* is “not a ruling on the merits, but instead simply stays the District Court’s injunction *pending a ruling on the merits.*” *Merrill v. Milligan*, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J., concurring) (Mem.). As a result, the parties did not argue, and the Court did not consider, every aspect of the issue before it. For example, plaintiffs did not argue that the grants at issue were not “contracts” for purposes of the Tucker Act. *See* Opp. to Application at 20–27, *Dep’t of Educ. v. California* (No. 25A910), 2025 WL 963588. Moreover, in granting a stay, the Supreme Court “bring[s] to bear an equitable judgment of [its] own.” *Trump v. Int’l Refugee Assistance Project*, 582 U.S. 571, 580 (2017). In *California*, that equitable judgment turned in part on the Court’s view that the plaintiff states had the “financial wherewithal to keep their programs running,” 145 S. Ct. at 969, and thus had not shown irreparable harm. That equitable inquiry is not at-issue here, where Plaintiffs need only show injury sufficient to establish standing and are entitled to final judgment on each claim as a matter of law.

* * *

Because Plaintiffs have established Article III standing for each of their claims, and the Tucker Act has no applicability, this Court has jurisdiction and should reach the merits of Plaintiffs' claims.

II. Plaintiffs Are Entitled to Judgment as a Matter of Law on Each of Their Claims

Defendants' hostile takeover and abrupt decimation of the Foundation exceed the Executive Branch's constitutional and statutory authority and thus violate the separation of powers. Defendants' impoundment of the Foundation's congressionally appropriated funds and cancelation of virtually all of its contracts and grants also constitute *ultra vires* actions taken without authority and unlawful action under the APA. And—as this Court already has found—Marocco's purported appointment to the Foundation Board violates the FVRA and the Appointments Clause, and thus all acts he purported to take with respect to the Foundation are null and void. Plaintiffs' claims present purely legal issues appropriate for resolution without factual development, and Plaintiffs are entitled to judgment on each claim.

A. Defendants' actions violate the separation of powers

The framers of the U.S. Constitution structured our federal government to ensure that a system of checks and balances curbs any impulses toward aggrandizement of power. “The declared purpose of separating and dividing the powers of government” between the legislative, executive, and judicial branches was “to diffuse[e] power the better to secure liberty.” *Bomsher v. Synar*, 478 U.S. 714, 721 (1986) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring)).

Although the executive and legislative branches share authority in certain spheres, such as foreign affairs, *see Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 21 (2015), the framers granted Congress plenary control over federal spending. That control is effectuated in part by the Spending Clause, which provides: “The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United

States; but all Duties, Imposts and Excises shall be uniform throughout the United States.” U.S. Const. art. I, § 8, cl. 1. The Constitution also grants the legislature the exclusive power to appropriate federal funds: “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” U.S. Const. art. I, § 9, cl. 7. The Spending and Appropriations Clauses, among other provisions, together operate to grant Congress exclusive power over the federal purse.

Alongside control over federal spending, the Constitution also vests in Congress the power to make law—*i.e.*, to legislate. U.S. Const. art. I, § 1. And although a sitting president can *veto* legislation presented to him, U.S. Const. art. I, § 7, cl. 2, he has no power to create federal law unilaterally, nor can he alter, modify, or rescind duly enacted legislation. In other words, the President’s power is limited to approving or rejecting in full legislation presented to him. *Clinton v. City of New York*, 524 U.S. 417, 439-40 (1998). And once legislation has been enacted as federal law, the Constitution charges the President with the affirmative duty to “take Care that the Laws be faithfully executed.” U.S. Const. art. II, § 3.

Defendants’ actions to shutter the Foundation flout these core separation-of-powers principles in numerous ways. Regardless of how “unnecessary” the President may consider the Foundation to be, *see* Dismantling EO, the Foundation is an independent agency created by Congress and cannot be closed (either literally or functionally) by executive fiat. “Federal agencies are creatures of statute,” *J. Rotenberg Educ. Ctr., Inc. v. FDA*, 3 F.4th 390, 399 (D.C. Cir. 2021), and only Congress can abolish a federal agency or otherwise dictate (or reduce) its duties. This is true as a general matter of administrative and constitutional law, but has particular force here. Congress took the unusual step of confirming that, as a matter of federal law, the Foundation “shall have perpetual succession unless sooner dissolved by an Act of Congress.” 22 U.S.C. § 290f(e)(1).

Defendants have disregarded Congress’s directives and taken actions with the intent and effect of dismantling a federal agency created by Congress. These actions include, but are not limited to:

usurping the power of the Foundation’s presidentially appointed and Senate-confirmed Board of Directors; purporting to install Marocco as sole member of the Board; firing the Foundation’s president and CEO; Marocco’s purporting to designate himself as President of the Foundation (and later to designate Bumbaca as President); placing almost all of the Foundation’s employees on administrative leave and instituting a widescale RIF to terminate virtually all of the Foundation’s employees within 30 days; canceling virtually all of the Foundation’s contracts and grants; and shuttering its website. By directing these actions, the President has violated his duties under the Take Care clause to faithfully execute laws passed by Congress. The President also has sought to unilaterally alter the Inter-American Foundation Act by gutting an agency that should exist “in perpetual succession.” 22 U.S.C. § 290f(e)(1). “[T]here can be no liberty where the legislative and executive powers are united in the same person.” *Bowsher*, 478 U.S. at 722 (quoting *The Federalist* No. 47, p. 325 (James Madison) (J. Cooke ed. 1961)). By carrying out the President’s unlawful directives, Defendants blatantly have violated the constitutional separation of powers.

It matters not that Defendants claim to have reduced the Foundation to its “minimum statutory presence,” Dismantling EO, and thus have left in place one grant and one employee. *See* Prelim. Inj. Hr’g Trans. at 62:21-63:15, *Aviel v. Gor*, ECF No. 23. That is not a functioning agency and certainly does not permit the Foundation to fulfill its legislatively directed mission. As a practical matter, before this Court enjoined Defendants’ lawless actions, *see* *Aviel Op.*, the Foundation was no longer functioning—a fact unchanged by Defendants’ lip service to satisfying a statutory “minimum.” Dismantling EO. The President (and his officers, on his direction) have “take[n] measures incompatible with the express or implied will of Congress,” placing “at stake ... the equilibrium

established by our constitutional system.” *Youngstown*, 343 U.S. at 637 (Jackson, J., concurring). Such actions cannot stand.⁷

In addition to their efforts to abolish the agency itself, Defendants have further violated the separation of powers by continuing to impound congressionally appropriated funds. In March of last year, Congress appropriated \$47 million in funding “to carry out the functions of” the Foundation “until September 30, 2025.” Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, div. F, tit. III. Congress further instructed that funds could not be used to “implement a reorganization, redesign, or other plan” that would “expand, eliminate, consolidate, or downsize” the Foundation (among others), unless the agency first consults with the Appropriations Committee in each chamber and “include[s] a detailed justification.” *Id.* § 7063(a), (b)(1), 138 Stat. at 843-44. And just days before this action was filed—even after Defendants’ unlawful actions to shutter the Foundation and freeze its funds—Congress *again* voted to continue to fund the Foundation’s activities. Full-Year Continuing Resolution, Pub. L. No. 119-4, § 1101(a)(11) (2025). Defendants have defied these congressional directives to spend this appropriated funding in accordance with the Foundation’s mission. In so doing they have acted unilaterally to wrest control over Congress’s “exclusive power over the federal purse,” *U.S. Dep’t of Navy v. Fed. Lab. Rels. Auth.*, 665 F.3d 1339, 1346 (D.C. Cir. 2012) (Kavanaugh, J.) (citation omitted), by preventing the Foundation from accessing its appropriations and by canceling all but one small grant. Defendants’ impoundment of the Foundation’s funding violates “settled, bedrock principles of constitutional law” because “where previously appropriated money is available for an agency to perform a statutorily mandated activity, [there exists] no basis for a court to excuse

⁷ It bears emphasis that Plaintiffs’ claims do not challenge whether the President “has acted in excess of his statutory authority,” *Dalton v. Specter*, 511 U.S. 462, 472 (1994), but instead that the President lacks *any* authority—constitutional or statutory—unilaterally to abolish part of the federal government. This is a dispute over whether Defendants’ actions violate core facets of our constitutional structure, not a dispute about the proper “statutory minimum” created under the Foundation’s organic statute.

the agency from that statutory mandate.” *In re Aiken Cnty.*, 725 F.3d 255, 260 (D.C. Cir. 2013) (Kavanaugh, J.); *see id.* at 257 (explaining that neither the President nor “subordinate executive agencies” may refuse to spend appropriated funds due to policy disagreements with the purposes set by Congress). Defendants are violating the separation of powers by aggrandizing to themselves Congress’s spending power.

As this Court is well aware, Defendants’ actions *vis-à-vis* the Foundation took place against the backdrop of other moves by the current administration to shutter agencies created by Congress and, in particular, to choke the flow of nearly all foreign-aid funding appropriated by Congress for expenditure by several agencies. Other courts reviewing separation-of-powers challenges to similar actions at other agencies have found likely constitutional violations, with one court in this district recently noting that “constitutional power over whether to spend foreign aid is not the President’s own—and it *is* Congress’s own.” *AIDS Vaccine Advoc. Coal.*, 2025 WL 752378, at *16; *see id.* at *17 (noting that Executive Branch has some discretion to “determine *how* appropriated funds are spent” but “Congress’s appropriations laws set the amount that is to be spent”).

Plaintiffs are entitled to judgment on their claim that Defendants’ actions to freeze the Foundation’s funding, terminate its contracts and grants wholesale, and shutter the agency violate core separation-of-powers principles. This Court should issue declaratory relief confirming the unlawful nature of Defendants’ actions and exercise its inherent equitable power to enjoin Defendants’ constitutional violations. *See Free Enter. Fund*, 561 U.S. at 491 n.2 (rejecting government’s argument “that an Appointments Clause or separation-of-powers claim should be treated differently than every other constitutional claim” with respect to the well-settled availability of equitable relief to prevent constitutional violations).

B. Defendants' actions to shutter the agency by impounding funds, terminating grants and contracts, and firing employees are *ultra vires*

Plaintiffs are also entitled to judgment on their claim that various actions taken to dismantle the Foundation and freeze its funding are *ultra vires* and thus null and void. “When an executive acts *ultra vires*, courts are normally available to reestablish the limits on his authority.” *Dart v. United States*, 848 F.2d 217, 224 (D.C. Cir. 1988).

1. *Federal statutes prohibit Defendants' impoundment of the Foundation's funding*

Taking the Foundation's funding first, Congress has acted specifically to protect its constitutionally derived authority to control federal spending by enacting the Congressional Budget and Impoundment Control Act of 1974 (“Impoundment Act”), Pub. L. No. 93-344, Title X, 88 Stat. 332. The Impoundment Act confirms that the President lacks power to unilaterally refuse to spend congressionally appropriated funds. If a disagreement with spending priorities should arise, the President may *propose* rescission of “all or part of any budget authority.” 2 U.S.C. § 683(a). But unless Congress “complete[s] action on a rescission bill rescinding all or part of the amount proposed” within 45 days, the funds “shall be made available for obligation.” *Id.* § 683(b). Congress left no ambiguity surrounding its intent in enacting this legislation. A House committee report notes: “No matter how prudently Congress discharges its appropriations responsibility, legislative decisions have no meaning if they can be unilaterally abrogated by executive impoundments.” H.R. Rep. No. 93-658, at 16 (1973).

Closely related to the Impoundment Act is the Anti-Deficiency Act, Pub. L. No. 97-258, 96 Stat. 877 (1982). Government officials or agencies violate that statute if they establish any funding reserve by withholding appropriated funds from a congressionally assigned program, except for certain limited exceptions. *See* 31 U.S.C. §§ 1301(a), 1512(c)(1). In apportioning or reappportioning an appropriation, “a reserve may be established only—(A) to provide for contingencies; (B) to achieve savings made possible by or through changes in requirements or greater efficiency of operations; or

(C) as specifically provided by law.” *Id.* § 1512(c)(1). Funds appropriated by Congress may not be placed in a reserve for any other purpose.

Defendants’ actions to freeze the Foundation’s access to its appropriated funding, and to cancel virtually all of its contracts and grants, violate both the Impoundment Act and the Anti-Deficiency Act. On information and belief, neither the President nor his subordinate officers have proposed the rescission of the budget authority covering the Foundation’s appropriations. And Congress certainly has not acted to rescind any such funding; on the contrary, Congress acted only weeks ago to *continue* the Foundation’s funding. *See* Continuing Resolution, Pub. L. No. 119-4, § 1101(a)(11). Defendants’ unlawful retention of the Foundation’s funds and across-the-board termination of virtually all of its obligations likewise create a funding reserve that runs afoul of the Anti-Deficiency Act. “[T]he President’s duty to enforce the laws necessarily extends to appropriations ... meaning that failure to act may be an abdication of the President’s constitutional role.” *City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1234 (9th Cir. 2018). No part of the U.S. Constitution, statute, or other source of law authorizes Defendants to impound the Foundation’s funding; on the contrary, the Impoundment and Anti-Deficiency Acts, as well as the relevant in-effect appropriations statutes, obligate Defendants to allow the Foundation to access and disburse its congressionally appropriated funds.

The President undoubtedly has discretion over what projects the Foundation funds, but he lacks authority to determine that congressionally appropriated funding *will not* be spent—whether that appropriation concerns activities domestic or abroad. The determination whether, and how much, money is to be spent is Congress’s alone. Defendants’ actions to cancel virtually all of the Foundation’s spending are *ultra vires*. *See also AIDS Vaccine Advoc. Coal.*, 2025 WL 752378, at *15–*16 (rejecting claim that the President has the authority to impound foreign aid funds); *In re Aiken Cnty.*, 725 F.3d at 267 (explaining that “our constitutional system of separation of powers would be significantly altered if

we were to allow executive and independent agencies to disregard federal law” by refusing to undertake activities directed by Congress).

2. *Marocco’s appointment to the Board, and all actions he took thereafter, are invalid*

In addition, and as this Court previously has found, all actions taken by Defendant Peter Marocco are likewise *ultra vires* because Marocco at no point lawfully exercised power over the Foundation or its officers. *See* Aviel Op. at 13 (“vehemently disagree[ing]” with Defendants that President Trump could appoint Marocco as an acting Board member). As explained above, the Inter-American Foundation Act requires that the nine members of the Board of Directors be presidentially appointed and Senate confirmed. 22 U.S.C. § 290f(g). It also outlines precise characteristics governing the composition of the Board. *Id.* § 290f(i). Only the duly appointed “Board shall direct the exercise of all the powers of the Foundation,” *id.*, including the power to appoint its president and chief executive officer, *id.* § 290f(j). The Act does not contemplate a Board member serving in an acting capacity or otherwise exercising powers of the Board without investiture through the advice-and-consent process.

The FVRA, 5 U.S.C. §§ 3345-3349e, grants the President, in limited circumstances, the authority to appoint acting officers to temporarily fill vacant positions that otherwise require Senate confirmation. The FVRA provides “the exclusive means for temporarily authorizing an acting official to perform the functions and duties of *any office* of an Executive agency ... for which appointment is required to be made by the President, by and with the advice and consent of the Senate,” absent narrow exceptions inapplicable here. 5 U.S.C. § 3347(a) (emphasis added). The FVRA explicitly controls who may serve as “an officer of an Executive agency” requiring advice and consent if the occupant “dies, resigns, or is otherwise unable to perform the functions and duties of the office,” *id.* § 3345, as well as how long such an officer may serve in a temporary capacity, *id.* § 3346. If an office requiring Senate confirmation becomes vacant, “[u]nless an officer or employee is performing the

functions and duties in accordance with” the FVRA, “*the office shall remain vacant.*” *Id.* § 3348(b) (emphasis added). Congress intended the FVRA to have teeth: It specifies that, in any case where a person purports to “perform[] any function or duty of a vacant office” but did not satisfy the FVRA’s strict requirements, any “action taken” by that official “shall have no force or effect.” *Id.* § 3348(d)(1). Courts repeatedly have set aside agency actions taken by individuals whose service violated the FVRA. *See, e.g., NLRB v. Sw. Gen., Inc.*, 580 U.S. 288, 309 (2017); *Asylumworks v. Mayorkas*, 590 F. Supp. 3d 11, 21-22 (D.D.C. 2022) (invalidating final rules issued during tenure of improperly appointed acting Secretary).

Critically for the present case, the FVRA prohibits service on the Board in an acting capacity. It states explicitly that “Sections 3345 through 3349b,” *i.e.*, the provisions governing temporary service, “shall not apply to—(1) any member who is appointed by the President, by and with the advice and consent of the Senate to any board, commission, or similar entity that—(A) is composed of multiple members; and (B) governs an independent establishment or Government corporation.” 5 U.S.C. § 3349c. By exempting Boards like the Foundation’s from the FVRA altogether, Congress has made clear that the President may not “temporarily authoriz[e] an acting official to perform the functions and duties” of the Board. *Id.* § 3347(a). When a member of the Foundation’s Board is “unable to perform the functions and duties of the office,” the office “shall remain vacant.” *Id.* § 3348(b)(1).

This result is unsurprising; as it has in other respects (such as requirements respecting expertise or political composition), Congress chose to protect the independence of multi-member boards, like the Foundation’s Board, by prohibiting service on such a body in a temporary capacity. By requiring that members of an independent, multi-member board be appointed by the President and confirmed by the Senate before exercising any executive power, Congress sought to prevent just the type of machinations that occurred at the Foundation. Peter Marocco was never appointed by the President to serve as a member of the Foundation’s Board and was never confirmed (nor considered) by the

Senate to serve in that role. He thus has never lawfully exercised any power granted by statute to the Foundation’s Board. Any actions he purported to take in his capacity as an acting member of the Board, including to self-designate as president and CEO, “shall have no force and effect.” *Id.* § 3348(d)(1). *See* Aviel Op. at 15 (“[T]he FVRA does not give the President power to appoint acting members of the IAF Board, and any actions by so-called ‘acting’ members of that Board are necessarily void.”) (quoting § 3348(d)(1)).

In arguing otherwise, Defendants likely will rely on “a suspiciously timed opinion from the Department of Justice’s Office of Legal Counsel (“OLC”) issued three weeks after Ms. Aviel was purportedly fired.” Aviel Op. at 16 (discussing *Temp. Presidential Designation of Acting Bd. Members of the Inter-Am. Found. & the U.S. Afr. Dev. Found.*, 49 Op. O.L.C. ____ (Mar. 14, 2025)). OLC’s reading of the FVRA is wrong for three reasons. First, it would render § 3348(d)(1)’s specific reference to § 3349c superfluous—a result that OLC itself was forced to acknowledge (at *8 n.3). Section 3348(d)(1) provides that if a person purports to take actions “in performance of any function or duty of a vacant office to which ... [§] 3349c appl[ies],” those actions “shall have no force or effect.” If, despite § 3349c’s language directing that the provisions allowing for acting appointments “shall not apply” to the positions listed in that section (including the Board positions) is nonetheless read to allow the President to appoint someone to the positions listed therein on an acting basis, it would render this language meaningless. But when construing statutes, “courts give effect, if possible, to every clause and word.” *Great Lakes Commnet Inc. v. FCC*, 823 F.3d 998, 1003 (D.C. Cir. 2016) (quotation marks and citation omitted); *see also* Aviel Op. at 15 (noting that Defendants’ reading of § 3349(c) “requires a serious distortion—or a complete disregard—of the FVRA’s text”).

Second, OLC’s reading of § 3349c ignores the fact that Congress has carefully identified when the President may appoint acting officers. The FVRA directs that its provisions—specifically, §§ 3345 and 3346—are the “exclusive means for temporarily authorizing an acting official to perform the

functions and duties” of principal officers, “unless” there is “express[]” statutory authorization or the President makes an appointment under the Recess Appointments Clause. 5 U.S.C. § 3347(a). Neither exception applies here: Morocco’s appointment was not pursuant to the Recess Appointments Clause, and § 3349c is not an “express[]” grant of authority. *Id.* Instead, § 3349c’s “shall not apply” language is best understood as Congress divesting the President of the authority that he would otherwise have to make an acting appointment to the Board under §§ 3345 and 3346. This reading of the statute is the only one that makes sense of the “statutory text as a whole and asses[es] the words in the context in which they are used.” *TIG Ins. Co. v. Republic of Argentina*, 110 F.4th 221, 231 (D.C. Cir. 2024).

Third, OLC’s reading cannot be reconciled with the FVRA’s legislative history. The Senate Report accompanying an early version of the FVRA explained that, in adopting § 3349c, Congress intended to preserve the then-status quo with respect to whether the President could make acting appointments to the positions listed in that section. Congress’s view was that it had “always been the case” that the (then-existing) Vacancies Act did not apply to such positions, and wanted to “avoid any confusion that might result from the enactment of a replacement statute on this point.” S. Rep. No. 105-250, at 22 (1998). Moreover, Congress plainly indicated its view that the President does not have the authority to appoint acting officers unless Congress has granted such authority: “[T]he President lacks any inherent appointment authority for government officers.” *Id.* at 5. It was also Congress’s view that “[t]he President’s power to take care that the laws shall be enforced is a duty, and not a source of power”—and that absent “affirmative statutory authority to fill a vacancy, the office must remain vacant.” *Id.* Thus, in seeking to preserve what had “always been the case” with respect to officers of entities like the Board, Congress meant to preclude the President from making any acting appointments to them. OLC’s contrary reading cannot be reconciled with what Congress clearly intended.

Even were the Court to conclude that the FVRA posed no barrier to the President making an acting appointment to the Board, the Appointments Clause still would prohibit such action. That clause requires the President to obtain “the Advice and Consent of the Senate” before appointing “Officers of the United States.” U.S. Const. art. II, § 2, cl. 2. The Senate’s “advice and consent power is a critical structural safeguard of the constitutional scheme.” *Sm. Gen., Inc.*, 580 U.S. at 293 (cleaned up). “The Framers envisioned it as ‘an excellent check upon a spirit of favoritism in the President’ and a guard against ‘the appointment of unfit characters from family connection, from personal attachment, or from a view to popularity.’” *Id.* (quoting *The Federalist* No. 76, p. 457 (Alexander Hamilton) (Clinton Rossiter ed. 1961)) (alteration omitted). And while *Congress* has given the President “limited authority to appoint acting officials to temporarily perform the functions” of vacant advice-and-consent offices since the founding, *id.*, it does not follow that the President has inherent authority under the Take Care Clause (or otherwise) to make acting appointments when Congress does not provide for them. Any other understanding of the Appointments Clause would deprive the Senate of one of its most important checks on executive power. *See Sm. Gen.*, 580 U.S. at 293; *see also* Aviel Op. at 16 (“The court has no choice but to reject” the President’s assertion of “a broad, heretofore unrecognized expansion of Executive power that would eviscerate key parts of the Constitution.”).

The President’s “frightening” claim here of power to fire the entire, bipartisan Board and install Defendant Marocco as an indefinitely serving, acting member of the Board “eviscerates the Appointments Clause.” Aviel Op. at 18. Because Marocco has not been validly installed as a member (much less as Chair) of the Foundation’s Board, actions he purported to take in that capacity are void *ab initio* as taken in the absence of any authority. *See* 5 U.S.C. § 3348(d)(1). In particular, Marocco’s attempt to designate himself as president and CEO of the Foundation during the hasty Board meeting he purported to hold in the Foundation’s lobby is without effect. And since Marocco has not at any time lawfully exercised power as president of the Foundation, actions he took in that capacity likewise

are void. In particular, Morocco's unilateral actions to cancel virtually all of the Foundation's contracts and grants are *ultra vires* and without legal effect. Morocco also lacked authority to terminate all but one of the Foundation's staff through a RIF. Plaintiffs are entitled to declaratory judgments confirming that these actions are null and void, as well as a permanent injunction barring Morocco, and all others acting in concert with him, from purporting to exercise Foundation powers absent proper appointment through the advice-and-consent process.

C. Defendants' impoundment of the Foundation's funding, and wholesale cancelation of its contracts and grants, violate the APA

Plaintiffs are also entitled to judgment on each of their three APA claims.

1. *Defendants' mass cancelation of contracts and grants is arbitrary and capricious*

The APA instructs courts to "hold unlawful and set aside agency action, findings, and conclusions found to be ... arbitrary, capricious, an abuse of discretion, or not otherwise in accordance with law." 5 U.S.C. § 706(2)(A). Review under this provision is available only for final agency action. Agency action is "final" for purposes of APA review if it "mark[s] the consummation of the agency's decisionmaking process," rather than "be[ing] of a merely tentative or interlocutory nature," and if the decision is "one by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (internal quotation marks and citations omitted).

Defendants' mass cancelation of the Foundation's contracts and grants is final agency action. It plainly marks the completion of agency decisionmaking, since Defendants have deemed the Foundation "unnecessary," Dismantling EO, and determined to eviscerate it to the maximum extent that, in *their* view, is permissible by law. The decision to cancel grants and contracts *en masse* also is one from which rights and obligations are determined and which "gives rise to 'direct and appreciable legal consequences,'" *U.S. Army Corps of Eng'rs v. Hawkes Co., Inc.*, 578 U.S. 590, 598 (2016) (citation omitted). That decision not only means Plaintiffs will lose access to immediate sources of grant

funding. Plaintiffs also face the prospect of losing the return on their own investments, the potential collapse of vital projects, and the ability to work with the Foundation, its staff, and its in-country contractors to improve their communities through effective development processes. *See supra* Section I.A.1. This is reviewable agency action.

Defendants’ decision to unilaterally cancel virtually all of the Foundation’s grants and contracts is arbitrary and capricious. To survive arbitrary-and-capricious review, an agency must demonstrate that it “has reasonably considered the relevant issues and reasonably explained its decision.” *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021). An agency must provide a “satisfactory explanation for its action[,] including a rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quotation marks omitted). And the APA demands that, prior to upending longstanding policies that have engendered reliance interests, agencies must acknowledge their change in course and explain the reasons for doing so. *FCC v. Fox Television*, 556 U.S. 502, 515 (2009); *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 30–31 (2020).

Defendants made no attempt to comply with these minimum requirements. There is no indication that Defendants engaged in any considered approach or attempted to set forth a contemporaneous memorandum articulating a rationale for their decision to engage in blanket cancellations and terminations. Defendants did not purport to investigate the Foundation’s grants and contracts to determine whether and, if so, which should be canceled—or even to ascertain what projects these grants and contracts supported. Defendants likewise did not consider the lawfulness of these blanket cancellations under the Further Consolidated Appropriations Act, or the Impoundment and Anti-Deficiency Acts. Indeed, Defendants provided no public explanation at all for their actions. Instead, the only contemporaneous records available are form emails to Plaintiffs stating the unreasoned conclusion that their grants suddenly were inconsistent with administration priorities and

that the President had directed the Foundation to eliminate all non-statutorily required functions. *See, e.g.*, Bullock Decl. ¶ 9, Ex. A; Aviel Decl. ¶ 16. This is the antithesis of a considered decision.

Defendants took no account of Plaintiffs’ and their communities’ reliance on the projects funded by Foundation grants and contracts. *See Regents of the Univ. of Calif.*, 591 U.S. at 30–31. They also failed to consider the broader impacts of abruptly ceasing hundreds of programs aimed at easing the factors driving mass migration in the Western hemisphere. Defendants made no effort to proffer a “reasoned explanation ... for disregarding facts and circumstances that underlay or were engendered by the prior policy,” or even to assess whether “there are good reasons for the new policy,” *Fox Television*, 556 U.S. at 515-16.

These failures are arbitrary and capricious. Critically, Plaintiffs’ requested relief would not preserve their grant awards in perpetuity, nor would it prevent the Foundation from later canceling these or other grants—if undertaken in a lawful manner by an officer lawfully wielding the power of the Foundation. As explained throughout, Plaintiffs do not challenge the termination of *specific* grants, but the decision to terminate all grants (but one). Plaintiffs ask the Court to roll back unlawful actions taken in the absence of authority, and that request falls firmly within the scope of relief available under the APA.

2. *Defendants’ blanket denial of congressionally appropriated funding is contrary to law*

The APA also instructs that a reviewing court “shall” “hold unlawful and set aside agency action” found to be “not in accordance with law” or “in excess of statutory jurisdiction.” 5 U.S.C. § 706(2)(A), (C). Defendants’ blanket denial of access to congressionally appropriated funding is contrary to law and in excess of statutory jurisdiction. The 2024 Further Consolidated Appropriations Act and the newly enacted Continuing Resolution create on the part of Defendant Department of Treasury a mandatory, nondiscretionary duty to make available and disburse the Foundation’s funds as needed for it to carry out its legislatively directed mission. Treasury has no discretion as to whether

it will allow the Foundation access to its own, congressionally appropriated funds. Defendants’ actions are also contrary to law because the withholding of the Foundation’s funding violates both the Impoundment Act and the Anti-Deficiency Act, for the reasons explained above, *see supra* § II.B.1. The Court should hold unlawful Defendants’ blanket denial of funding, which Defendants have used—in purpose and effect—to functionally shutter the agency.

3. *This Court should compel agency action unlawfully withheld and unreasonably delayed*

Finally, the APA instructs that a court “shall” “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1). This provision operates similarly to the writ of mandamus by allowing courts to order agencies to comply with mandatory, nondiscretionary duties for which action has been unlawfully refused or delayed. *Anglers Conservation Network v. Pritzker*, 809 F.3d 664, 670 (D.C. Cir. 2016) (“This standard reflects the common law writ of mandamus, which the APA ‘carried forward’ in § 706(1).”) (*quoting Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 63 (2004)). Defendant Department of the Treasury has a mandatory, nondiscretionary duty to disburse funds in its care upon a lawfully presented disbursement request from the Foundation. In performing this role, Treasury essentially acts as the Foundation’s “bank” and lacks authority to refuse payments or cancel its grants and contracts. Treasury has refused to fulfill that mandatory duty by impounding the Foundation’s funds and unilaterally canceling its contracts. This Court should compel the Treasury Department to fulfill its mandatory duty to disburse the Foundation’s funding as needed for it to accomplish its legislatively directed mission.

* * *

As this Court already has found, “[t]o argue that the IAF remains functioning when it has one employee, one grant, and little else is comically difficult to believe.” *Aviel Op.* at 21. Defendants have demonstrated the intent, and nearly have succeeded, at reducing the Foundation to rubble. Prompt

final judgment in Plaintiffs' favor is necessary to put an end to these unconstitutional and lawless actions.

CONCLUSION

Plaintiffs are entitled to judgment as a matter of law on each of their claims. The Court should enter the relief requested in Plaintiffs' complaint and proposed order.

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Respectfully submitted,

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