

ORAL ARGUMENT NOT YET SCHEDULED**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

UNITED STATES DEPARTMENT OF
AGRICULTURE et al.,

Defendants-Appellants,

v.

URBAN SUSTAINABILITY
DIRECTORS NETWORK et al.,

Plaintiffs-Appellees.

Case No. 26-5264

**PLAINTIFFS-APPELLEES' OPPOSITION TO DEFENDANTS-
APPELLANTS' MOTION TO STAY PRELIMINARY INJUNCTION
PENDING APPEAL**

In February 2025, Defendants began to implement a policy to mass terminate grant awards based on the presence of disfavored terms involving what the Trump Administration calls “diversity, equity, and inclusion” (“DEI”). This case was filed in June 2025 to challenge that unlawful policy and the resulting terminations. The district court issued a preliminary injunction shortly thereafter, but it only invalidated the individual terminations of the five original Plaintiffs and allowed the policy to proceed because there was not yet an adequate administrative record. Since then, Defendants have prolonged final resolution of the case by withholding

administrative record documents and asking for numerous extensions. Meanwhile, Defendants in March 2026 continued to implement this policy by terminating all but one of the fifty grants in the Increasing Land, Capital, and Market Access Program (“the Land Access Program”). Thus, twenty-four recipients of Land Access Program grants that were terminated (“the Land Access Plaintiffs”) joined this suit and were granted a preliminary injunction enjoining their grant terminations.

Defendants have now moved to stay that preliminary injunction based almost entirely on the misplaced argument that this case is like those in which grant terminations are tangled in the thorny question of whether Administrative Procedure Act (“APA”) or Tucker Act jurisdiction applies. But Defendants neglect to mention that there is a wholly separate source of sovereign immunity waiver here that indisputably grants the Article III courts with jurisdiction. Specifically, Congress instructed that when a party is aggrieved by an adverse funding decision by the U.S. Department of Agriculture (“USDA”) subagency at issue here, it must exhaust administrative remedies through USDA’s National Appeals Division (“NAD”) after which it may proceed in federal district court. 7 U.S.C. § 6999. The Land Access Plaintiffs did just that, and the jurisdictional inquiry ends there.

To the extent the Court inquires beyond this unambiguous statutory grant of jurisdiction, the district court’s reasoning that these particular grants are not contracts subject to the Tucker Act also passes muster. And Defendants’ attack on the merits

of the lower court's decision can also be readily rejected. Thus, Defendants' motion must fail because they have not and cannot make a strong showing of likely success.

The Court then need not weigh the equities because if Defendants cannot prevail on the merits, the equities cannot save them. But even if the Court were to consider the equities, it would find that they tip heavily in favor of the Land Access Plaintiffs.

Accordingly, Plaintiffs-Appellees respectfully ask that this Court deny Defendants-Appellants' Motion for Stay Pending Appeal.

BACKGROUND

Beginning in January 2025, the Trump Administration issued numerous Executive Orders requiring termination of government funding related to what it called "DEI." A102. USDA then implemented those Executive Orders through a policy by which it identified grants for termination based on the use of disfavored terms and then terminated the grants *en masse* by minimally edited form letters. Pls.' Mem. Suppl. A.R. 6-10, *USDN v. USDA*, No. 25-1775 (D.D.C. Jan. 30, 2026), Dkt. No. 55-1 (summarizing administrative record produced thus far). In June 2025, five nonprofit organizations that had grants terminated, or targeted for termination, pursuant to this policy initiated this lawsuit challenging both their individual terminations and the agencywide policy, and filed a motion to preliminarily enjoin both. A21–25. The district court granted the preliminary injunction as to the

individual terminations, reasoning that it had jurisdiction over the claims, and the terminations were likely arbitrary and capricious—and for some contrary to law—in violation of the APA. A3–94. The court, however, denied the preliminary injunction on the broader policy, reasoning that an adequate administrative record had yet to be developed. A63–64.

Defendants appealed that preliminary injunction but did not seek a stay pending appeal. *USDN v. USDA*, No. 25-5370 (D.C. Cir. 2025). This Court granted Plaintiffs’ motion to hold that appeal in abeyance pending the resolution of two other cases involving similar issues. Order, *USDN v. USDA*, No. 25-5370 (D.C. Cir. Dec. 5, 2025). Defendants represent that they objected to that motion, Mot. at 3, but they filed no opposition and only stated they “d[id] not believe abeyance is warranted at this time, but may revisit” the issue. Plaintiffs-Appellees’ Mot. to Hold Appeal in Abeyance Pending Outcome of Related Cases at 2, *USDN v. USDA*, No. 25-5370 (D.C. Cir. Nov. 17, 2025).

With no injunction barring sustained implementation of the challenged policy—and as Defendants continue to drag their feet in preparing an administrative record that would allow ultimate resolution of the claims¹—Defendants terminated

¹ Defendants blatantly misstate the scope of the proceedings below, stating the scope of the record could reach “seemingly every grant USDA has terminated in the past year and a half.” Mot. at 13. To the contrary, following the parties’ conferral on the issue, the district court explained the case was limited to “grants terminated due to characterization as DEI- or climate-related.” Min. Order, *USDN v. USDA*, No. 25-

grants *en masse* pursuant to the same policy. A104. On March 23, 2026, Defendants terminated 49 of the 50 grants issued by USDA’s Farm Service Agency (“FSA”) for the Land Access Program. *Id.* The lone grant to survive the mass termination was that of Agroecology Commons, an initial plaintiff to this suit that was protected from termination by the first preliminary injunction. *See* A9–10, A16–17, A73–75.

USDA created the Land Access Program with funding from Congress intended to benefit “underserved farmers, ranchers, or forest landowners,” certain educational institutions that serve underserved communities, and “farmers, ranchers, or forest landowners determined to have experienced discrimination prior to January 1, 2021, in Department of Agriculture farm lending programs.” IRA, Pub. L. No. 117-69, § 22007(b), 136 Stat. 1818, 2022-23 (2022). Congress directed that these funds be used in part “to provide outreach, mediation, financial training, capacity building training, cooperative development and agricultural credit training and support, and other technical assistance on issues concerning food, agriculture, agricultural credit, agricultural extension, rural development, or nutrition;” and “to provide grants and loans to . . . improve land access (including heirs’ property and fractionated land issues).” *Id.*

1775 (D.D.C. June 12, 2026). Plaintiffs have been clear that they seek only those documents reflecting the policy for terminating those grants.

Each Land Access Program grantee received a boilerplate termination letter from FSA that took issue with the program as a whole and culminated in generalized accusations that the grantee had discriminated through unlawful “DEI” and had engaged in “wasteful spending.” A104–05. The termination letters stated the grantees could appeal their termination to NAD. A105. After receiving the termination letters, each of the Land Access Plaintiffs exhausted administrative appeals through USDA’s NAD. A105–06. In each administrative appeal, NAD issued a “final determination” stating that it would not review the merits of the termination because the “decision terminating your [] grant is not appealable because it concerns matters of general applicability.” A105.

Thus, the Land Access Plaintiffs sought to join this suit and moved for a separate preliminary injunction enjoining their terminations. A109. The Land Access Plaintiffs argued that the district court had jurisdiction pursuant to 7 U.S.C. § 6999 because they had exhausted administrative appeals through NAD, the terminations violated the APA because they were contrary to law and were arbitrary and capricious, and the equities required reinstatement of their grants. Land Access Pls.’ P. & A. Mot. Prelim. Inj., *USDN v. USDA*, No. 25-1775 (D.D.C. May 26, 2026), Dkt. No. 63-1.

On June 30, 2026, the district court granted the Land Access Plaintiffs’ motion for a preliminary injunction and ordered Defendants to vacate the terminations and

reinstate the grants. A98. The court concluded, incorporating the reasoning from its prior preliminary injunction, that it had jurisdiction because the grants at issue were not contracts subject to the Tucker Act and the recent Supreme Court orders did not change that. A118.

The court then held that the Land Access Plaintiffs were likely to succeed on their claim that the terminations were contrary to law in violation of the APA because they “flout[ed] Congress’s mandates” by “terminat[ing] [the] grants for the very reason that the grants further the aims Congress explicitly instructed defendants to pursue.” A120. The court also found the equities weighed in favor of a preliminary injunction because the Land Access Plaintiffs would have to stop or significantly reduce the scope of their work absent preliminary relief, each Land Access Plaintiff would suffer reputational harms from the terminations, and there was a substantial public interest in requiring the government to abide by federal laws. AR121–33.

STANDARD OF REVIEW

Stay of a preliminary injunction is only granted in “extraordinary” circumstances. *Citizens for Resp. & Ethics in Washington v. Fed. Election Comm’n*, 904 F.3d 1014, 1017 (D.C. Cir. 2018). “To secure such relief, the government must (1) make a ‘strong showing that [it] is likely to succeed on the merits’; (2) demonstrate that it will be ‘irreparably injured’ if the district court’s order remains in effect during the appeal; (3) show that issuing a stay will not ‘substantially injure

the other parties interested in the proceeding’; and (4) establish that ‘the public interest’ favors a stay.” *Miot v. Trump*, No. 26-5050, 2026 WL 659420, at *1 (D.C. Cir. Mar. 6, 2026) (quoting *Nken v. Holder*, 556 U.S. 418, 434 (2009)).

ARGUMENT

I. DEFENDANTS DO NOT MAKE A STRONG SHOWING THAT THEY ARE LIKELY TO SUCCEED ON THE MERITS.

A. Statute Confers the District Court with Jurisdiction Over the Land Access Plaintiffs’ Claims.

The statutory scheme governing USDA’s National Appeals Division, or NAD, provides the district court with jurisdiction over the Land Access Plaintiffs’ claims because they have exhausted administrative remedies through NAD. *See* 7 U.S.C. § 6999. Yet Defendants’ stay motion rests almost entirely on a single argument: that this preliminary injunction is tangled in the web of recent Supreme Court orders and pending cases considering whether challenges to grant terminations belong in Article III courts under the APA or in the Court of Federal Claims under the Tucker Act. Mot. at 14–22. But Defendants wholly ignore the separate statutory basis for district court jurisdiction unique to this case that frees this Court from having to wade into the intricacies of that ongoing debate. None of the cases cited by Defendants involve this sort of separate statutory basis for jurisdiction. And though the district court based its jurisdiction decision on other grounds, this issue was fully briefed below, and this Court can affirm on any basis supported by the record. *Elec.*

Priv. Info. Ctr. v. Presidential Advisory Comm’n on Election Integrity, 878 F.3d 371, 375 (D.C. Cir. 2017).

Congress established USDA’s NAD to adjudicate appeals by certain “participant[s]” of “adverse decisions” made by certain USDA subagencies, including FSA. *See* 7 U.S.C. §§ 6991, 6992(d), 6996. Section 6999 of the statutory scheme governing NAD provides that a “final determination of [NAD] shall be reviewable and enforceable by any United States district court of competent jurisdiction in accordance with chapter 7 of Title 5.” 7 U.S.C. § 6999.

This language makes clear that “Congress intended for any Tucker Act remedy to be displaced” because “Congress has determined that judicial review of disputes . . . is to be conducted in a district court following the exhaustion of administrative remedies within the Department of Agriculture.” *St. Bernard Par. Gov’t v. United States*, 916 F.3d 987, 997–98 (Fed. Cir. 2019); *see also Deaf Smith Cnty. Grain Processors, Inc. v. Glickman*, 162 F.3d 1206, 1211, 1213 (D.C. Cir. 1998) (holding “§ 6999 provides the district court with jurisdiction over *all* final determinations of the NAD” and rejecting argument that Section 6999 excludes “actions for ‘money damages’” (emphasis in original)).

Each Land Access Plaintiff filed a timely appeal with NAD, and shortly thereafter, each received a final determination from the NAD Director rejecting their administrative appeal. A105. Thus, their terminations were then reviewable in

district court pursuant to § 6999. Indeed, the Land Access Plaintiffs' challenge of their terminations was *required by statute* to be brought in district court and district court alone. *See Enter. Nat'l Bank v. Johanns*, 539 F. Supp. 2d 343, 345 (D.D.C. 2008), *aff'd sub nom. Enter. Nat'l Bank v. Vilsack*, 568 F.3d 229 (D.C. Cir. 2009) ("Final determinations by the NAD are enforceable by the U.S. District Courts pursuant to 7 U.S.C. § 6999."); *Deaf Smith Cnty. Grain Processors*, 162 F.3d at 1213 (finding that appeals from NAD could proceed only in the district court and not in the Court of Federal Claims).

While Defendants did not address this jurisdictional basis in their stay motion, they raised two arguments related to it below; however, neither holds water. First, Defendants claimed § 6999 does not apply because the NAD Director determined the terminations were "not appealable because it concerns matters of general applicability." That analysis is, however, disconnected from § 6999's text, which does not provide district court with jurisdiction over an appealable decision, but over a "final determination." Not only did each Land Access Plaintiffs' NAD decision state it was final, Land Access Pls.' P. & A. Mot. Prelim. Inj., *USDN v. USDA*, No. 25-1775 (D.D.C. May 26, 2026) at 8–9, Dkt. No. 63-1, but § 6992(d) provides that a general applicability determination is "administratively final," and the implementing regulations likewise provide it is "a final determination," 7 C.F.R. § 11.6(a)(2).

Second, Defendants argued that the district court only has jurisdiction to review the NAD Director's general applicability determination, not the merits of the underlying termination. But, § 704 of the APA, incorporated by reference at 7 U.S.C. § 6999, makes clear that “[a] preliminary, . . . or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action.” 5 U.S.C. § 704. The Eighth Circuit, the only court to have reached the issue, reasoned the same:

If . . . the NAD Director decides that the . . . issue is a matter of general applicability and therefore not subject to further administrative review, that decision is a final agency action . . . [, and] [t]he merits of the [underlying USDA] decisions are then reviewable under 7 U.S.C. § 6999 and 7 C.F.R. § 11.13.

Bartlett v. U.S. Dep’t of Agric., 716 F.3d 464, 474 (8th Cir. 2013). In *Bartlett*, the court noted specifically that the “decisions on the merits made final by this NAD determination [of general applicability] would clearly be ‘[a]gency action made reviewable by statute,’ within the meaning of 5 U.S.C. § 704.” *Id.* at n.4.

Thus, because each Land Access Plaintiff received a “final determination” from NAD, § 6999 authorizes district court review of FSA’s underlying adverse decisions. This Court need not consider whether sovereign immunity waiver lies with the APA or the Tucker Act because it is indisputably present in the NAD statutory scheme.

**B. Alternatively, the District Court has Jurisdiction Under the APA
Because the Grants at Issue are not Contracts.**

In addition to jurisdiction under 7 U.S.C. § 6999, this Court has jurisdiction because the Land Access Plaintiffs’ grants are not contracts subject to the Tucker Act and recent Supreme Court orders do not change that result.

The parties agree that the two-part test from *Megapulse, Inc. v. Lewis*, 672 F.2d 959, 968 (D.C. Cir. 1982)—considering the “source of the right” and the “type of relief sought”—determines whether a claim belongs in district court or the Court of Federal Claims. Mot. at 15. Here, as the district court properly concluded, the source of the right is not contractual because (1) the government itself called the instruments grant “awards,” a term which is statutorily distinct from a “contract”; and (2) they “lack[ed] the kind of consideration sufficient to constitute a contract before the Court of Federal Claims.” A118; A35–39. *Department of Education v. California*, 604 U.S. 650 (2025), did not alter this conclusion because the distinction between grants and contracts was not at issue in that case. A39–40. So too for *National Institutes of Health v. American Public Health Association*, 145 S. Ct. 2658 (2025). A118–19.

Rather than confer a benefit to the government, these grants merely impose conditions on the awardees. This is not consideration. *See St. Bernard Parish Gov’t v. United States*, 134 Fed. Cl. 730, 735 (2017) (noting that for “government contracts

. . . consideration must render a benefit to the government, and not merely a detriment to the contractor”) (quoting *Metzger, Shadyac & Schwarz v. United States*, 12 Cl. Ct. 602, 605 (1987)); *Hymas v. United States*, 810 F.3d 1312, 1328 (Fed. Cir. 2016) (indirect benefits to the government by “advanc[ing] the agency’s overall mission” is not sufficient consideration).

Defendants’ authority is inapposite. As the court explained, unlike the Land Access Program grants, the agreement at issue in *Columbus Regional Hospital v. United States*, 990 F.3d 1330 (Fed. Cir. 2021), was “conferring a direct benefit distinct from generally advancing FEMA’s mission” *not* imposing the “traditional conditions of compliance for receiving federal funds.” A38–39. There is no consideration here because the Land Access Plaintiffs under the agreements “do not perform any services directly on the government’s behalf that the government agency would otherwise be obliged to perform.” A39. Instead, the Land Access Plaintiffs are “developing their own, unique projects to pursue general statutory aims.” *Id.* As the district court explained, providing performance reports and complying with other reporting obligations “reflect conditions on the awards and do not constitute ‘direct benefit[s]’ to the government.” A37.

Thus, Defendants’ primary argument—that there is no district court jurisdiction in this case—can readily be rejected based either on the NAD statutory

scheme or on the district court's reasoning that the grants are not contracts subject to the Tucker Act.

C. The Terminations Run Afoul of the APA.

Defendants' paltry argument on the merits also does not satisfy the required strong showing that they will prevail. In just two paragraphs, without citing any supporting authority, Defendants passingly contest the district court's conclusion that the terminations were contrary to law. Mot. at 1–2, 22–23. The Court should not treat this argument any more seriously than Defendants do.

Defendants' core claim on the merits is that because the Land Access Program was meant to serve “underserved” rather than “socially disadvantaged” individuals, it did not allow considerations of race or ethnicity. This argument fails, for two reasons.

First, USDA regularly includes in its definition of “underserved” references to race, ethnicity, or “socially disadvantaged farmer[s] or rancher[s].” 7 C.F.R. §§ 9.302, 610.22, 5001.3; *see also* Farm Serv. Agency, *USDA Offers Targeted Farm Loan Funding for Underserved Groups and Beginning Farmers*, USDA (Mar. 6, 2024), <https://www.fsa.usda.gov/news-events/news/03-06-2024/usda-offers-targeted-farm-loan-funding-underserved-groups-beginning>. Congress has defined “underserved” similarly. *See* 34 U.S.C. § 12291; 42 U.S.C. § 15002. Further, the administrative record produced thus far establishes that until needing to divine a

rationale for these terminations, this USDA understood Congress meant the same when creating the Land Access Program. *See* Mot. Suppl. AR Ex. A at 2, *USDN v. USDA*, No. 25-1775 (D.D.C. Jan. 30, 2026), Dkt. No. 55-3 (USDA memorandum requiring a “review of funding activities that use terms such as . . . ‘underserved communities,’ ‘socially disadvantaged producers,’ . . . when they are used to promote racial, ethnic, and gender preferences, except as required by statute.”). And including racial and ethnic groups within “underserved” fully aligns with that term’s plain meaning. *See, e.g., Pigford v. Glickman*, 185 F.R.D. 82, 85–86 (D.D.C. 1999) (summarizing USDA’s history of racial discrimination), *aff’d*, 206 F.3d 1212 (D.C. Cir. 2000).

Second, Defendants have failed to establish that any of the Land Access Plaintiffs actually limited participation in their programs based on immutable characteristics. Though Defendants continue to equate the identification of a program’s intended “beneficiaries” in the Project Narrative—a requirement Defendants included in their Notice of Funding Opportunity—with a program’s requirements for participation, these assertions are not only unsubstantiated, but also refuted across the board. Pls.’ Reply Prelim. Inj. 19–21, *USDN v. USDA*, No. 25-1775 (D.D.C. June 23, 2026), Dkt. No. 79 (summarizing evidence submitted with declarations).

Thus, Defendants' stay motion must fail because they have not made the requisite strong showing of likely success on their jurisdictional argument and the merits of the Land Access Plaintiffs' claims.

II. TO THE EXTENT THE COURT DEEMS IT NECESSARY TO WEIGH THE EQUITIES, THEY FAVOR THE LAND ACCESS PLAINTIFFS.

Given that Defendants fail to even mention the obvious statutory basis for jurisdiction and only passingly address the lower court's merits decision, this Court need not even consider the equities to reject Defendants' stay motion. Defendants cannot rely on equitable considerations that "presuppose[]" they are "likely to succeed on the merits," when they have failed to make the required strong showing to that effect. *New York v. Trump*, 171 F.4th 1, 24–25 (1st Cir. 2026); *see also Am. Ass'n of Univ. Professors v. Trump*, 815 F. Supp. 3d 907, 977 (N.D. Cal. 2025) (quoting *Doe #1 v. Trump*, 957 F.3d 1050, 1059 (9th Cir. 2020)). As this Court has explained, it need not entertain claims of "government (and public) . . . legitimate and significant interest" when those "argument[s] assume[] the correctness of the government's position on the merits" and the Court has determined the government is "unlikely to succeed." *J.D. v. Azar*, 925 F.3d 1291, 1338 (D.C. Cir. 2019).

To the extent the Court nonetheless evaluates the equities, they strongly favor Plaintiffs. As the district court explained, accepting the governmental and public interest "in permitting the Department to take decisive action when it comes to

setting its policy priorities” through terminating grants, and recognizing Defendants’ inability to do so would limit funds for “the Secretary’s priorities,” Defendants’ concerns “pale[] in comparison” to the harms Plaintiffs established. A132–33.

Defendants claim they are irreparably harmed because, based on their speculation, they will not be able to recoup spent grant funds. Mot. at 24. But, as the district court explained, this cannot constitute a harm given that Defendants “remain obligated to pay those funds previously allocated, so they have not demonstrated any cognizable harm to the public fisc.” A88.

Moreover, Defendants complain the Land Access Plaintiffs will likely be able to spend down their grants because of “[t]he pace of litigation in the district court” and this Court’s abeyance in the appeal of the first preliminary injunction. Mot. at 24–25. They neglect to mention that final resolution in district court has been prolonged due to Defendants’ own delays, including the failure to produce an adequate record, Order, *USDN v. USDA*, No. 25-1775 (D.D.C. May 29, 2026), Dkt. No. 71 (ordering supplementation of the record), and their nine-and-counting motions for extensions.² Moreover, they omit that they did not file an opposition to the motion to hold the appeal of the other preliminary injunction in abeyance. As

² Mots. for Extensions of Time, *USDN v. USDA*, No. 25-1775 (D.D.C. various dates), Dkt. Nos. 25, 31, 33, 43, 77, 82, 86, 90, 95.

Defendants' own authority explains, irreparable harm cannot be "of their own making." *Dep't of Educ. v. California*, 604 U.S. at 652.

Defendants also claim the preliminary injunction interferes with the Administration's policy priorities. As an initial matter, it is Congress, not the President, which controls the purse and required that these funds go towards groups like the Land Access Plaintiffs. Moreover, if the Administration's policies are unlawful, an injunction cannot cause Defendants harm. *See TikTok Inc. v. Trump*, 490 F. Supp. 3d 73, 85 (D.D.C. 2020).

The harms claimed by Defendants pale in comparison to those that will be suffered by the Land Access Plaintiffs and the communities they serve if the preliminary injunction is stayed. Defendants insist the only harm to the Land Access Plaintiffs is monetary and "any wrongfully withheld funds" could be recovered later. Mot. at 25–26. But the immediate harms to the Land Access Plaintiffs, as evinced by sworn declarations, would be much more significant. A126. They include "staff layoffs, reducing or shuttering programs, [and] diverting resources" in ways that undermined the organizations' "core missions," as well as harms "to [the Land Access Plaintiffs'] reputations" due to the fact that they made promises "to the communities they serve" based on the awarded grants they cannot now fulfill and Defendants' "accusations" of bias and financial mismanagement that underlay the

terminations. A121–32 (citing record evidence from every Land Access Plaintiff in support).

These facts distinguish this case from *California* on which Defendants rely. Mot. at 24. There, the States “represented . . . that they have the financial wherewithal to keep their programs running” without the grants, rendering their claims of “irreparable harm” from the loss of the grants “of their own making.” 604 U.S. at 652. The Land Access Plaintiffs are not financially situated similarly to the States, so their loss of grant funding cannot be offset by their ability to recover wrongfully withheld funds later.

Instead, the harms to the operations and reputations are hefty equities in their favor. Where “new obstacles unquestionably make it more difficult” for a plaintiff to accomplish its “primary mission,” that is an “irreparable harm.” *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016). Relatedly, so too are “layoffs of team members,” and the “interruption” or “loss” of entire “programs” or “projects.” *Thakur v. Trump*, 176 F.4th 1187, 1205 (9th Cir. 2026); *see also New York*, 171 F.4th at 25. As is “harm [to] Plaintiffs’ professional reputations.” *Thakur*, 176 F.4th at 1205; *see also Widakuswara v. Lake*, No. 25-5144, 2025 WL 1288817, at *14 (D.C. Cir. May 3, 2025) (Pillard, J., dissenting), *on reconsideration en banc*, No. 25-5144, 2025 WL 1521355 (D.C. Cir. May 28, 2025). And fulfilling Congress’s objectives in enacting a program is consistent with the public interest. *League of*

Women Voters, 838 F.3d at 13. Therefore, were the Court to reach them, the equities heavily favor Plaintiffs.

III. IF IT DOES NOT REJECT THE STAY MOTION, THE COURT SHOULD REMAND TO THE DISTRICT COURT.

As an alternative to denying the stay outright, this Court could remand to the district court for further proceedings. *See* 28 U.S.C. § 2106. While the parties briefed jurisdiction based on 7 U.S.C. § 6999 below, the district court found jurisdiction on other grounds. The district court also reserved judgment on the Land Access Plaintiffs' alternative claim that the terminations were arbitrary and capricious. While this Court can independently find jurisdiction based on 7 U.S.C. § 6999, and can reject Defendants' curt and factually inaccurate argument on the contrary-to-law claim, it may prefer to require "the district court to decide in the first instance whether to modify, suspend, or dissolve the preliminary injunction" based on the arguments on which it did not initially rule. Order, *Nat'l Treasury Emps. Union v. Vought*, No. 25-5091 (D.C. Cir. June 19, 2026). Defendants' alternative—that this Court grant the stay based on their incomplete presentation of the law and fact—is merely a means to baselessly inflict the irreparable harms described above on the Land Access Plaintiffs. As it did in *National Treasury Employees Union*, the panel could also retain jurisdiction over the appeal and hold the stay motion in abeyance during the remand to avoid any prejudice to Defendants.

CONCLUSION

Accordingly, Plaintiffs-Appellees respectfully request that this Court deny Defendants-Appellants' motion to stay the preliminary injunction pending appeal.

Dated: July 24, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), I hereby certify that this motion complies with Federal Rule of Appellate Procedure 27(d)(1)(E) because it was prepared with Times New Roman 14-point, a proportionally spaced font, and the motion complies with Federal Rule of Appellate Procedure 27(d)(2) because it contains 4,546 words, according to the word count of Microsoft Word.

/s/ David S. Muraskin
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