

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Thakur, et al,)	
)	No. 3:25-cv-04737-RFL
Plaintiff,)	
)	
vs.)	
)	San Francisco,
Trump, et al,)	California
)	August 12, 2025
Defendant.)	2:01 p.m.
)	

BEFORE: THE HONORABLE RITA F. LIN, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS VIA ZOOM VIDEOCONFERENCE

MOTION FOR PRELIMINARY INJUNCTION

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A P P E A R A N C E S

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P R O C E E D I N G S

COURTROOM DEPUTY: Calling civil action 25-4737
Thakur, et al, versus Trump, et al. Counsel, please state your
appearances for the record beginning with counsel for
plaintiffs.

MR. CHEMERINSKY: Erwin Chemerinsky. Good afternoon,
Your Honor.

MR. ALTABET: Good afternoon, Your Honor.

Jason Altabet for the United States, and I'm joined by
two co-counsel who will introduce themselves.

MR. VELCHIK: Michael Velchik also for United States,
defendant.

MS. BARRAGAN: Kat Barragan also for the United
States.

THE COURT: Good afternoon to all of you.

I want to give you some thoughts about my initial take
on the information that you've provided me, and then we can go
through the questions that I've put out yesterday, and then at
the end, I promise everyone will have a chance to tell me
anything else you think I ought to know before entering a
ruling of the case.

So let's just start with where I see the bidding.
Obviously, last spring, NSF terminated grants by the hundreds
via mass form letters. The letters just abruptly ended these

1 carefully vetted projects that NSF had previously funded, some
2 of which have been going on for years.

3 The letters gave no explanation other than that the
4 projects no longer served NSF's, quote, agency priorities. On
5 June 23rd, I entered a preliminary injunction order finding
6 this was likely a violation of the Administrative Procedures
7 Act, which requires NSF to explain for each individual grant
8 why it is changing course and consider the reliance, interests
9 of the researchers, and the public. Two weeks ago, NSF went
10 out and, again, used form letters to cut off fundings to
11 researchers at UCLA on mass.

12 The form letters have the same defects as those
13 already enjoined. It's just a bald statement that NSF has
14 considered reliance interests and they are outweighed. There
15 is no grant specific consideration of the reliance interests of
16 the researchers or the publics interest of the research.

17 It seems to me that NSF's principle response is, well,
18 we called it a suspension and not a termination but these are
19 indefinite suspensions. There's no end date. There's nothing
20 about what the researchers could do to make it end so it looks
21 to me like a termination by another name and that kind of gets
22 into some of the questions that I wanted to ask the parties
23 about.

24 The first question is really a question for the NSF.
25 It's that the preliminary injunction order had required NSF to

1 reinstate grants that it had terminated between January 20th,
2 2025 and June 3rd, 2025. NSF already did that.

3 NSF represents that it's not, in this action,
4 attempting to revisit any previously reinstated grants to UCLA
5 by suspending them. Does NSF agree that suspending those
6 previously reinstated grants would have violated the
7 preliminary injunction order? I'd like to hear from NSF on its
8 view on that.

9 MR. ALTABET: Yes, Your Honor. And just for table
10 setting purposes, I'll be taking lead on questions one and
11 three, and Michael, who has a broader view of the university
12 suspension actions per Your Honor's question number two, will
13 take the lead on question number two.

14 So starting with question number one, NSF's position,
15 our position, is that it would not have violated the injunction
16 to have suspended the previously terminated grants, and our
17 understanding of that, of that suspension would not be a
18 problem, is that the Court's order required restoration of
19 those grants to the status quo and reinstatement. But our
20 reading of the restoration to the status quo and reinstatement
21 is that those grants are then to be treated as any other grant,
22 any other grant that, say, had not been terminated previously
23 so only the perspective portion of the Court's order would come
24 into play.

25 And our understandings, as we laid out in on our

1 briefing, is the court's order does not apply to suspensions
2 versus terminations and that the suspension action complies
3 with the criteria in the form termination class and the equity
4 termination class. So I can speak a bit as to also why then
5 NSF did not suspend this bucket of grants, but it's not our
6 understanding that it would violate the injunction once grants
7 are fully reinstated and restored once the status quo is
8 actually met through compliance to then take action as to those
9 grants, unless Your Honor has another view of what the status
10 quo portion means. That's our understanding.

11 THE COURT: So is it your view then that the day after
12 NSF reinstated all of these grants to UCLA under the
13 preliminary injunction order, NSF could have turned around the
14 very next day and issued a suspension of those very same grants
15 as long as it was labeled a suspension rather than a
16 termination and use the exact same form letter it used before?

17 MR. ALTABET: So assuming that all the compliance
18 happened, the funds have been turned back on, the letter has
19 been sent, reinstated, and restored, and so long as it is a
20 suspension and not a termination, then, yes, we do. And we
21 base that on the fact that only termination is included in the
22 injunction, suspensions aren't.

23 And we understand that there are, under fact specific
24 circumstances, there could be a situation over time --
25 something I don't think we are close to at all -- where a

1 suspension is essentially termination but we don't think that
2 that's that. Michael will be able to speak to that as well
3 when we start talking about question two.

4 But our understanding is if it is a suspension, then
5 it is not covered by the Court's injunction.

6 THE COURT: Will you tell me about why NSF made the
7 decision to treat these two types of grants differently despite
8 the interpretation you've just laid out.

9 MR. ALTABET: Yeah. So, I mean, to start, it's for
10 similar reasons as to why NSF did not seek a stay of the
11 Court's order in that it is -- it was very time consuming and
12 practically difficult to identify grants and work with
13 plaintiffs. And there's still an ongoing compliance efforts
14 with plaintiffs, we've swapped Xcel documents with grant
15 numbers to determine what else there might be out there, if
16 there's anything out there that was missed in the searches.

17 It was -- as Your Honor notes in the status reports,
18 it was a substantial and difficult process. And that bucket of
19 grants was just not -- not touched through the suspension
20 action in large part just because so much work has already gone
21 into it. NSF doesn't want to be turning on turning off,
22 turning on turning off those grants and dealing with that sort
23 of situation.

24 And then, second, NSF is ongoing compliance with that
25 so I think there's also a concern that we're still

1 communicating with plaintiffs to see if there's anything left.
2 NSF told me yesterday that someone reached out, a PI on a grant
3 and asked, hey, am I included on this. It was a grant that
4 wasn't included in a prior Xcel. It was included in a search.

5 So I think for those practical, generalizable regions,
6 NSF didn't want to deal with that bucket of grants in the
7 suspension action.

8 THE COURT: Let me give plaintiff an opportunity to
9 respond. I don't have a lot of questions for plaintiff on this
10 but I'm open to hearing anything else you think I should know
11 about this question.

12 MR. CHEMERINSKY: I appreciate it, Your Honor. The
13 Government's position would make a mockery of the Court's
14 order. The Government would then say the very day after your
15 order they could simply cut off all of the same grants by
16 labeling it a suspension.

17 In part, you address this with paragraph five of your
18 injunction which of course begins that says this relief applies
19 in perspective basis. And the rest of paragraph five makes
20 clear that it -- injunction does apply to future cutoffs of
21 grants.

22 The other argument that's made by the Government is
23 the distinction between a termination and a suspension. I know
24 your second question goes to that, but, practically, there is
25 no difference between the two. The Government could simply

1 take every termination, call it a suspension, and then avoid
2 the Court's order.

3 When you look at it from the perspective of
4 researchers, a suspension has exactly the same effect as a
5 termination. The research has to stop, labs will need to
6 close, graduate students post-docs will lose their jobs.
7 Papers won't be published.

8 And the reality is a terminated grant can be restored,
9 as we've seen, and a suspended grant can go on indefinitely.
10 It can't be that the Court's order can be so easily
11 circumvented just by labeling a suspension rather than a
12 termination.

13 THE COURT: Let's go to question two then. It's been
14 widely publicized that the NSF and the other agency defendants
15 have halted research funding to various universities based on
16 allegations similar to those listed in NSF's August 1st, 2025
17 letter, also the prior letter to UCLA. Did NSF terminate the
18 research grants as to the other universities while calling this
19 fault a suspension only with respect to University of
20 California?

21 Mr. VELCHIK: May I please the Court. I'm happy to
22 address that question.

23 The short answer is no. Following the Court's request
24 for information yesterday evening, the Federal Government
25 engaged in interagency consultation process, reached out to the

1 relevant agencies, as well as the litigating components
2 handling some litigation to get Your Honor timely and accurate
3 information on this question. The Federal Government has taken
4 the same approach with respect to UCLA as it's taken vis-a-vis
5 Ivory League Universities in similar cases.

6 Specifically, Federal agencies have initially
7 suspended certain grants to these universities. At that point,
8 universities have had the opportunity to take corrective action
9 if they wanted to. Some universities have used this as an
10 opportunity to enter into settlement negotiations, and, in
11 deed, some have successfully concluded settlement arrangements.

12 Some universities in at least one notable case have
13 used this suspension opportunity to identify no particular
14 grants that have really compelling reasons for continuing
15 funding, which the Government did in one particular case. And
16 one case to the university decided to sue and engaged in
17 litigation. At that point, the Federal Government later
18 terminated grants with respect to Harvard, but across all of
19 the fact patterns there is an initial suspension.

20 I'm happy to sort of address, first, some of the
21 mechanical and legal suspensions between suspension and
22 termination and to flush those out. I can also address sort of
23 the specific fact patterns of Columbia University, Harvard
24 University, and others to the extent the Court is interested.
25 The term suspension in termination will appear in the actual

1 text of the contracts -- so the specific grants at issue -- or
2 they will be incorporated by reference through a terms and
3 condition in language that tracks what is codified at 2 CFR
4 Section 200.339.

5 This lays out different remedial actions that agencies
6 can pursue for noncompliance and it uses the language
7 suspension and termination. I will flag for the Court that,
8 colloquially, sometimes a suspension will be referred to as a
9 freeze or a pause. But, again, those terms are in contract
10 distinction to a termination.

11 Mechanically like what happens is at the actual agency
12 level, an employee will go into the payment management system
13 and they will be able to identify a particular grant and put
14 what's called a hard funds restriction -- and that sort of
15 turns that particular grant to have a restriction. In
16 practice, that means that if the university -- which is the
17 recipient of the grant and is in privity with the Government
18 for purposes of this contact -- if they try to withdraw funds
19 from that particular fund, they'll be unable to do so unless
20 there's intervening human action at the agency level.

21 This is a bit easier to implement. That is why
22 agencies have sort of done the suspension as sort of the
23 initial action with respect to Columbia, Harvard, Penn, and
24 Brown Universities and now UCLA.

25 Termination is different. Again, it's a different

1 legal term so it's, you know, distinct in that respect. But
2 also when the agency ultimately determines that it wants to
3 terminate a grant, it has to update the notice of award, send
4 out additional documentation. And so just to give you an
5 example of the distinctions, in the Columbia University case,
6 initially, as with all of these cases, the Federal Government
7 suspended certain number of grants.

8 Columbia did not immediately pursue litigation, has
9 not sued. There was some litigation that was brought by
10 students and other researcher organizations. There were two
11 opinions in the Southern District of New York where the Court
12 held that they lacked standing, noted that combating
13 anti-Semitism consistent with the president's executive order
14 was a valid agency priority and also noted that appropriate
15 jurisdiction would lie in the Court of Federal Claims because
16 of the grants.

17 And its analysis emphasized the fact that, you know,
18 privity was with Columbia University. It was not a party to
19 that litigation and that would sort of affect its ability to
20 conclude a global settlement negotiation. Columbia University
21 later entered into a settlement negotiation, and when it did
22 that and when that was finalized, the Federal Government lifted
23 the suspension and has restored the funding for those grants.

24 And that's separate from the fact pattern that took
25 out with Harvard University. So there it started the same way.

1 Federal agencies suspended certain grants to Harvard
2 University.

3 There were two lawsuits. One was brought along the
4 similar lines of Columbia University, brought by groups of
5 researchers that had similar standing concerns. But
6 differently, Harvard ended up suing. Once it was notified of
7 the suspensions, there was a back and forth negotiation between
8 the Federal Government and Harvard University.

9 During those negotiations, Harvard alleges -- the
10 Government contests -- that certain proposals put forth by the
11 Government, again, allegedly violated Harvard's First Amendment
12 rights. And that is sort of the gravamen of their lawsuit.
13 After Harvard issued public statements indicating it was not
14 willing to take corrective action or otherwise remedy the
15 concerns, that the period of suspension was meant to provide
16 for, at that point, the Federal agencies terminated those
17 grants with respect to Harvard.

18 That litigation remains pending in the United States
19 District Court for the District of Massachusetts. There are
20 cross examination motions for summary judgment and that is how
21 that is playing out there. I'm also aware of the University of
22 Pennsylvania and Brown University. Those follow the Columbia
23 fact --

24 THE COURT: Sorry, you seem to have cut out there. I
25 can't hear you anymore.

1 MR. VELCHIK: Am I loud enough now?

2 THE COURT: Last I heard from you is that you're also
3 aware that the University of Pennsylvania and Brown University
4 follow Columbia fact pattern.

5 MR. VELCHIK: Yes. And I didn't say more than that so
6 we didn't miss much.

7 But, yes, there was an initial suspension.
8 Universities negotiated with the Government. They ultimately
9 concluded settlement agreements and, at that point, the
10 suspensions were lifted and those particular grants were
11 restored. So that is how it has played out with respect to
12 other universities which I think may be helpful context for the
13 Court's consideration.

14 So, yes, now the Federal Government has suspended
15 these grants with respect to UCLA. UCLA, which, again, is sort
16 of the contract for purposes of these grants, you know, it has
17 several options. You know, it could take corrective action
18 addressing some of the concerns that the Government has raised
19 in these letters as well as the accompanying separate notice of
20 a violation of Title 6.

21 It could decide that it wants to pursue settlement
22 negotiations and try to reach a global settlement. And to the
23 extent that the Court sort of rules on this without including
24 UCLA, that could sort of affect or complicate those settlement
25 negotiations or the universities interest in finality. The

1 university also could identify particular grants that really do
2 merit continued funding.

3 So the one case that came up in some filings in the
4 Harvard litigation, for your awareness, was there was a DARPA
5 grant that had unique concerns because it involved national
6 security. No one else was able to do the research, and the
7 researchers notified the Department of Defense about that
8 particular grant. Funding for that one was continued, and,
9 again, that's sort of part of the virtues of the suspension
10 processes. You can't identify specific grants that really do
11 need to have continued funding before you take the step of
12 terminating them and going through that paperwork requirement.

13 But UCLA can take any of those next steps and I think
14 that should sort of provide context for the Court, unless you
15 have additional questions that I'm happy to address.

16 THE COURT: One question I had if you mentioned sort
17 of a technical thing, a hard funds restriction. Is that
18 something that exists only in the suspension context and not in
19 the termination context? I wasn't sure what you meant by that.

20 MR. VELCHIK: I mean, that is the -- like the
21 mechanical term that individuals who use the payment management
22 services platform will typically use to refer to that. To the
23 extent that the Court is interested in pursuing this
24 distinction, although Columbia did not file suit, I believe
25 there was an affidavit that describes a little bit of this

1 process and the steps that HHS took with respect to certain NIH
2 and other HHS grants at Columbia University as part of the
3 litigation out of the SDNY. But that's sort of the colloquial
4 term that individuals who interface with the payment systems
5 use.

6 But, legally, for purposes of the contract, for
7 purposes of 2 FCR section 200.339, typically we speak to
8 suspension versus termination. But just to give you --

9 THE COURT: The hard funds restriction, is that the
10 same tool you use to suspend as to terminate?

11 MR. VELCHIK: That is only used for suspension. So
12 that is like a temporary way that restricts the ability of the
13 university to draw down those particular funds, but everything
14 else --

15 THE COURT: I understand.

16 MR. VELCHIK: To the extent they want to revise the
17 suspension, like that requires additional human intervention.
18 But I think once it's terminated, there are separate paperwork
19 notification that goes to the grant recipient and then they
20 would close out that so I don't understand the hard fund
21 restriction to be the same mechanism. It's not only a legally
22 distinct term, it has different legal effects, but it's also
23 just mechanically not the same thing in terms of people are
24 doing with the 0's and 1's.

25 THE COURT: Let me give plaintiff an opportunity to

1 respond.

2 MR. CHEMERINSKY: Thank you, Your Honor.

3 Three quick points. First, the letter to Harvard said
4 it was a termination. I'm quoting you to you from the letter
5 from May 12th, 2025 from the United States National Science
6 Foundation. And it says effective immediately the attached
7 wards are terminated.

8 If we were in your courtroom, I would ask to approach
9 to bring you a copy. With your permission, we'll send you a
10 copy electronically so you have it. It's, quite notably, the
11 word is terminated not suspended. Second, and quite
12 importantly --

13 THE COURT: Would you please -- could you file that on
14 the electronic filing system so that everyone can have access
15 to it after the hearing.

16 MR. CHEMERINSKY: That's exactly what we would do.

17 Second, whether it is called a suspension or
18 termination, the requirements of the Administrative Procedures
19 Act still have to be met. The Code of Federal Regulation
20 Provision, 200-339 simply describes what the Government can do.
21 It doesn't speak to how the Government should do it.

22 And, of course, the Administrative Procedures Act
23 requires this. It's notable that in their letter they point to
24 claims of discrimination but there is a Federal statute here
25 that specifies the procedures for cutting off or even pausing

1 grants under that. This is 42 United States Code Section
2 2000d-1.

3 And it says if a grant is going to be cut off or
4 paused because of claims of discrimination, there has to be
5 notice, a hearing, 30 days notice to Congress, finding of fact,
6 and the grants can be cut off only for the specific program
7 that's found to be in violation of the law. That requires the
8 exact same kind of individualized determination that you did in
9 your earlier injunction.

10 Then, my third and final point is, from the
11 perspective of the researcher whose grant has been suspended,
12 there's no difference between a suspension and a termination.
13 Indeed, the suspension leaves the person in complete doubt as
14 to whether it will ever be restored. They have to -- according
15 to the letter sent to UCLA -- immediately stop spending money.

16 That means they can no longer pay rent, no longer pay
17 graduate students, no longer pay post-docs. There is no
18 difference then from the perspective of the researcher due to
19 suspension or termination.

20 THE COURT: Let's me just ask Mr. Velchik as to the
21 May 12th letter that Mr. Chemerinsky referred to, is that the
22 subsequent termination that you're talking about or is that --
23 do you know what that letter references and why it uses the
24 word termination?

25 MR. VELCHIK: Happy to respond to all of the points.

1 With respect to that point, I don't have the document that's
2 being referenced, first, but I will say that there was initial
3 -- what was in the litigation called the freeze letter, and
4 this was the initial notification to Harvard that these funds
5 had been suspended and that was sort of the first notification
6 that went out.

7 After negotiations broke down and Harvard sued, there
8 was subsequently the decision to terminate those grants. And
9 those were subsequent notifications that were sent out by each
10 agency at a later time. To the extent there was a factual
11 dispute, we were able to, you know, through the interagency
12 process, consult with HHS. That did confirm they physically
13 suspended the grants to Harvard originally.

14 It was only later when the termination letters were
15 sent that any were actually terminated. So that's factually
16 sort of what happened at issue there and mechanically just in
17 terms of the system. Happy to continue addressing that before
18 I turn to opposing counsel's points two and three.

19 THE COURT: I don't think I need further back and
20 forth on points two and three. Although at the end, as I said,
21 if folks have additional information you think it's important
22 for the Court to have, you'll have an opportunity to do that.

23 But I do want to move to question three which is about
24 NSF's process. I think Mr. Altabet was going to address that.
25 Does NSF represent that it conducted its individual bias

1 grant-by-grant analysis to evaluate the impact of immediately
2 halting funds on the interest of researchers relying on the
3 grants or on the public interest in that research? And, if so,
4 does NSF represent that such an analysis included an assessment
5 for each grant of the stage of the research and its staffing
6 requirements, the educational value of the research to graduate
7 students, wasted resources from halting funding midstream, and
8 the loss to the public if the research isn't published.

9 MR. ALTABET: So the answer is yes and no to that,
10 Your Honor. It's a mixed answer to this question.

11 So to start, NSF did evaluate when sending out the
12 suspensions and supplemental letter whether the reasoning that
13 it had for the grantee specific conduct was sufficient to
14 suspend grants, these various grants. In addition, it did do
15 individual grant-by-grant analysis and created a bucket of sort
16 of critical important grants that it would not suspend. So the
17 list of grants is not every UCLA grant that was remaining that
18 was outside of the bucket of previously reinstated grants.

19 So, for example, NSF told us that it identified a
20 grant where there was a large facility where a cut off of
21 funding for a period of time would cause irrevocable harm. So
22 when it found those sorts of -- and that goes to the public
23 interest portion of Your Honor's question -- there were some
24 grants, these critical important grants that NSF did not
25 suspend as part of this.

1 In some ways, I think this goes a little bit to what
2 Michael was talking about the in Harvard context. It sounds
3 like, there, maybe Harvard identified some grants. Here, NSF,
4 when it was implementing the suspension action itself, found
5 some of these critical grants. But otherwise as to Your
6 Honor's question of grant-by-grant analysis as to, for example,
7 the graduate students, no, it did not do a grant-by-grant
8 analysis in that way.

9 Its understanding of the injunction is that a
10 grant-by-grant analysis or grant specific analysis was
11 sufficient as long as it explained the change from the original
12 decision and compared reliance interests under the arbitrary
13 and capricious review.

14 (Court Reporter interrupts for clarification.)

15 Under arbitrary and capricious review, NSF's
16 understanding was that grant specific analysis was if it
17 explains in detail the change from the original decision and
18 considers reliance interest, and NSF thought it did that
19 because grantee specific conduct seemed like something that is
20 a grant specific explanation, even if isn't, say, a paragraph
21 about the topic of the grant. In particular, since it's
22 different than the types of actions that were on the record in
23 PI context where it was about the content of the individual
24 grants. It really was about grant-by-grant what the content
25 is.

1 Versus, here, let's say if it was discovered that
2 there was a fire and the research facility was destroyed, there
3 might be grants connected to that research facility that would
4 have to be suspended or terminated and the -- a grant specific
5 analysis would appropriately be there's no way that we can fund
6 this grant at this institution because the research facility
7 has been destroyed even though the topic of the grant is not in
8 the notice.

9 THE COURT: So does this grant-by-grant analysis
10 involve looking at the stage of the research and -- and the
11 effect that the termination would have midstream on the
12 research for each and every one of the grants?

13 MR. ALTABET: No. Specifically, we are not saying
14 that NSF has taken those steps. We think on the public
15 interest side we identified the very important grants that
16 needed to maintain, but we are not contending that NSF did that
17 sort of granular detailed look at each grant for, say, how long
18 the grad students had been working on that or something as
19 detailed as that in Your Honor's question.

20 THE COURT: So when you were saying that NSF looked at
21 the reliance interests, did the examination of reliance
22 interests involve a grant-by-grant analysis of how the
23 researchers have been relying on the funds and they're, say,
24 two years into this and this is what the impact is going --
25 this is what the impact of cutting off of the funds will be on

1 this particular grant. It does not sound to me like you're
2 saying they did that.

3 Instead, it sounds to me like they looked at the list
4 of grants and they said which are of these are super important
5 and based on their topic. Am I understanding that accurately?

6 MR. ALTABET: I think maybe the only difference or
7 clarification on my end which is that NSF determined that an
8 individual researcher's -- whatever the specific circumstance
9 is that that reliance would not be sufficient to overcome the
10 problems with the research environment at UCLA. But that -- I
11 think that's -- it's maybe ancillary to Your Honor's question
12 which is did they go into every single grant, look at, say, the
13 age of the grant or the situation to that researcher.

14 It was more an analysis that applies to every grant
15 but it was not in the way that Your Honor just described, if
16 that makes sense.

17 THE COURT: So my understanding -- you can tell me if
18 I'm wrong -- is that NSF did a grant-by-grant analysis of which
19 grants it believed are important and then, on that basis,
20 selected one grant -- maybe more -- to not suspend or
21 terminate. Then NSF did not do a further individualized
22 analysis looking at how far along the research was, what the
23 impact of cutting off funding would be on waste or on graduate
24 students getting laid off, on the likelihood that the
25 researcher could be able to publish the findings.

1 Instead, NSF made an across the board determination
2 that all of those interests would necessarily be outweighed in
3 every instance if the research was taking place at UCLA. Am I
4 understanding that accurately?

5 MR. ALTABET: I think that's right, Your Honor, except
6 there might be instances where to determine whether a grant is
7 critical, one of the things you just discussed came up. I
8 don't think about the researchers, but, perhaps, for example,
9 that this is far along and it's a critical topic so we can't
10 interrupt it mid flow. But, otherwise, I think that Your Honor
11 has accurately described the situation.

12 THE COURT: I'm going to give plaintiff an opportunity
13 to respond.

14 MR. CHEMERINSKY: Thank you, Your Honor. Nothing in
15 the two letters to UCLA indicates there was the individual
16 analysis that the Government lawyer just spoke of. Maybe it
17 happened, maybe it didn't.

18 But the whole point is the letters didn't say. In
19 Ohio versus EPA and other Supreme Court cases said that in
20 order to not be arbitrary, capricious, and an abuse of
21 discretion, a government decision must be reasonable and
22 reasonably explained. And the key is there wasn't the
23 reasonable explanation. What they did was replace individual
24 form letters with two letters, the large number of grant
25 numbers attached.

1 There's no explanation there that's provided at all.
2 This is exactly the kind of termination that the court enjoined
3 previously. It's the antithesis of individualized decision
4 making. And all of the factors you just enumerated that you
5 listed in question three weren't present here.

6 It seems the Government's argument is that they made a
7 determination for UCLA as a whole. But if it's going to be the
8 termination that of such dramatic effects, to not be arbitrary,
9 capricious, and an abusive discretion is certainly
10 responsibility for clear explanation as to the basis for
11 terminating the grants and the reliance is taken into account.

12 Let me focus on reliance. The United States Supreme
13 Court, the Department of Homeland Security for this region of
14 California was quite explicit that it's essential that agencies
15 take into account reliance interests. All you have here is the
16 bald assertion of the Government that we took reliance interest
17 into account. That doesn't make it reasonably explain.

18 It seems what's going on here, Your Honor, is
19 something not allowed by the APR or any Federal statute holding
20 hostage to all of the individual grants to try to coerce UCLA
21 into a settlement. That does violate the APA of Federal Law.

22 THE COURT: That was all the questions I had for the
23 parties. I promised I'd give you each an opportunity to tell
24 me anything else you thought I ought to know.

25 Before we get there, I wanted to flag one issue I have

1 which is I -- in the past, I've taught an evening course on
2 criminal procedure at UC Law in San Francisco. Obviously, I'll
3 just say I haven't taught the class since this lawsuit was
4 filed. And I was considering the possibility of teaching
5 again.

6 I haven't made a decision on it. Earliest it could
7 happen would be in the spring. If I end up deciding to do
8 that, it does not seem to me that that would require recusal in
9 this matter. Obviously, University of California as we
10 discussed many times is not a party to this case.

11 Also, we would be scheduled to finish cross summary
12 judgment motions by December, which would be prior to the start
13 of the semester. The law school is its own separate school
14 within the UC system.

15 I don't see any indication that the grants at issue --
16 which mostly involve scientific research -- would involve UC
17 Law San Francisco. I would be surprised if the law school got
18 any grants at all or let alone any significant number of grants
19 from NSF or any of the agency defendants here. So it's hard
20 for me to imagine how the grant issue could affect the law
21 school or my teaching, but I wanted to disclose it.

22 And obviously the parties have a little more
23 information than I do about the particular grants, but I wanted
24 to raise it in case you all had an objection or concern you
25 wanted me to know about. So let me know about that as well

1 when you're responding.

2 Mr. Chemerinsky.

3 MR. CHEMERINSKY: I was just going to address that
4 point. The University of California San Francisco Law School
5 is not a part of the University of California System. The
6 University of California System is under the regency of the
7 University of California. It includes ten campuses.

8 It does include the University of California San
9 Francisco Law School. The University of California San
10 Francisco Law School is a separate entity separately funded
11 from the University of California and not governed by the
12 regents of the University of California.

13 THE COURT: Oh great. I didn't know that. Thank you.
14 I appreciate it. I think that addresses the concern I have and
15 thanks for the additional information.

16 Let me give the Government an opportunity to let me
17 know anything else you would like to know and then plaintiff
18 can respond.

19 MR. ALTABET: Sorry. Just one point on the UCSF
20 issue. So I guess so the preliminary injunction applies to all
21 of the University of California System. So just to make sure I
22 understand what we are understanding, the injunction only
23 covers University of California institutions where the regents
24 are in charge. Just so we know for the future.

25 I don't think this has come up at all. I'm not sure.

1 I was not aware of this difference but I want to make sure
2 we're matching the preliminary injunction on that.

3 THE COURT: University of -- UC Law San Francisco is
4 not the same as UCSF. I think UCSF is a campus within the
5 University of California. And so I do understand the
6 injunction to apply only to the University of California which
7 I erroneously thought UC Law School San Francisco was a part
8 of.

9 It recently had a name change. But I will double
10 check but I am understanding from Mr. Chemerinsky it is not
11 part of University of California, despite its names.

12 MR. ALTABET: Understood.

13 THE COURT: Anything else you would like the Court to
14 know about the motion?

15 MR. ALTABET: So with Your Honor's permission, Michael
16 will briefly address our arguments and then I will have a
17 couple points and then we'll be finished. Is that okay?

18 THE COURT: That's fine.

19 MR. VELCHIK: Thank you, Your Honor, for flagging the
20 issue of potential recusal. Obviously I think ethics issues
21 are usually fact specific but we're happy to look into it and
22 taking into consideration the explanation that we had about the
23 relationship of the different universities to the UC System.
24 We can get back to you if we have concerns.

25 I did want to just take the opportunity to address the

1 three points raised by our friend, opposing counsel. First,
2 there was the argument that even if a suspension is called a
3 suspension, you know, it may be -- it should considered a
4 termination or at a certain point in time it might become so
5 long as to be converted into a termination. We disagree.

6 First of all, suspensions and terminations are legally
7 distinct concepts for the reasons we explained. Mechanically,
8 they're also very distinct concepts. Even if in theory there
9 may come a day where the suspension has lasted so long that
10 this court thinks it could be converted into a termination, we
11 certainly are not there yet. I think this has been suspended
12 for about roughly a week.

13 A week is not enough time for this court to adjudicate
14 that a suspension of one week is a de facto termination. And
15 to give the Court some context, I mean, we had some of these
16 suspensions in other cases. These have all been resolved on
17 timelines, you know, within this administration.

18 Ultimately took, you know, office this year. So I
19 think certainly, you know, we're not at the point where we're
20 suspending any grants for years on end and this is going to
21 convert into a termination and we would commend that reasoning
22 to the Court.

23 Second, plaintiffs raise the argument that Title 6
24 provides the exclusive vehicle for addressing the Government's
25 concerns for anti-Semitism. We vehemently disagree with that.

1 I can go on ad nauseam about why that is false. We have
2 litigated this extensively in other cases. We think that
3 interpretation is absurd. Here, we are not invoking our
4 authorities under Title 6. We are acting pursuant to the
5 specific terms of the contracts, and I think it would be an
6 outrageous interpretation of civil rights law that somehow
7 Title 6 confers unique procedural protections on races or
8 individuals who try to deprive individuals of their civil
9 liabilities protected by Title 6.

10 I can go into that further but I say the point only to
11 drive home the fact that I think this would be an inappropriate
12 procedural vehicle to adjudicate these important concerns given
13 the fact that, number one, this is a, you know, show cause
14 hearing about compliance with the previous preliminary
15 injunction that did not consider many of the issues at play.

16 I mean, two, UCLA is not even a party to this. And I
17 think they would be the principle negotiator. They have the
18 vested rights. They are in privity with the Government.

19 Three, these issues have not been briefed. Opposing
20 counsel is mentioning different documents that are not in the
21 record and we can look at them whenever they're filed, making
22 unique legal arguments that I think will have, you know,
23 profound consequences if there's case law on this. And so I
24 think it's a bit rushed to use this awkward procedural posture
25 to try and either adjudicate the rights of UCLA or forever

1 immunize UCLA from further scrutiny for its violations of Title
2 6 based on a broad and overly expansive interpretation of a
3 previous preliminary injunction order that did not contemplate
4 any of these facts.

5 Third, I know that the Court is aware of this, but I
6 think it bears mentioning. I mean, there are legitimate and
7 bona fides concerns that the Government has with the conduct
8 that has taken place at UCLA. Like these are serious and even
9 UCLA admits them.

10 I mean, you know, we have a report on anti-Semitism
11 and bias that the university itself has pointed out. This is
12 referenced in the letter. I recommend that this Court review
13 it.

14 And we've got grotesque and horrific documentation of
15 everything from swastikas on buildings. The Court itself
16 identifies there have been over a hundred reports of
17 individuals experiencing a physical attack or physical threat.
18 And 40 percent of respondents in it's survey experienced
19 anti-Semitic discrimination at UCLA. The Federal Government
20 filed a notice of a violation of Title 6 also further
21 documenting some of the concerns that the Government has.

22 There have been widespread reports. I mean, I can
23 sort of go through the factual record to the three beacon and
24 others reporting, failed medical school, how racial preferences
25 supposedly outlawed in California has persisted at UCLA. It

1 documents everything from anecdotes, describing how medical
2 students at UCLA can't even identify major arteries.

3 THE COURT: I know there's a lot you may have to say
4 about this. I don't see the underlying investigation as the
5 issue. The issue is more does the termination in this form --
6 using this type of form letter violate the existing preliminary
7 injunction order. So I don't think we need to get into the
8 merits of the investigation or of the interpretation of Title 6
9 or -- I think that that's not before the Court. But --

10 MR. VELCHIK: I concur. And I will say nothing more
11 on it only to say that these were just illustrations of why
12 exactly it would be inappropriate to foreclose all of these
13 future concerns, future potential litigation with UCLA or
14 future potential settlement negotiations just given the
15 importance of the fact pattern, all of the legal questions are
16 out there, but Your Honor's point I think acknowledges the
17 point so I have nothing further to say and appreciate the
18 Court's time.

19 MR. ALTABET: And just a couple points from me, Your
20 Honor. The first is I think taking a step back and just
21 briefly from NSF's perspective, this, you know, was originally
22 a case about content and specific grants and whether the
23 terminations were sufficiently reasoned as to content based
24 terminations. I think the suspension action naturally seems
25 different in a few ways; one, the suspension point.

1 But even putting that aside that the interest of the
2 Government was about grantee conduct and the letter extensively
3 explained why the grantee conduct mattered. I think goes to
4 sort of -- is different than a splash point of the letters that
5 Your Honor looked at at the original PI where Your Honor
6 pointed out that there was not grant specific explanations
7 where there the reasoning was about grants.

8 Here, the reasoning is about grantee conduct. And, at
9 least from NSF's perspective, it thought a letter laying out
10 that grantee conduct was sufficient under these circumstances
11 to match the injunctions grant specific explanation.

12 I think it's also helpful to think if, hypothetically,
13 Your Honor excluded certain types of actions in the class
14 definition including suspensions and including reductions, and
15 I think that was for a good reason. If before the Court, at
16 the time, there had been litigation about whether suspensions
17 would qualify and whether it would be included in the class
18 definition since the class definition is whether some UCLA
19 researcher has a terminated grant.

20 I think it would have been a hard -- and I think we
21 ultimately we would have been successful in eliminating that
22 suspension language on the briefing because no class member has
23 a suspended grant, suspensions raise different issues, and even
24 the content of this suspension raises issues that are not
25 common or typical or representative.

1 And so I'm not saying that that's what's before the
2 Court except on the supplemental briefing on the extension
3 question, but I do think it's a helpful way of thinking about
4 where NSF was coming from and why we think it's not encompassed
5 by the way the injunction is set out.

6 And Your Honor hasn't asked for further questions
7 about this supplemental briefing on extending whether if the
8 preliminary injunction doesn't cover suspensions should be
9 added so we'll simply rest on our brief on that, Your Honor,
10 unless Your Honor has any questions on that extension.

11 THE COURT: I don't.

12 Let me give plaintiff an opportunity to respond.

13 MR. CHEMERINSKY: Thank you, Your Honor.

14 This Court said that the National Science Foundation
15 could not cut off grants without following the requirements of
16 the Administrative Procedures Act. Paragraph five of this
17 Court's injunction said it applies prospectively. And then the
18 National Science Foundation did exactly that, cutting off
19 grants to two members of the -- the two classes of members that
20 this Court had certified.

21 Let me address quickly the four points the Governments
22 lawyers just made.

23 First, they said, again, there's a distinction between
24 the suspension or termination. This is wrong all -- in terms
25 of this case as a matter of fact and as a matter of law. As a

1 matter of fact, as I said repeatedly in this hearing, when a
2 grant is suspended, there's exactly the same effect on the
3 researcher as the termination of the grant.

4 And here I point you to the declarations of UCLA
5 researchers Mackinnon and Japotti that demonstrate the harms to
6 them for suspension are the same as the harms would be from
7 termination. But as a matter of law, what the Government
8 hasn't addressed is whether you call it a suspension or a
9 termination, it is still governed by the requirements of the
10 Administrative Procedures Act. The Government doesn't get an
11 exception to the Administrative Procedures act just by calling
12 it a suspension rather than a termination.

13 And the concern of course is that the Government could
14 completely circumvent this Court's injunction just by always
15 calling it a suspension. And a suspension can last forever
16 just as a termination can be revoked. We don't think it's
17 necessary for this court to revise its injunction to deal with
18 suspensions, but, of course, if that was the issue, it could
19 easily do so.

20 The second thing the Government lawyer did concerned
21 the point that I made about 42 United States Code 2000d-1. I
22 think the Government misunderstood my argument. I was not
23 saying that this court should rely on 42 United States Code
24 2000d-1 in this hearing.

25 We're relaying on the Administrative Procedures Act.

1 It's hard to tell from the Government's letters why exactly
2 they were terminating the grants and what the legal basis was
3 for it. And I just wanted to say that if the grants were
4 terminated on the basis of discrimination, the statute there
5 specifically requires individualized termination.

6 It would be enforced is what the Administrative
7 Procedures Act does but we're relying here on the
8 Administrative Procedures Act and the First Amendment, just
9 what this court said previously.

10 Third, the Government's lawyer goes into great length
11 in terms of the conditions at UCLA. I want to make it clear
12 it's our position is the Government can terminate grants. The
13 Government can suspend grants. But it has to follow the
14 requirements of the Administrative Procedures Act.

15 Coming in and telling this court a lot of things
16 that's not in the record doesn't meet the requirements of the
17 agency following the requirements of the administrative
18 procedures act.

19 And, finally, the question that was raised by the
20 Government is whether the letters were adequate. And, as I
21 said, what the Government did was substitute for individual
22 form letters two letters with a long list of grants. It was
23 certainly conclusory even as to UCLA, the example I mentioned
24 earlier, the Government has to show that it's taken reliance
25 interest into account.

1 The Government doesn't do that by saying we took
2 reliance interest into account. This Court in it's third
3 question today itemized what needs to be considered
4 individually for grants or wrongful for grants and there's no
5 indication in these letters the Government did that. The
6 Government violated this Court's injunction and the Court
7 should order the immediate reinstatement of grants from the
8 National Science Foundation to the UCLA researchers who are
9 part of the classes certified by this Court.

10 THE COURT: Thank you all for the argument. I'll take
11 the matter under submission and issue a written order. I
12 anticipate it will come out probably either later today or
13 tomorrow.

14 I'm conscious of the request that the Court give
15 clarity to the parties sooner rather than later.

16 Thank you.

17 MR. CHEMERINSKY: Thank you, Your Honor.

18 MR. ALTABET: Thank you, Your Honor.

19 COURTROOM DEPUTY: Court is adjourned.

20
21 (The record was concluded at this point at 2:51 p.m.)

22 ---oOo---

C E R T I F I C A T E

I, ANDREA K. BLUEDORN, do hereby certify that I am
duly appointed and qualified to act as Official Court Reporter.

I FURTHER CERTIFY that the foregoing pages constitute
a full, true, and accurate transcript of all of that portion of
the proceedings contained herein, had in the above-entitled
cause on the date specified therein, and that said transcript
was prepared under my direction and control.

DATED this 15th day of August, .

/s/ Andrea K. Bluedorn

Andrea K. Bluedorn, RMR, CRR