

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Rita F. Lin, Judge

NEETA THAKUR, on behalf of	)	
themselves and all others	)	
similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
VS.	)	NO. 3:25-cv-04737-RFL
	)	
DONALD J. TRUMP, in his	)	
official capacity as President	)	
of the United States, et al.,	)	
	)	
Defendants.	)	
	)	

San Francisco, California  
Thursday, December 18, 2025

**TRANSCRIPT OF REMOTE PROCEEDINGS**

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1      Thursday - December 18, 2025

10:04 a.m.

2      P R O C E E D I N G S3      ---o0o---4      **THE COURTROOM DEPUTY:** All rise. Court is now in  
5      session. The Honorable Rita F. Lin is presiding.

6      Please be seated.

7      Calling Civil Action 25-4737, Thakur et al. versus Trump,  
8      et al.9      Counsel, please approach the podium and state your  
10     appearances for the record, beginning with counsel for  
11     plaintiffs.12     **MS. POLSKY:** Good morning, Your Honor. Claudia  
13     Polsky, UC Berkeley Law, representing plaintiff UC researchers.14     **MS. BARRAGAN:** Good morning, Your Honor. Kathryn  
15     Barragan from the Department of Justice. I'm here with my  
16     colleague Jason Altabet representing the federal defendants.17     **MS. POLSKY:** And also my colleague Kevin Budner is  
18     here from Lieff Cabraser representing researcher plaintiffs.19     **THE COURT:** Good morning to all of you.20     I want to give you some initial thoughts about where I see  
21     us and then walk through some of the questions that I provided  
22     to you earlier in the week.23     As you all already know, I already granted a preliminary  
24     injunction as to six federal agencies barring them from  
25     terminating grants to UC researchers using these types of

1 boilerplate form letters. The ruling was based on a finding  
2 that these letters are arbitrary and capricious, they don't  
3 contain the reasoned decision-making that is required under the  
4 Administrative Procedures Act.

5 Department of Energy has always been a defendant in this  
6 case, but it was not enjoined because there was no class  
7 representative who had a grant from that agency terminated.  
8 Then in October, the Department of Energy terminated \$7 billion  
9 in grants en masse, nationwide, using basically the same form  
10 letters that I had previously found to be illegal.

11 It seems to me that on the arbitrary and capricious issue  
12 the claim is basically identical to what I dealt with before.  
13 I know the government disagrees and believes that the NIH  
14 opinion is an intervening authority that is important for the  
15 Court to consider. But we have been through that issue in this  
16 litigation already. And I don't see a real distinction between  
17 the claim here and the situation we've dealt with in the past.

18 But I do have questions about some of the other claims  
19 that have been asserted by plaintiffs in this latest set of  
20 grant terminations. Particularly, I have questions about the  
21 equal protection claim.

22 I understand that there are public statements about  
23 cutting climate-related grants in blue states. And as I  
24 understand it, plaintiffs' argument is essentially that it's  
25 unconstitutional to target citizens of blue states for funding

1 cuts. But I have a lot of questions about that theory so I  
2 want to start there.

3 My first question is: The termination letters state that  
4 the grants were terminated to align funding decisions with the  
5 new administration's priorities. And the accompanying public  
6 statement refers to the, quote, left's climate agenda as the  
7 reason for the cancellations. On what basis can the Court  
8 conclude that the termination decisions had no rational  
9 relationship to legitimate government interests like  
10 cost-cutting or policy priorities?

11 Let's start with plaintiffs on that question.

12 **MS. POLSKY:** Absolutely. Thank you, Your Honor, for  
13 the opportunity.

14 I will start with cost-cutting, and I think we can best  
15 examine that potentially legitimate government rationale by  
16 looking granularly at the correspondence that ostensibly the  
17 Department of Energy -- but actually the Office of Management  
18 and Budget -- sent to the UC Regents on October 2nd informing  
19 them of Dr. Bedsworth's grant termination, one of our two  
20 plaintiff declarants.

21 And there is a citation there to the executive order --  
22 excuse me -- the policy memorandum from DOE entitled "Ensuring  
23 Responsibility for Financial Assistance," which describes how  
24 projects are supposed to be, among other things, financially  
25 sound and economically viable. There is then a cursory

1 statement that this grant does not meet those financial  
2 responsibility criteria, with absolutely no analysis. The -- I  
3 will cite, the totality of the analysis.

4 Specifically, the Department has determined direct air  
5 capture hubs provide no tangible economic benefit.

6 No analysis. No numbers.

7 Direct air capture hubs may raise natural gas prices if  
8 deployed at scale.

9 They may also lower them. You do not cancel a climate  
10 satellite because it may occasionally forecast snow when, in  
11 fact, it rains. That's the nature of weather forecasting.

12 So absolutely no analysis. This is a grant of over a  
13 million dollars. This is two short declarative sentences. So  
14 there is absolutely no cost-cutting basis.

15 Furthermore, when you actually look at the contemporaneous  
16 statements of the OMB director Russel Vought and  
17 President Trump, which are in our exhibits to the McLorg  
18 declaration, there is no mention whatsoever about fiscal  
19 prudence, cost-cutting as a rationale.

20 And this is a marked distinction to the much earlier  
21 period of grant terminations including some May 2025 grant  
22 terminations by the Department of Energy, when DOGE, rather  
23 than OMB, was calling the shots, and there were references to  
24 cutting 10 percent, cutting fat, and so forth. There is not  
25 even a pretext of a cost-cutting rationale in any of the

1       communications that accompanied these -- these mass grant  
2       terminations on October 2nd.

3           And what is extraordinary here in terms of the level of  
4       procedural irregularity that raises serious questions about the  
5       degree to which there could be any legitimate government  
6       interest, is if you compare Exhibit D in Dr. Bedsworth's  
7       declaration with Exhibit E, you will find these seem to be two  
8       termination letters about basically exactly the same thing.  
9       And plaintiffs were initially scratching their heads as to why  
10      there would be two letters a mere eight days apart terminating  
11      the same grant.

12       The October 2nd letter says that this is essentially  
13      effective immediately. Then there is a new letter issued on  
14      October 10th that says: This will serve as a correction and a  
15      confirmation of the notice you received on October 2nd, and it  
16      will serve as the effective date of termination.

17       Now, why in the world would a busy federal agency write a  
18      new letter eight days later to say, "Oh, by the way, your grant  
19      is essentially recanceled"?

20       Well, the reason is actually above the text of the letter.  
21      It's the letterhead. The letterhead, in quotations, from  
22      October 2nd, is simply a typed version of "United States  
23      Department of Energy." This is very clearly not from the  
24      Department of Energy.

25       And I'm sure if we were able to conduct discovery in this

1 matter, it would become clear that this is directed by OMB or  
2 by someone other than the Department of Energy, because what's  
3 really distinct about the October 10th letter is that it is  
4 actual Department of Energy letterhead. So somebody seems to  
5 have noticed a procedural irregularity, issued this completely  
6 superfluous letter.

7 And I raise it just to show the process infirmity that  
8 infects all of this termination activity on October 2nd;  
9 termination activity that is occurring when the government is  
10 newly shut down, and when those administering SNAP benefits are  
11 literally unable to report to work to disperse food to hungry  
12 children. So the urgent activity at the Department of Energy  
13 was to mass-terminate these grants because that apparently  
14 could not wait until the government resumed operations.

15 In terms of policy priorities, which is at least an  
16 intuitively much more reasonable reason that the Administration  
17 might revisit these prior grant commitments -- obviously  
18 elections have consequences; we readily concede that.

19 The Administration is absolutely free to issue executive  
20 orders and pursue policies that are markedly different from  
21 those of the prior administration. So, for example, as  
22 articulated in the relevant executive order, it is free to  
23 pursue energy independence for America. It's free to pursue  
24 energy dominance. We want to be competitive in the energy  
25 sphere. We don't want to be importing oil from

1 conflict-riddled regions. And it's free to pursue climate  
2 stabilization or not, as it chooses.

3 But what's remarkable here is when you actually look at  
4 these stated priorities in the executive order, there is a  
5 100 percent non-match between the substance of what these  
6 researchers were doing and the asserted goals of the  
7 Administration.

8 So, for example, there is no better way to establish  
9 energy independence in America than to produce energy solely  
10 from renewable sources like solar or wind. Those belong to no  
11 sovereign. They're super abundant in America, and it's  
12 actually the express purpose of the ARCHES hydrogen hub project  
13 to use unlimited solar and to use wind energy to produce  
14 so-called green hydrogen as opposed to producing hydrogen from  
15 fossil fuels. So that's energy independence for you.

16 In terms of energy dominance, we need look no farther than  
17 the grant terminations of not Dr. Atanassov's ARCHES grant, but  
18 actually his other grants which relate to fuel cell catalysts.  
19 And he identifies in his declaration the innovations he is  
20 pursuing in how fuel cells are made as giving the United States  
21 a shot at being the global leader in producing efficient,  
22 long-lasting fuel cells that would, for example, enable us to  
23 switch to diesel trucking to trucks powered by hydrogen that  
24 get tens of thousands hundreds of thousands of miles without a  
25 service. And so here, too, we show that energy dominance would

1 be furthered, not inhibited, by the grants at issue.

2       And then when we look as Dr. Louise Bedsworth's research,  
3 it's actually not at all related to climate change, although  
4 perhaps, you know, Russell Vought at OMB misconstrued it that  
5 way. Direct air capture of carbon relates to trying to  
6 stabilize the climate by removing excess heat-trapping gases  
7 whether or not you think human industry has put those excess  
8 gases there. God could have put those gases there. But it's  
9 just the fundamental feature of how a greenhouse works that,  
10 when you have heat-trapping gases in the stratosphere it gets  
11 hotter. And that's why, for example, I think it's over  
12 60 degrees today in San Francisco in mid-to-late December.

13       So there's just a complete non-match between the  
14 administration's asserted priorities with respect to energy as  
15 articulated in the executive order on American energy  
16 dominance, unleashing American energy dominance, and the  
17 terminations at issue. And there's no attempt whatsoever in,  
18 as you said, these cursory, arbitrary form letters to  
19 articulate how those two things connect to each other.

20       So --

21       **THE COURT:** So the question I have, though, is -- I  
22 understand what you're saying from an APA arbitrary and  
23 capricious analysis perspective. They didn't really explain  
24 what the match is between what they did and the reasoning that  
25 is in the executive orders.

1       But for the purposes of equal protection on a rational  
2 basis test, what I'm supposed to do is look at what they did  
3 and say: Is it connected to a -- to a legitimate government  
4 interest, and is it rationally related to that interest?

5       And so I can understand from the Administration's  
6 perspective that what they're saying is they terminated these  
7 grants because it furthers the, quote, left's climate agenda.  
8 I believe the quote from OMB was, "Nearly \$8 billion in green  
9 new scam funding to fuel the left's climate agenda is being  
10 canceled."

11       So that phrasing sounds to me like the government is  
12 saying: We don't believe this is a good use of taxpayer money  
13 to fund the -- grants that seek to reduce carbon in the  
14 climate, and we're going to pursue energy independence through  
15 some other means, whether it be fuel extraction or some other  
16 methodology.

17       It's not: We're not going to pursue energy independence  
18 through altering the atmosphere.

19       Why isn't that a legitimate government interest for which  
20 these grant funding cuts are rationally related?

21       **MS. POLSKY:** Understood, Your Honor.

22       And I want to speak first to the administration's ability  
23 to change its funding priorities before I get to the specific  
24 issue of the equal protection analysis and whether some  
25 interest other than the ones I've identified might save these

1 terminations from constitutional infirmity.

2 So the first thing I just wanted to mention is  
3 prospectively the Administration can absolutely choose not to  
4 fund direct air capture of carbon dioxide, not to fund fuel  
5 cell innovation, not to fund fuel cell --

6 (Reporter interruption for clarity of the record.)

7 **MS. POLSKY:** So prospectively, the Administration  
8 absolutely can choose not to fund grants like Dr. Bedsworth's,  
9 which addresses climate stabilization. It can choose not to  
10 fund hydrogen hubs like ARCHES, except footnote to the extent  
11 Congress expressly directed that you must fund some. And it  
12 may choose not to fund, say, fuel cell innovations of the type  
13 at issue in Dr. Atanassov's non-hydrogen hub awards.

14 However, as you have previously ruled, there are  
15 tremendously substantial reliance interests that need to be  
16 considered where these are already awarded grants, so the  
17 Administration is not writing on a blank slate with respect to  
18 implementing policy priorities.

19 But to go directly to your question about the equal  
20 protection analysis here, I think this brings us to your  
21 Question 2: Is it plaintiffs' position that funding decisions  
22 involve impermissible animus, not just -- if political  
23 affiliation of the affected constituents is one of several  
24 factors in the decision-making process?

25 And it absolutely is, Your Honor.

1       And I will explain that with reference to, I believe,  
2 three cases that are quite helpful in elucidating this, none of  
3 which involve a suspect classification such as discrimination  
4 on the basis of race or gender. So those cases, which I will  
5 elaborate, are *Romer versus Evans*, and *Shelby County versus*  
6 *Holder*.

7       Before I describe the relevance of those cases here to the  
8 equal protection analysis, however, I would like to call  
9 Your Honor's attention to something that I hope opposing  
10 counsel is aware of because it involves their client in a case  
11 in a very similar posture to this one about the Department of  
12 Energy October 2nd terminations; and that is a case currently  
13 pending before Judge Mehta in the DC district court where there  
14 have been three hearings on this equal protection issue, the  
15 latest one of which was this morning. And I would like to read  
16 to you and to opposing counsel what plaintiffs' counsel in that  
17 case e-mailed me and said was a concession made by the  
18 government at the hearing this morning. And, of course, you  
19 can confirm this with reference to the transcript, it is not  
20 yet available; this hearing just concluded.

21       But in plaintiff counsel's technology, the government said  
22 that (as read) :

23               "If the Court determines as, a matter of law,  
24 that the blue versus red state residence of a grant  
25 awardee is not a legitimate government basis for

1       treating similarly situated awardees differently, so  
2       long as that was a primary reason" -- not the primary  
3       reason, "a primary reason for the differential  
4       treatment, that violates equal protection."

5       So I just wanted to put that out there, that the  
6       government has essentially conceded -- to the extent you trust  
7       this e-mail that can be readily confirmed soon -- the  
8       government has conceded that animus need not be the sole  
9       motivation for terminating grants, even whereas here that  
10       animus is manifest in the types of social media posts and news  
11       reports you've identified -- as long as it was a primary reason  
12       if the Court finds that essentially it is illegal for the  
13       government to punish or disfavor blue states because it's not a  
14       legitimate government interest, then there is an equal  
15       protection violation.

16       And so now I would like to return to the three cases I  
17       mentioned which I think essentially set the precedent and the  
18       standards for this Court to apply in resolving this issue.

19       So as Your Honor has indicated, and as the briefing has  
20       assumed, we're dealing with a rational basis standard of review  
21       here -- which is, of course, quite deferential to the  
22       government. However, as described in *Romer versus Evans*, it  
23       really is rational basis with a bite, insofar as the government  
24       has made a classification and it treated a group that is  
25       politically unpopular less favorably based on that

1 classification.

2           And as surely the Court knows, in *Romer versus Evans*,  
3 the Court invalidated a Colorado state law that barred state  
4 and local enactments to protect lesbian gay and bisexual people  
5 from discrimination, essentially a law that said there shall be  
6 no further laws within our state to do this thing.

7           And there the Court says that the government need not  
8 create a new -- they needn't create a new suspect class to find  
9 an equal protection violation where there is a, quote, bare  
10 desire to harm a politically unpopular group, because that is  
11 not a legitimate government interest. And plaintiffs would  
12 submit that, here, Democrats seem to be a politically unpopular  
13 group with this Administration. They have therefore created a  
14 classification "Are you a researcher in a blue state versus a  
15 researcher in a red state," and they have used that to guide  
16 their terminations.

17           **THE COURT:** One question I have about that is I had  
18 understood *Romer v. Evans* as having sort of an elevated version  
19 of rational basis review, "rational basis with a bite --"

20           **MS. POLSKY:** Right.

21           **THE COURT:** -- because it involved a group that would  
22 persistently be in the political minority. In other words, a  
23 group that -- it would be difficult to imagine would ever have  
24 the sufficient numbers to, on its own, be able to defend itself  
25 politically. And I -- it's hard for me to understand how the

1 Democratic Party fits into that model.

2 Help me understand that.

3                   **MS. POLSKY:** Absolutely. I think, among the three  
4 cases that I will go through, *Romer* is the most difficult for  
5 us because it is the closest to a suspect classification;  
6 right? It's where the law is coming close. That's why this is  
7 a 7-2 decision by Justice Kennedy. Clearly, we're not quite at  
8 the point where we say LGBTQ+ people are -- you know, are  
9 entitled special protections because of this invidious  
10 discrimination.

11                  But I hear that. I mean, we could discuss whether the  
12 scheme of having a two senators per state irrespective of  
13 population means that Democrats will always struggle, but I am  
14 not going to go there.

15                  Let me instead go to a different case that I think makes  
16 this clearer which is *Mount Healthy versus Doyle*. And in that  
17 case there was absolutely no issue of any kind of group that  
18 was persistently disadvantaged. This was essentially a case  
19 where a teacher exercised free speech rights, so it was a  
20 fundamental right; and there was no evidence that, you know,  
21 the teacher was in any way disfavored by his administration,  
22 but then the Administration attempted to fire him. And  
23 ultimately, this was held to violate equal protection because  
24 there was animus against him for exercising a fundamental  
25 right, his First Amendment right of free speech.

1       And most important in that case, the Court held that that  
2 animus need not be the only reason for the termination. It  
3 essentially dealt with and established a standard for a  
4 mixed-motive actions by the government; there it was a public  
5 school system. And that's absolutely applicable here.

6       It could be that this administration doesn't want to  
7 stabilize the climate and want to save some money but cutting  
8 already awarded grants and doesn't care about reliance  
9 interests. But this is obviously infected to the core with  
10 partisan animus, and that is not legitimate. And so that is --  
11 that is why that case is fairly -- fairly similar to this one.  
12 There's nothing akin to a protected class at issue.

13       And then, I think, the case that maybe makes it even  
14 clearer is *Shelby County*, where albeit a closely divided court  
15 said you can't discriminate against states without a rational  
16 basis. Essentially this is a case involving preclearance under  
17 the Voting Rights Act. And essentially nine states are  
18 required to say sort of, you know, "Mother, may I," to the  
19 Federal government, "May I run my elections this way," but 41  
20 states are not.

21       And the Court said, in *Shelby County*, that this is not  
22 rational, that states enter the country on an equal footing,  
23 and, you know, there essentially has to be a very, very clear  
24 reason that they're being treated differently. It can't just  
25 be some animus towards -- towards some.

1       And in this case we essentially have red states and blue  
2 states, and by extension, in the administration's view, their  
3 residents, whether or not they're even Republicans or  
4 Democrats, being disfavored because of that group affiliation.

5       And so I think all of these cases give us some purchase on  
6 this notion of, even if you're not in a protected class, if the  
7 government has potentially a legitimate rationale, as you've  
8 identified, and then it creates some classification and the  
9 classification doesn't in any way further that purported  
10 purpose, then there's no rational basis.

11       And what I think makes that crystal clear here is when you  
12 compare plaintiffs' exhibit showing the list of grants that  
13 were initially proposed for termination in October, with the  
14 list of grants that were ultimately terminated, the 312 to blue  
15 states, you can see that projects that are absolutely  
16 identical, but for the fact that some occur in blue states and  
17 some occur in reds states, get different treatment.

18       There is no rational basis for that in plaintiffs' view.

19       **THE COURT:** So one question I have, then, under this  
20 theory is, let's say you have a situation where the government  
21 is in a budget crunch and they need to cut \$200 million from  
22 the budget. They got to find someplace to do it. There are  
23 six grants that are out there that could all be cut. And  
24 between those six they're basically all the same; it doesn't  
25 matter which one we cut.

1           So they decide which ones to cut based on, well, Senator  
2 So and So is going to have the administration's back on this  
3 future initiative that we want to get through Congress, and so  
4 we're not going to cut the grants in Senator So and So's state.  
5 But this other senator has been a real problem for us and has  
6 been an antagonist to the Administration, and we're going to be  
7 less considerate to his constituents' needs because we don't  
8 need Senator So and So's votes because Senator So and So never  
9 votes with us anyway.

10           Do you think that the administration's decision to  
11 consider the political affiliations of the various senators in  
12 calculating which grants to cut violates equal protection?

13           It just sounds to me like regular politics. But you tell  
14 me. If I find this to be equal protection violation, doesn't  
15 that make the legislative process and the horse-trading that  
16 happens in it, on some level, just unconstitutional?

17           **MS. POLSKY:** No, Your Honor. But I appreciate the  
18 invitation to explain why.

19           First of all, what's going on here is not legislation.  
20 This is executive action. This is not any kind of  
21 horse-trading in Congress.

22           And importantly when, for example, to use defendants'  
23 example, there are pork barrel politics going on -- you know,  
24 you can build your bridge to nowhere if I can have money for  
25 something else that you don't care about but my constituents

1 do -- that's ordinary politics, and we have no desire to  
2 constitutionalize that. And there's no violation there.

3 But one thing that's really distinct is that there's no  
4 animus there. There is no group being treated differently.  
5 There is just retail-level bargaining over outcomes.

6 And to move it back to the executive theater where this  
7 problem resides, what's happening here is something that is  
8 happening across the board. It's happening to every single  
9 democratic state irrespective of the state of play.

10 If there are Republican senators or Congresspeople who are  
11 voting with or against the president, that doesn't seem to be  
12 affecting what gets terminated. Certainly the president has  
13 some red state detractors on issues. Perhaps Lisa Murokowski,  
14 et cetera, has some blue state defenders on some issues. And  
15 so there is, again, nothing in the pattern of grant  
16 terminations that even aligns with that, if that were  
17 permissible motive.

18 **THE COURT:** What about the fact that this is occurring  
19 during the shutdown, and the evidence in the record is that  
20 this is related to the desire to motivate congressional  
21 Democrats to cooperate with the Administration to reopen  
22 government on some level? What -- doesn't that bring it back  
23 into the political horse-trading realm?

24 **MS. POLSKY:** I don't think so, Your Honor. I think  
25 that it is not constitutionalizing politics to say there is a

1 line beyond which we can't politicize the Constitution. We  
2 don't lose all of our constitutional rights in terms of --  
3 including the right we have as individuals to fundamental  
4 freedom like voting, like speech, simply because there is  
5 political dispute in Washington and it's high stakes.

6 **THE COURT:** But I'm having a hard time understanding  
7 why this situation is necessarily different from a  
8 constitutional law perspective than legislative horse-trading.

9 If the objective the executive action is to motivate  
10 political cooperation on the legislative front, why is it not  
11 okay for them to allow political considerations to enter into  
12 which grants and which projects are canceled?

13 **MS. POLSKY:** Well, Your Honor, it could certainly be  
14 effective. We don't deny that there is a political  
15 relationship between this raft of terminations and what the  
16 Administration was hoping would happen with resolving the  
17 shutdown in terms of congressional dynamics.

18 But we submit that it is not a legitimate government  
19 interest to punish your political enemies to get your way.  
20 That would seem to be a limitless proposition where we're going  
21 to terminate benefits, SNAP benefits, only to students with --  
22 with brown hair because we think they are less likely to be  
23 Aryan, and we suspect their parents are more likely to be  
24 Democrats.

25 We would all finds that extremely problematic even though

1 people with brown hair are not a protected class.

2           **THE COURT:** Because it would be a pretext for  
3 prohibited discrimination.

4           **MS. POLSKY:** Exactly. Because it would be -- there  
5 would just be no legitimate government interest in feeding  
6 children with one hair color and not another. And here,  
7 there's just no legitimate interest, as we see it, in  
8 terminating a hydrogen hub that Congress has said you must  
9 create in one place and not terminating one in the other.

10           **THE COURT:** So in your view, would it be  
11 constitutional for the Administration to, when choosing between  
12 four different projects to terminate, choose a particular  
13 project because that senator has been the least cooperative  
14 among the four senators who are -- whose constituencies would  
15 be affected, that senator has been the least cooperative so  
16 we're going to terminate the grant in that state. Let's say  
17 it's not red states blue states, it's just about trying to get  
18 Senator So and So to start cooperating with the Administration.

19           **MS. POLSKY:** And if we talk specifically about equal  
20 protection, not any other potential legal infirmity with that  
21 termination, reliance, arbitrariness, and so forth, no  
22 articulation of reason, that's just why -- why it's done, I  
23 think the fewer grants --

24           **THE COURT:** Yes, for the record, I'm just stalking  
25 about equal protection.

1                   **MS. POLSKY:** Yes. And so I think the fewer actions  
2 there are like that, the more difficult it is to show an  
3 impermissible type of animus based on a group classification.  
4 If you have one or two data points, then there could be some  
5 reason the Administration might offer that is somehow  
6 plausible.

7                   I think somehow, here, when you have over 300 grants being  
8 terminated exclusively based on group membership, the -- and  
9 absolutely no effort whatsoever to articulate a reason that  
10 these grants and not substantively identical ones elsewhere are  
11 being terminated, it rises to the level of equal protection  
12 violation.

13                   So it is somehow a gradient, but we're talking about group  
14 classification. When you have only one or two data points  
15 those persons patterns are really hard to see.

16                   **THE COURT:** One question I have for you then is the  
17 defendants cited this study that was performed by an outside  
18 nonprofit where they said that the terminated grants affected  
19 projects in 49 states.

20                   What is plaintiffs' response to that analysis?

21                   **MS. POLSKY:** I mean, essentially saying, well, there  
22 will be -- there are a couple of different things going on.  
23 There's an argument: Well, if you look downstream enough there  
24 are going to be some Republicans affected. For example, there  
25 might be Republican researchers on these grounds so it's not

1 totally democratic.

2 But leaving aside that type of hyperattenuation argument,  
3 what the Department of Energy has down here which is clever,  
4 but I think quite disingenuous, is that they have endeavored to  
5 lump together Department of Energy grant terminations that did  
6 not occur on October 2nd in the context of these shutdown  
7 maneuvers with these to get a very big denominator and an  
8 appearance of political neutrality.

9 And to be more specific, for example, when we look at  
10 Department of Energy grant terminations in, say, May of 2025 --  
11 of which there were some but not enough for us to believe we  
12 could bring a putative DOE class before you -- or when you look  
13 at the three DOE grants that were suspended at UCLA -- that you  
14 have since, by junction, reinstated -- those grants were --  
15 that had nothing to do with political partisanship, as far as  
16 the records reflect.

17 What happened on October 2nd was a discrete action that  
18 was being directed not by DOGE, which was no longer in the  
19 picture, Elon Musk was nowhere to be found, but instead being  
20 directed by OMB -- see the faux letterhead. And there was no  
21 cost-cutting motive. There was, instead, this partisan animus  
22 that need not be inferred because it was stated so baldly,  
23 unashamedly, even gloatingly by both OMB's director Russel  
24 Vought and by the president saying: We're going to get them  
25 where it hurts. We're going to get the blue states.

1           There's absolutely no pretext of rational decision-making.  
2       So that's what that study is all about. It's not about these  
3       grants.

4           **THE COURT:** Let me give the government an opportunity  
5       to respond.

6           **MR. ALTABET:** So I'm going to try to move sequentially  
7       through the questions, and hopefully address some of the points  
8       that have been raised.

9           So to start, I think, as Your Honor pointed out, this is  
10       not arbitrary and capricious review. This is equal protection  
11       review. And one very important part of that is that's going to  
12       affect both states and federal government both legislatures and  
13       executive officers in both states and federal levels.

14           So we're not dealing with arbitrary and capricious  
15       analysis. We're dealing with this, you know, concededly from  
16       the plaintiffs' side, the rational basis version of equal  
17       protection review. And as is stated throughout the cases, that  
18       is -- suggests that any -- that plaintiffs have to negate any  
19       conceivable basis for the action taken by the government.

20           It's, you know, black letter law that this does not depend  
21       on what the Government's actually asserted reason was. It's  
22       actually any conceivable reason that could be brought out as  
23       the legitimate state interests. And it's entirely irrelevant  
24       whether it was a conceived reason, say, in litigation versus  
25       before or anywhere in between.

1       And so I want to start with that because Your Honor's  
2 first question goes to this: Well, there's these clearly  
3 legitimate state interests like cost-cutting or reorienting  
4 grant portfolios to match policy priorities.

5       And here these grant terminations rather plainly match  
6 either a cost-cutting rationale or reorientation of a policy  
7 portfolio rationale.

8       And given that there is then a conceivable rational basis  
9 supporting them. And under *FCC v. Beach Communications*, or any  
10 of these classic equal protection rationale basis cases, that  
11 sufficient to sustain the Government's action.

12       And so I do think that brings us to that second point  
13 because one thing plaintiffs point out, and I don't --  
14 you know, I don't know what happened in the hearing earlier  
15 today. I heard the quote "a primary reason would be  
16 sufficient."

17       I don't know about the DC circuit case law, but based on  
18 Your Honor's second question I double-checked the Ninth Circuit  
19 case law. I have one case that's not the briefing that I just  
20 want to read out since I think it answers this question. It's  
21 *Olson v. California*, an *en banc* decision from last year,  
22 104 F.4th 66, pin cite 81.

23       And that case makes clear, in reversing a panel decision,  
24 which found animus based on a primary reason being animus  
25 against the company Uber. The *en banc* panel reversing said if

1 the statute or government action serves no legitimate  
2 governmental purpose and -- and it italicized "and" -- if  
3 impermissible animus toward an unpopular group prompted the  
4 government action, only then does equal protection rational  
5 basis fail.

6 And it says as well: We ask only whether plausible  
7 reasons exist supporting the governmental action.

8 So I think, then, turning to the cases dealing with animus  
9 in the rational basis context, it makes sense within that test.  
10 The rational basis test is whether there's a conceivable basis.  
11 And the cases that found animus and found that there was no  
12 conceivable basis, *Clayburn*, *Moreno*, *Windsor*, and *Romer*, were  
13 cases where the Court said that there was no conceivable basis  
14 except for inexplicable community prejudice or animus.

15 And Your Honor knows the cases from the briefing, but  
16 *Moreno*, we're dealing with, quote, hippy communities. In  
17 *Clayburn*, we're dealing with intellectually disabled people  
18 trying to live in a home and having their permit denied. And  
19 in *Romer* and *Windsor*, we're dealing with the LGB community.

20 And, you know, we have nothing like that here. When we  
21 look at the -- sort of that very narrow times where the Court  
22 has found there's no conceivable basis, here we have many  
23 conceivable bases, as Your Honor spoke with opposing counsel  
24 about.

25 I also want to just briefly address the cases that

1 opposing counsel brought up. *Mount Healthy*, I believe it is or  
2 Mount Healy [sic] and *Shelby County*. Those cases were not  
3 rational basis/equal protection cases. One was a First  
4 Amendment case, a personal retaliation case as best I can tell.  
5 And the other, *Shelby County*, was an equal sovereignty case  
6 dealing with states.

7 Plaintiffs have said they're not relying on any state  
8 rights or any state protections in the Constitution, so *Shelby*  
9 *County* plainly doesn't apply.

10 And the case that opposing counsel said was difficult for  
11 them, *Romer*, is the only case of those three that actually  
12 deals with equal protection/rational basis scrutiny. And  
13 that's the one where it has to be inexplicably -- at no basis  
14 conceivable, except inexplicable community prejudice or animus.

15 So I want to -- and I had sort of a longer answer to  
16 Question Number 2, but I want to make sure I address what  
17 Your Honor is interested in.

18 **THE COURT:** Let me just ask you, as I understand what  
19 plaintiffs are saying, they're saying that the classification  
20 isn't just "You terminated the following grants. Was it partly  
21 because of cost-cutting and policy issues?"

22 But instead the classification here is that you terminated  
23 Grant A because it came from a blue state, and you did not  
24 terminate Grant B because it came from a red state. And was  
25 there a legitimate government interest in distinguishing

1 between Grant A and Grant B.

2       And I think everybody would agree that simply the fact  
3       that it is red state recipient or a blue state recipient is not  
4       itself a legitimate government interest.

5       What's your response to that?

6       **MR. ALTABET:** So I have a couple of points there. The  
7       first is we don't think that this is, quote, invidious animus  
8       at all to base a decision on political or partisan  
9       considerations, as Your Honor sort of went through in the  
10       questioning; that these are sort of a part of a larger,  
11       legitimate rationale when there are several factors at play.  
12       We're cutting based on cost. We're reorienting grant  
13       portfolios. As we go through that, we're going to take into  
14       account partisan considerations. That is a legitimate part of  
15       a larger consideration.

16       And so I guess the first argument is that it's not  
17       invidious animus at all. And if it were held to be invidious  
18       animus given that equal protection covers state and federal  
19       legislatures and state and federal executive actions, it would  
20       unconstitutionalize a large swath of the most regular of  
21       politics.

22       It would mean that if I were to be a governor of a state  
23       and I were choosing who is going to be on a state commission  
24       and I have two equally qualified candidates, one is from my  
25       partisan political party and one is not, that is violates equal

1 protection for the reason -- picking between two equally  
2 situated people, to pick the one from my party versus someone  
3 else.

4 The horse-trading and earmark context as well, given that  
5 there is a limited pot of money, and obviously when you're  
6 building a bridge to nowhere to one person's district, you're  
7 not building a bridge to nowhere in another person's district,  
8 to use that fairly classic example.

9 And so that's the first argument here. It's not invidious  
10 animus at all to use partisan considerations. But even if the  
11 Court determines that, A, it is not permissible in one aspect,  
12 if a decision was solely based on partisan considerations, that  
13 that is not -- that that itself could trigger an invidious  
14 animus analysis, as I sort of cited earlier this *Olson* case, or  
15 more broadly, these rational basis animus or equal protection  
16 cases say is that as long as there is a legitimate conceivable  
17 interest, even if there is an additional illegitimate interest,  
18 then that's fine; then that still passes equal protection  
19 rational basis scrutiny.

20 I know there's a little back-and-forth in the briefing  
21 about *Arlington Heights versus Trump v. Hawai'i*. And I would  
22 just point out, I think, *Olson* and, I think, all the other  
23 rational basis cases like *Windsor* and the like use, this a  
24 rational basis formulation. *Arlington Heights* and *DHS v.*  
25 *Regents*, were cases involving smoking out discriminatory intent

1 involving race or ethnicity, and so that is inapplicable here.

2 And if you look at the case law, I don't think you see  
3 that sort of formulation being used in these animus non-suspect  
4 class, nonfundamental rights, just sort of the basic rational  
5 bases analysis.

6 And so finally, if Your Honor -- I guess, I have one other  
7 sort of generalized point here which is going to this  
8 conceivable rational basis. There is also a generalization,  
9 permissible rational basis here in regards to terminating  
10 grants where the primary recipient is in a, quote, blue state.  
11 And that's this idea that -- we cited *American Bus Association*,  
12 but *Olson, FCC versus Beach Communications*, talk about how an  
13 officer making a decision or a legislature making a decision,  
14 can make generalization that are under- and overinclusive to  
15 some sort of conceivable interest.

16 And here it's conceivable that projects headquartered in  
17 states generally considered, quote, blue states are going to be  
18 more likely to have policy interests and priorities or be based  
19 on projects that are against the policy priorities of the  
20 Administration here because the Administration here, for  
21 example, is interested in oil and gas, and generally speaking,  
22 projects in blue states are going to be interested in solar and  
23 renewable energy.

24 And I think everyone agrees that the Administration is  
25 allowed to reorient from renewable energy, or policies that are

1 associated with blue states, to policies that are associated  
2 with oil and natural gas, and sort of an alternative way of  
3 looking at the energy environment.

4 So I hope that answers Your Honor's question.

5 **THE COURT:** Last word on the equal protection issue  
6 for plaintiff.

7 **MS. POLSKY:** Yes, I'll keep it brief, Your Honor.

8 We would submit that once it has been shown that there  
9 could be mixed motives and animus is in the mix, that is a  
10 problem under the equal protection clause. And what I would  
11 say is because we believe under *Mount Healthy* and other law,  
12 the burden shifts to the government once there appears to be no  
13 legitimate interest, and animus is clearly in the mix to show  
14 that the government would have made the same decision but for  
15 that animus.

16 What is striking here is the two dogs that did not bark in  
17 the night, and those are the two declarations defendants  
18 submit. One declaration talks about why it is difficult for  
19 the Department of Energy to determine how many researchers are  
20 affected by the grants it has terminated and even, in fact, to  
21 track whether there are UC recipients of some of those grants.

22 The other declaration makes the case that because ARCHES  
23 is a different kind of research than Dr. Bedsworth's research  
24 grant, or some of the other DOE research grants, somehow they  
25 don't belong together. We see absolutely no declaration

1 discussing any conceivable legitimate government interest for  
2 treating like grants to blue and red states unlike.

3 They have not managed to carry even their tiny burden of  
4 differentiation where there appear, in the most generous of  
5 imaginings, a mixed motive.

6 **THE COURT:** What's your response to the government's  
7 hypothetical about a governor who is trying to fill seats on a  
8 commission a selects someone from her political party rather  
9 than the opposing political party? Do you think that that  
10 would be unconstitutional under the equal protection clause  
11 because it's animus towards the other party?

12 **MS. POLSKY:** Insofar as only one person can fill the  
13 seat, it inheres in hiring that you can only hire one person  
14 for a seat, and necessarily candidates will differ along a  
15 variety of, you know, grounds. So that is difficult. Again,  
16 I've discussed the difference between a one-off event and  
17 creating a classification. If the government -- if the  
18 governor said, "I will never appoint anyone to a commission who  
19 is not of my political party," that might be a problem. But  
20 that's not the situation that opposing counsel posits.

21 **THE COURT:** So in his hypothetical, would you -- would  
22 it be plaintiffs' view that that's a violation of equal  
23 protection?

24 **MS. POLSKY:** That -- sorry, Your Honor. I'm taking --  
25 I'm taking a moment because it's dissimilar to this situation

1 in so many respects. Not only do we have many more data here,  
2 but it is not only possible to accommodate all of these  
3 researchers; they are already accommodated through  
4 congressional appropriations and through prior agency  
5 grant-making. So there's no choice to be made. All of these  
6 things can be funded. So would it be an equal protection  
7 violation in that -- in that instance?

8 If the government -- if the government could show that it  
9 would have made the same decision but for that political  
10 rationale, no. And my guess is the government would almost  
11 always be able to show that two job candidates are never ever  
12 identical. But that is a very tough hypothetical that, as I  
13 said, is not like even on all-tens with this case.

14 **THE COURT:** So -- but just to be clear, let's say we  
15 have a straight-up admission from the governor "I picked so and  
16 so over the other person because they're from the Democratic  
17 Party and not from the Republican party."

18 Is your view that that would be unconstitutional under  
19 equal protection?

20 **MS. POLSKY:** I think that would likely not be, Your  
21 Honor. And I think that is because we are really in -- more in  
22 the realm of political decision-making.

23 This here in terms of personnel ability to work with those  
24 people, it's commonplace when executives are given the ability  
25 to replace people on boards and commissions, that those people

1 are of their own party even if they're not by statute required  
2 to be. So I think that does bring us more into the realm of  
3 normal politics.

4       What we're seeing here looks much more like of the  
5 doctrine of unconstitutional conditions; i.e., you are only  
6 eligible for federal money prospectively and apparently  
7 retrospectively if it turns out that your state was smart  
8 enough to vote for the winner in the last presidential  
9 election.

10       **THE COURT:** In a situation where the -- I think you  
11 were saying that this isn't a situation where there's scares  
12 resources because there's already been an appropriation.

13       But isn't it the case that if they are terminating some  
14 grants either that money is going to be reallocated or it's  
15 going to return to the taxpayer in some sense?

16       So help me understand why they could -- the government  
17 couldn't make the argument that it's selecting -- among the  
18 many grants that have been given under this program, it's  
19 selecting the blue state grants in order to further its agenda  
20 in other legislation.

21       **MS. POLSKY:** Absolutely. Two responses, Your Honor.

22       One is, if the government were making a rational decision  
23 to eliminate some expenditures it doesn't want to incur --  
24 again, supposing we can get around the issue that this is  
25 already-promised money -- the government would not terminate a

1 lot of low-dollar grants while leaving very high-dollar grants  
2 in place in red states. That's very hard to describe as  
3 legitimate.

4 So, for example, the uncanceled hydrogen hubs in red  
5 states are vastly larger grants than most of the grants that  
6 are on the list of three-hundred-plus grants in blue states.  
7 So this can't be justified as physical stringency.

8 And second this brings us to Your Honor's Question 3, I'm  
9 not sure if we're there yet, but the issue of whether we are  
10 seeking to certify a class with respect to a contrary to law  
11 claim.

12 In certain cases here -- and I would, again, bring us back  
13 to direct air capture, Dr. Bedworth's grant, what's being  
14 terminated is something that Congress said must be funded.

15 So, no, the money doesn't go back to the taxpayer. This  
16 is impoundment. There's a statutory section that you cite in  
17 Your Honor's question that says we're going to have these  
18 direct air capture projects because it is essentially a  
19 national emergency to stabilize the climate.

20 **THE COURT:** Let's go to Question 3. I think we have  
21 had a thorough enough discussion on the equal protection  
22 clause.

23 So my Question 3 is: Are plaintiffs seeking to certify a  
24 class with respect to that contrary to law claim under the  
25 Administrative Procedures Act; and if so does any evidence in

1 the record indicate that there are other projects involving the  
2 UC researchers beyond the CALDAC project and the ARCHES project  
3 that have been terminated in a manner inconsistent with  
4 42 United States Code Section 1629(8) (d) or  
5 42 United States Code 1616(1) (a)?

6 Those are the sections requiring funding of direct air  
7 capture hubs and funding at least one renewable energy hydrogen  
8 hub.

9 **MS. POLSKY:** Yes, Your Honor.

10 The simple answer is we are not presently seeking to  
11 certify a class with respect to a contrary to law claim because  
12 we think that would fail for numerosity for the reason you say.  
13 Generally, Congress is not that specific. And it's striking  
14 and arguably elevates the Government's burden of justification  
15 in trying to terminate these grants that Congress specifically  
16 said, "We need hydrogen hubs and we need direct air capture."  
17 So it was very specific decision-making. Most of these grants  
18 are not of that type.

19 However, the APA contrary to law prong contemplates  
20 violation of regulations in addition to statutes and we believe  
21 that as this case progresses we are very likely to find that  
22 there are clear violations of DOE's own regulations about grant  
23 termination, in which case we might, at some future point, be  
24 seeking to certify a contrary to law class.

25 And this is not only a supposition based on the things

1 I've described like the faux letterhead, and the haste and so  
2 forth and the public statements. There is an item that I have  
3 just shared with opposing counsel and that I would like to  
4 bring to the Court's attention that was breaking news  
5 yesterday. I had to obtain this from a reporter because it's  
6 not widely available, and this is a news announcement from the  
7 office of Senator Adam Schiff. And may I approach?

8                   **THE COURT:** You may pass it to my courtroom deputy.

9 Thank you. And you've already provided a copy to opposing  
10 counsel?

11                   **MS. POLSKY:** Yes, I did, just before the hearing.

12                   And there are three items here, Your Honor. I've put them  
13 in chronological order to make it intelligible. But the one  
14 that I want to talk about, the very last, I've put a yellow  
15 flag on that at the top.

16                   And so this -- there was an announcement yesterday that  
17 the Department of Energy's Office of Inspector General has  
18 decided to launch an independent investigation into the  
19 unlawful termination of DOE grants to California because there  
20 my be procedural irregularity.

21                   If -- the second document here is the October 20th letter  
22 in which California's two senators and a number of California  
23 congressional representatives wrote to Ms. Sarah Nelson, the  
24 acting IG for the Department of Energy, and requested this  
25 investigation describing a number of what they perceived to be

1 procedural irregularities through creation of this  
2 classification that we've been amply discussing.

3 The final item here, and this is the one that was issued  
4 just yesterday is a communication back from Ms. Nelson, who's  
5 identified as performing the duties of the inspector general  
6 for the Department of Energy, opposing counsel's client. This  
7 is addressed to the Honorable George Whitesides of the U.S.  
8 House of Representatives. It thanks the representatives for  
9 their letter raising concerns about these cancellations and it  
10 says the Officer of Inspector General, quote, recently  
11 announced an audit which will review the Department of Energy's  
12 processes when cancelling financial assistance and whether  
13 these cancellations were in accordance with established  
14 criteria.

15 And so we think when the results of this audit are known,  
16 it may well be that the IG is compelled to find that there were  
17 a number of procedural violations, and then we might be back  
18 with a contrary to law claim; but we do not have one at this  
19 time, Your Honor.

20 **THE COURT:** Given that plaintiffs are not pursuing  
21 that claim, I don't have questions for defendants on that  
22 issue. But let me know if there's something else you think I  
23 ought to know about that issue.

24 **MS. BARRAGAN:** So I can just briefly state, Your  
25 Honor, that I think plaintiffs agree that the two statutes

1 could only be attributed to the named plaintiffs' grants, and  
2 they wouldn't apply to the class, generally.

3 And in terms of future regulations that may be violated,  
4 it seems like, at least to the equal protection class, that's a  
5 discrete set class based on October terminations. So I'm not  
6 really sure how future regulatory violations might occur with  
7 respect to that class.

8 **THE COURT:** Let me just move month Question 4 which is  
9 about the third form termination class. And just to be clear,  
10 I'll have a little time at the end for you to tell me anything  
11 else that you think is important before I take the matter under  
12 submission.

13 So let's move to Question 4.

14 Is there any more of an update from the parties on the  
15 number of putative third form termination class members? It  
16 looked like, from the Government's brief, that the government  
17 was continuing to assess is that issue. So I'm curious if the  
18 government or plaintiffs have an update.

19 And also I would like to know if the government agrees  
20 that two individuals named, Dr. Brouwer and Dr. Liu, would fall  
21 within the list of putative class members.

22 Let me start with the government on that.

23 **MS. BARRAGAN:** Thank you, Your Honor.

24 Just to preface, before I answer your question, I just  
25 wanted to note, during the second set of provisional class

1 certification, the government conceded numerosity, after we  
2 looked into it and were convinced that it had been satisfied.  
3 And, again, we took a similar, careful approach here, and we  
4 determined after an investigation that there are issues with  
5 numerosity here. And so that is why we're continuing to raise  
6 it.

7 And so we included the Davis declaration with our  
8 opposition brief. And I can go through the methodology that we  
9 used there. We essentially pulled the grant application  
10 materials for the grants that were named in Exhibit A to  
11 Professor Polsky's declaration, and these grant application  
12 materials they typically include an award summary document that  
13 explicitly lists the principal investigators or co-PIs who are  
14 on the grant application and will be working on the grant.

15 And there's also typically a list of resumes of the PIs  
16 and co-PIs. And so we looked through those resumes and we  
17 looked through the summary documents to determine if there are  
18 any UC individuals who were listed as PIs, co-PIs, or lead  
19 researchers on the grant application materials.

20 And we think this methodology tracks exactly what the  
21 previous class definitions have been in this case which is  
22 simply UC individuals who are listed as PIs, co-PIs, or lead  
23 researchers on the grant application materials. That's  
24 generally been the class definition and so that's what we used  
25 for our methodology.

1       And I'll last note that DOE is happy to share these grant  
2 application materials with the Court and with plaintiffs'  
3 counsel, but we just want to be careful about that because as  
4 you might understand there's a lot of trade secret information  
5 in these materials, confidential information, so we need to do  
6 this carefully. That's why we haven't been able to share it at  
7 this time, but we're happy to do so.

8       So now I'll get into the first part of your Question 4.

9       So we can provide an update on the six grants that we  
10 listed in paragraph 7 of the Davis declaration which is  
11 ECF Number 165-1. And these are the six grants in Exhibit A of  
12 Professor Polsky's declaration that didn't federal award  
13 identifiers in the exhibit, so it took DOE a bit longer to  
14 track down these awards, but we were able to track them down.  
15 I can go through each of those six briefly.

16       **THE COURT:** That's fine.

17       **MS. BARRAGAN:** So I'll start with sub-2024-10252. We  
18 determined that the period of performance for this grant ended  
19 naturally by its terms on December 31st, 2024. So the grant  
20 has been fully paid out. It doesn't look like there's any  
21 termination with respect to that grant.

22       Same with the grant ending in Exhibit A with 228132. So  
23 for that grant we determined there is one UC researcher in the  
24 grant application materials, that's Dr. Zenyuk. However, in  
25 the Davis declaration she's already included for purposes of

1 numerosity. She's named PI on a number of the grants that have  
2 been terminated so we didn't include her as an update to the  
3 numerosity count.

4 Moving the grant ending in A144556, it looks like this  
5 grant actually is grants with two particular federal award  
6 identifiers and we confirmed both of these are still active,  
7 and there's been no termination letter issued with respect to  
8 these grants.

9 Similarly, A140373 expired by its terms on July 31t, 2025.

10 And there are two grants left of these six, and those  
11 both -- the two remaining both have UC individuals listed as  
12 PI -- PIs on the application materials, and these are new  
13 individuals so we would add them to numerosity. And those are  
14 grants ending in MA2057 and 1564668.

15 So our original count in opposition was 14 putative class  
16 members. This adds two.

17 And the last bit of this is that in the Davis declaration  
18 there was one grant with a federal award identifier that just  
19 took DOE a bit long together to pull application materials for,  
20 and that is the grant with the federal identifier DEEEE0010724.  
21 That is in paragraph 13H of the Davis declaration.

22 And we determined there's one additional UC individual  
23 listed as a PI on that grant. That's Dr. David G. Victor at  
24 UC San Diego.

25 So just to summarize that, DOE has identified an addition

1 three UC researchers who we think would fit the class  
2 definition here that plaintiffs have proposed. That puts our  
3 total at 17 researchers.

4 Now, I'll address the second part of Your Honor's question  
5 which is as to the three additional grants that the plaintiffs  
6 identified in their reply brief that are attributed to  
7 Dr. Brouwer and Dr. Liu.

8 We looked into these grants and we don't think either of  
9 these individuals should be included as putative class members  
10 because DOE's determined that none of these grants have been  
11 terminated, and I can walk through that as well.

12 So one of them is ending in 00321381.087. This seems to  
13 be funding opportunity announcement, not a final award. And  
14 DOE provided me a link to that opportunity announcement. I'm  
15 happy to share that with the Court. We determined there's no  
16 executed award here with respect to UC Irvine, which I believe  
17 that's Dr. Brouwer's university, so we think that's the  
18 selection that the plaintiffs are referring to here. But  
19 there's no termination letter with respect to any selection  
20 here because there's no final award to UC Irvine, so we don't  
21 think there's anything that could have been terminated here.

22 Now, moving to the grant ending in 11656, DOE's determined  
23 that is an active grant and has not been terminated.

24 And finally as to the third grant which ends in 32667,  
25 again, DOE has determined that negotiations as to this award

1 have not been completed and there's no execution of this award.  
2 And so, again, there's no termination letter because there's  
3 nothing to terminate here.

4 And I can also briefly address some of the arguments that  
5 plaintiffs made in reply with respect to numerosity.

6 Again, the Ninth Circuit -- courts in the Ninth Circuit  
7 have just held as a general rule that classes under 21 putative  
8 class members are too small, and the general benchmark is 40  
9 putative class members. We don't think that plaintiffs have  
10 met their burden to show that either the third form termination  
11 class or the proposed equal protection class are sufficiently  
12 numerous.

13 And, again, class actions are generally only warranted  
14 where joinder is impracticable here, and we think here  
15 individual lawsuits are perfectly feasible. There's a small  
16 enough number of individuals and they're all readily  
17 identifiable.

18 **THE COURT:** Anything further from plaintiffs?

19 **MS. POLSKY:** A number of things. I apologize,  
20 Your Honor. There are many factual developments here.

21 Starting with Dr. Iryna Zenyuk, who is a world leading  
22 hydrogen and fuel cell researchers at UC Irvine, I had the  
23 opportunity to speak with her and specifically ask her about  
24 this question of whether -- of how we determine how many  
25 critical researchers are actually implicated by a given grant.

1       As you know from the briefing we believe that Department  
2 of Energy is considerably undercounting by essentially just  
3 looking at PIs and co-PIs. And if you look at something like  
4 ARCHES or even Dr. Bedsworth's award, which is for well over a  
5 million dollars, I'm sure she would love to be funded to that  
6 tune. This is obviously going to multiple people. I believe,  
7 in her case that's about seven people.

8       So I said to Dr. Zenyuk, to what extent are Ph.D.  
9 students, post-docs, and senior researchers typically or always  
10 identified by function in a grant application or identified by  
11 name, because this goes to the existing class definition which  
12 speaks about these key researchers being named.

13       And she said: Well, we must budget for them as part of  
14 the application as part of the budget.

15       So impliedly there are more than the PIs who are integral  
16 to doing the project contemplated. She said (as read):

17            "So every proposal will have a budget and they  
18 must be budgeted for. Function is identified as each  
19 person in the budget should be attached to a task  
20 number. We have to provide DOE with their  
21 nationality as part of supplementary documents."

22       So names are identified in supplementary documents,  
23 functionality in the main document.

24       And so what we have here, essentially, is a case where we  
25 do not have in the record the communications between DOE and

1 grantees that are subsequent to the award announcement, when  
2 the identification of the specific individuals performing  
3 research critical budgeted tasks will be identified.

4 And so this is an issue that we were not contemplating,  
5 Your Honor, based on the early agencies we brought before you  
6 because, for example, a National Endowment for the Humanities  
7 award, typically is not a multiyear award involving a lab and  
8 equipment and techs, and people have to know how to use certain  
9 statistical programs, and there's not a whole cast in the wings  
10 critical to consummating the project on, in our case, Middle  
11 Eastern History.

12 And so when we get to awards like DOE's in particular that  
13 are vast -- you know, six-, seven-figure awards, nine-figure  
14 awards in the case of ARCHES -- there -- there are enormous  
15 number of critical researchers with unique expertise who are  
16 identified by name later on.

17 And similarly in any multiyear award -- most of these are  
18 multiyear awards -- there will be Ph.D. students, post-docs,  
19 even primary researchers who come and go. You know, they move  
20 to another university; typically, they don't take their grant  
21 with them, so there will be substitutions. So it's impossible  
22 to confine the universe to people who are actually named on the  
23 application and have it be reasonably reflective of the number  
24 of UC researchers affected.

25 So that might be a matter of just tweaking the class

1 definition a little bit by saying, you know, identified by  
2 function in a grant application, or named in a grant  
3 application or subsequent -- or communication subsequent to the  
4 award. But, again, this is relatively new issue that's  
5 implicated but these big multiyear awards.

6 **THE COURT:** So are you proposing a different class  
7 definition than what you had originally proposed in the papers?

8 **MS. POLSKY:** We could address this in a number of  
9 ways, Your Honor. That's -- that's one possibility with  
10 respect to these awards. But it is also possible that simply  
11 between now and the time of our motion for summary judgment, we  
12 identify and describe these additional actors who we define as  
13 principal researchers. As opposing counsel has indicated, it  
14 takes some time to figure out all the people on these awards.  
15 So we can just consider this a provisionally certified class in  
16 terms of the numerosity issue. And we are absolutely confident  
17 we will be back to you with well more than 21, and I'm  
18 confident more than 40 people based on what I understand.

19 Dr. Zenyuk alone said every time there's PI or a co-PI, it  
20 is a guarantee that there are one-plus devoted post-docs or  
21 doctoral students with specialized expertise on that project.  
22 So I think overnight we can double that. Obviously, we need to  
23 get that in via declaration, but I'm just forecast that even  
24 without changing the class definition, we will be at a much  
25 larger number soon.

1       A final issue, if you don't mind, that I might want to  
2 raise at the risk of overcomplicating things is just responsive  
3 to what opposing counsel said about why we might not be able to  
4 count the Dr. Brouwer/Dr. Liu grants for purposes of numerosity  
5 because this will apply to other researchers. There appear to  
6 be many grants at DOE that are essentially in limbo where DOE,  
7 under the Biden Administration, communicated that they would be  
8 funded. There was an assistance award, but ultimately there  
9 was not the contracting communication that would be predicate  
10 to issuing a termination notice.

11       So, for example, when I had communication with Dr. Liu, he  
12 said, "We have not received any termination notice although our  
13 grant number has shown up several times in the online news as  
14 one that was being terminated. However, the funding has not  
15 arrived at UC Riverside, so we cannot start the project or  
16 incur any expense. When I inquire it's 'No updates yet, still  
17 tracking this as being under DOE review.'"

18       And I have had these kind of communications with a number  
19 of researchers including Dr. Brouwer, who made for me a list of  
20 his federal DOE awards that were canceled or terminated. There  
21 were five of them. One was ARCHES. We counted him towards our  
22 ARCHES number of affected researchers. The other two had FAIN  
23 numbers that we were able to cite and provide which enabled  
24 opposing counsel to confirm that they were officially  
25 terminated.

1       But then there are additional awards, two additional  
2 awards that are essentially in this purgatory where essentially  
3 the Department has said "We will be funding this," but the --  
4 the awards seems to have lapsed because DOE is not processing  
5 the next budget period that was contemplated. And for one of  
6 these Dr. Brouwer says, our go/no-go decision point is  
7 January 2026. So like if we don't hear from DOE "You have the  
8 money," we can't do the project.

9       In our view, that is a constructive termination. If they  
10 choose not to call it a termination because there's no  
11 termination letter issued, that to me sounds awfully  
12 reminiscent of calling something a suspension rather than a  
13 termination. The researchers do not have the money. They  
14 cannot get communication from program officers about when they  
15 will have the money. They cannot plan. They cannot spend.  
16 That is constructive termination.

17       So I don't think we will even need to include those to get  
18 well above the numerosity threshold. But I wanted to explain  
19 that as a reason there's some discrepancy in our accountings of  
20 who's been affected. The universe is much, much larger.

21       Thank you, Your Honor.

22       **THE COURT:** Last word for defendants.

23       **MS. BARRAGAN:** Thank you, Your Honor.

24       So just to address a few of the points that plaintiffs'  
25 counsel has made. We reviewed -- DOE reviewed all grant

1 application materials including budget information that was  
2 submitted as part of the grant application. And that's what we  
3 used to determine whether there were UC researchers named on  
4 the grant application materials. So we did including,  
5 you know, budget information that was submitted in our  
6 numerosity calculation.

7 And it seems like plaintiffs are suggesting that the class  
8 definition should be broadened to include non-lead researchers  
9 on certain projects, such as graduate students, and we think  
10 that would affect the standing analysis in this case, which is  
11 really predicated on the idea that these grants, the  
12 researchers -- you know, these are their projects and they have  
13 ownership over these projects. And I think that becomes  
14 increasingly difficult to justify as we start to include  
15 individuals who, for example, in Exhibit A are listed with time  
16 as small as .04 full-time equivalent hours on a particular  
17 grant. You know, that person can't be considered part of the  
18 current class definition. And so I think that just introduces  
19 some issues with the Court's prior reasoning in this case.

20 And then finally I'll just briefly address plaintiffs'  
21 points as to Dr. Liu and Dr. Brouwer's applications. You know,  
22 DOE's determined that there aren't final awards in this case,  
23 so there haven't been termination letters issued as to these  
24 awards because there's no final award with agreed-upon terms.

25 **THE COURT:** Thank you all for the argument. It was

1 very helpful, and for the briefing. I'm going to take the  
2 matter under submission and issue a written order.

3 Be well.

4 **MS. POLSKY:** Thank you, Your Honor.

5 **MS. BARRAGAN:** Thank you, Your Honor.

6 **THE COURTROOM DEPUTY:** Court is adjourned.

7 (Proceedings adjourned at 11:18 a.m.)

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10 CERTIFICATE OF REPORTER

11 I certify that the foregoing is a correct transcript  
12 from the record of proceedings in the above-entitled matter.

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14 DATE: Monday, December 22, 2025

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19 Ruth Levine Ekhaus, RMR, RDR, FCRR, CCG, CSR No. 12219  
20 Official Reporter, U.S. District Court

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