No. 26-210

IN THE

Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, *et al.*,

Petitioners,

v.

NEETA THAKUR, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

ERWIN CHEMERINSKY
Counsel of Record
CLAUDIA POLSKY
U.C. BERKELEY SCHOOL OF LAW
LAW BUILDING
Berkeley, CA 94720
(510) 642-6483
echemerinsky@berkeley.edu

ANTHONY P. SCHOENBERG
LINDA S. GILLERAN
KYLE A. MCLORG
DYLAN M. SILVA
FARELLA BRAUN + MARTEL LLP
One Bush Street, Suite 900
San Francisco, CA 94104

ELIZABETH J. CABRASER
RICHARD M. HEIMAN
KEVIN R. BUDNER
ANNIE M. WANLESS
CLARE D. PEREZ
LIEFF CABRASER HEIMANN & BERNSTEIN
275 Battery Street, 29th Floor
San Francisco, CA 94111

Counsel for Respondents

121342

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QUESTION PRESENTED

Whether the First Amendment limits the ability of the President and federal agencies to terminate the funding of grants awarded through competitive programs solely because of their perception of the viewpoint expressed in the research.

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INTRODUCTION

This Court's decisions make clear that "ideologically driven attempts to suppress a particular point of view are presumptively unconstitutional in funding, as in other contexts." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 830 (1995) (internal quotation marks omitted). Indeed, this Court has been emphatic "even in the provision of subsidies, the Government may not 'ai[m] at the suppression of dangerous ideas.'" *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 587 (1998) (citations omitted).

The federal district court and the United States Court of Appeals for the Ninth Circuit concluded that the Trump administration was unlawfully doing exactly this: terminating already awarded grants to faculty and researchers at the University of California based on a perception of the viewpoint expressed in their research. Federal agencies identified grant proposals reflecting what they regarded as "dangerous ideas" based on keywords in their titles and then abruptly cut off their funding. *Thakur v. Trump*, 787 F. Supp. 3d 955, 978 (N.D. Cal. 2025). Appendix to Petition for a Writ of Certiorari (hereafter, "App.") at 60a. As the district court concluded, "Plaintiffs have shown a substantial likelihood that their funding was terminated based on the viewpoint expressed in their grant proposals." *Thakur*, 787 F. Supp. 3d at 978-79; App. 61a.

In petitioning for a Writ of Certiorari, the government admits that this is exactly what occurred, yet claims that its conduct does not violate the First Amendment. But the government can point to no case where this Court, or

any court, has held that the President and federal agencies may terminate grants awarded through a merit-driven competitive process based on the perceived viewpoint of the research. The government identifies no conflict between the decision of the Ninth Circuit on this issue and the rulings of any other courts. And no decision of this Court ever has approved the President or federal agencies cutting off existing grant funding because of their disagreement with the views that might be expressed in the research.

Quite the contrary, this Court has declared that "viewpoint discrimination is uniquely harmful to a free and democratic society." *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 187 (2024). This Court has thus explained that even in the context of funding decisions, the government must "abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale." *Rosenberger*, 515 U.S. at 829.

The core of the Defendants' argument is that the government "can without violating the Constitution, selectively fund a program to encourage certain activities it believes to be in the public interest, without at the same time funding an alternative program." Petition for a Writ of Certiorari (hereafter "Pet.") at 3 (quoting *Rust v. Sullivan*, 500 U.S. 173, 193 (1991)). Of course, this is true: Congress may create and fund programs without needing to fund alternative programs. But that is not what this case is about; it is about whether the President and federal agencies violate the First Amendment when they terminate *already awarded* grants because of the

perceived viewpoint of the researchers as expressed in grant proposals. Not a single decision of this Court supports the Defendants' position that the President and federal agencies have unlimited discretion to engage in viewpoint discrimination in their funding decisions. This Court has been consistent and explicit that even in the provision of funding the government may not "discriminate invidiously in its subsidies in such a way as to 'ai[m] at the suppression of dangerous ideas.'" *Regan v. Tax'n with Representation of Wash.*, 461 U.S. 540, 547-48 (1983) (citation omitted).

In the only other decision that addressed this issue, *Am. Council of Learned Soc'ys v. NEH*, No. 25-cv-3657, 2026 WL 1256545 (S.D.N.Y. May 7, 2026), the court came to the same conclusion as the Ninth Circuit here. Defendants' brief indicates that an appeal is pending in that case. Pet. 11, 22-23. Defendants also note that there are a number of other cases pending that may pose this question. Pet. 22-23. But that makes this case the paradigm situation of where this Court would benefit from allowing the issue to percolate in the lower courts and confronting the issue only after it has the benefit of additional lower court rulings, especially from other federal courts of appeals.

Because the government identifies no split in the Circuits or the lower courts, and there is no conflict between the Ninth Circuit's decision in this case and any ruling of this Court, there is no basis for granting the Petition for a Writ of Certiorari.

STATEMENT OF THE CASE

This case involves federal agencies, at the direction of the President, terminating grants to University of California faculty and researchers based on the perceived viewpoint expressed in their research. The stakes for the researchers, and for the public that benefits from their work, could not be higher. Once funds are cut off research must stop. Laboratories must close. Staff is laid off. Post-doctoral researchers must leave. Graduate students must find alternative research projects, often extending their time to degree, or not be able to continue their studies at all. Papers are not published. Research, including for scientific and medical advances, ceases. Even if later somehow the research resumes, it is permanently and irreparably set back and costs inevitably increase.

The Plaintiffs in this case are researchers at the University of California, the world's leading public research institution. Its ten campuses, three affiliate national laboratories, and dozens of institutes, centers, and facilities produce research that has changed the world, increased human knowledge, and contributed to the prominence and security of the United States and the health and welfare of all Americans.

Beginning January 20, 2025, President Trump issued Executive Orders directing agencies to terminate grants, including those related to disfavored topics, such as diversity, equity, and inclusion ("DEI"), clean energy, and sustainability. The matter before the Court involves two federal agencies that cut off grants to University of California faculty and researchers based on the perceived viewpoint of the research: National Science Foundation

("NSF") and National Endowment for the Humanities ("NEH") (hereafter referred to as "Defendants").[1] NSF and NEH filed the instant Petition for a Writ of Certiorari.[2]

These Defendants implemented the President's orders by abruptly and unlawfully terminating grants *en masse*. They selected grants for termination using keyword searches for what they deemed forbidden terms and concepts and terminated them via form letters without any reasoned explanation. Grants with no apparent connection to disfavored concepts were also terminated via form letter without any reasoned explanation.

The terminations dealt a devastating blow to the thousands of researchers at the University of California who relied on these federal grants. As the district court noted: "They face unexpected funding shortfalls, will likely have to lay off staff, and will experience career and reputational harm if they cannot complete their projects. They also must spend time seeking alternate funding, a time-consuming process with little chance of success."

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1. The Environmental Protection Agency also was a Defendant included in the district court's order, but has agreed to a settlement with the Plaintiffs. Pet. 11. As the district court explained, the EPA did a keyword search to cut off grants and likely terminated Plaintiff Thakur's grant because its title included "Environmental Justice." *Thakur*, 787 F. Supp. 3d at 978; App. 60a.

2. As the government notes, while the appeal in this case was pending, Plaintiffs amended their complaint to seek a preliminary injunction with respect to grants terminated by the Department of Transportation, Department of Defense, and Department of Health and Human Services. The district court granted the preliminary injunction and the "government's appeal of the injunction is being held in abeyance pending this appeal." Pet. 11.

Thakur, 787 F. Supp. 3d at 992; App. 89a. Research had to stop; laboratories had to close; projects had to be suspended, often never to resume.

In the four months following Inauguration Day, from January 20 to early June 2025, the federal government terminated more than $324 million in grants to the University of California system alone. Compl. ¶ 112 (June 4, 2025), Dkt. No. 1; *see also* Order at 15. This is a significant underestimate as it is limited to what was listed on a Department of Government Efficiency website that was incomplete and also did not include instances where University of California researchers received sub-grants that were terminated.

Additionally, subsequent to the filing of the Complaint – and in violation of the preliminary injunction in this case – the Trump administration on August 1, 2025, cut off $584 million in funding to researchers at University of California, Los Angeles. *See* Alan Blinder & Michael C. Bender, *Trump Wants U.C.L.A. to Pay $1 Billion to Restore Its Research Funding*, N.Y. Times, (Aug. 8, 2025), https://perma.cc/LE4R-C2SZ.

A. The Federal Grants and Their Termination

1. Federal Agency Grantmaking

Article I of the Constitution grants Congress the power of the purse. *See U.S. Dep't of the Navy v. Fed. Lab. Rels. Auth.*, 665 F.3d 1339, 1346-47 (D.C. Cir. 2012) (the "power over the purse was one of the most important authorities allocated to Congress in the Constitution's 'necessary partition of power among the several departments.'")

(quoting *The Federalist No. 51*, at 320 (James Madison) (Clinton Rossiter ed. 1961)).

Pursuant to this bedrock principle, prior to Inauguration Day on January 20, 2025, federal agency grantmaking proceeded under the authority of Congress, which appropriated taxpayer funds for specific public purposes and objectives. Defendants awarded grants using money appropriated and allocated to them by Congress, to promote their agencies' missions in a manner compliant with statutory mandates, pursuant to regular administrative processes, on the basis of individualized review and evaluation, and subject to termination only for reasons stated in applicable regulations. All of this changed after Inauguration Day, when Defendants terminated hundreds of millions of dollars of previously awarded grant funding to University of California researchers in derogation of all of the above-listed principles.

Defendants' actions terminating funds based on the perceived viewpoints expressed in the research was particularly striking insofar as many of these agencies operate under statutory mandates to further diversity, equity, and inclusion. For example, Congress in 1965 established the NEH as a federal agency both to support the advancement of the humanities across the United States and to ensure that Americans could understand "the diversity of excellence that comprises our cultural heritage." 20 U.S.C. § 951(9). Accordingly, Congress delegated to NEH the power to provide funding for individuals involved in research, publication of scholarly works, and promotion of the humanities, *see id.* § 956, and "authorized [NEH] to enter into arrangements, including

contracts, grants, loans, and other forms of assistance" to effectuate these goals. *Id.* § 956(c).

Congress's directives for NEH specifically require it to support diverse and underrepresented viewpoints. For example, one statutory function of NEH is to authorize grants to "initiate and support programs and research which have substantial scholarly and cultural significance and that reach, or reflect the diversity and richness of our American cultural heritage, including the culture of, a minority, inner city, rural, or tribal community." *Id.* § 956(c)(4). Likewise, in selecting recipients of funding, federal law requires that NEH's Chair "shall give particular regard to scholars, and educational and cultural institutions, that have traditionally been underrepresented." *Id.* § 956(c).

This is similarly true for the NSF. Congress established the NSF in 1950 as an independent agency designed "[t]o promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense; and for other purposes." National Science Foundation Act of 1950, Pub. L. No. 81-507, 64 Stat. 149 (codified as amended at 42 U.S.C. § 1861 et seq.). The NSF is tasked by statute to "provide Federal support for basic scientific and engineering research, and to be a primary contributor to mathematics, science, and engineering education at academic institutions in the United States." 42 U.S.C. § 1862k(a)(6)(A). The Act also directs the NSF to provide "grants, loans, and other forms of assistance" to support scientific research and award "scholarships and graduate fellowships in the mathematical, physical, medical, biological, engineering, and other sciences." *Id.* § 3(a)(2), (4).

Amendments to the Act in 1998 reaffirmed the NSF's statutory commitment to making the United States a leader in STEM fields, and sets forth several "core strategies" for achieving the above goals, including the following: "Develop intellectual capital, both people and ideas, with particular emphasis on groups and regions that traditionally have not participated fully in science, mathematics, and engineering." 42 U.S.C. § 1862k(b)(1). Congress further mandated that the NSF Director "shall . . . support programs designed to broaden participation of underrepresented populations in STEM fields," including specifically awarding "grants . . . to increase the participation of" minorities, women, and persons with disabilities. *Id.* § 1862s-5(c), (d)(1).

The NSF awards research grants through a merit review process that is regarded as the gold standard of scientific review. Expert panels of independent scientists, engineers, and educators, all vetted to avoid conflicts of interest, serve as reviewers of NSF grants, reviewing them for both "intellectual merit" and "broader [societal] impacts." 42 U.S.C. § 1862s(b).

2. Federal Funds Awarded to the UC System

The University of California (the "UC System") is the world's leading public research institution. For years, the UC system has partnered with the federal government to deliver dramatic innovations. Without the UC System's research and the support of federal funding, the world would not have the internet, MRI machines, plug-in hybrid cars, cochlear implants, a universal viral vaccine, a brain implant that prevents Parkinson's symptoms, the use of CRISPR gene-editing to cure

sickle cell disease and treat other medical conditions, or the world's largest 3D map of the universe. Decades of UC cancer research have saved nearly four million lives in the past thirty years. Entire industries have grown out of UC research, including biotechnology, computing, semiconductors, telecommunications, and agriculture. UC research prowess continues and at breakneck speed: the UC System averages four new inventions *per day*. In 2023, seventy-eight startups were launched using UC intellectual property or technology. For 2026, UC is ranked #1 for alumni-founded startups in the world.

UC research quite literally shapes the future: 8.2% of all academic research in the United States is conducted by UC researchers. Such achievements would not be possible without federal grants, which are the single largest source of UC research funding, historically accounting for more than half of the UC system's total research awards. In fiscal year 2024, the UC system received more than $4.069 *billion* in federal research monies, covering 10,256 distinct awards. These stable federal funding sources, and the research talent they attract and empower, have enabled the UC system to make its outsized contributions multi-decade contributions to human progress.

3. The Trump Administration Directed Federal Agencies to Terminate Research Grants.

Beginning on January 20, 2025, the Trump Administration directed federal agencies to "terminate" previously awarded grant funds through a series of Executive Orders ("EOs") to that effect.

For example, an EO titled *Ending Radical and Wasteful Government DEI Programs and Preferencing* ("First DEI EO") instructed the Attorney General and others to "coordinate the termination of all discriminatory programs, including illegal DEI and 'diversity, equity, inclusion, and accessibility' (DEIA) mandates, policies, programs, preferences, and activities in the Federal Government, under whatever name they appear." Exec. Order No. 14151, 90 Fed. Reg. 8339 (Jan. 20, 2025). Additionally, the First DEI EO directs each federal agency head to "terminate, to the maximum extent allowed by law, all . . . 'equity-related' grants or contracts" within sixty days. *Id.*

An EO titled *Ending Illegal Discrimination and Restoring Merit-Based Opportunity* ("Second DEI EO") addresses purported "immoral race- and sex-based preferences under the guise of so-called [DEI] or [DEIA]." Exec. Order No. 14,173, 90 Fed. Reg. 8633 (Jan. 21, 2025). The order requires the Director of OMB to "[e]xcise references to DEI and DEIA principles, under whatever name they may appear, from Federal acquisition, contracting, grants, and financial assistance procedures" and to "[t]erminate all 'diversity,' 'equity,' 'equitable decision-making,' 'equitable deployment of financial and technical assistance,' 'advancing equity,' and like mandates, requirements, programs, or activities, as appropriate." *Id.*

An EO titled *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government* ("Gender EO") directed that "[f]ederal funds shall not be used to promote gender ideology," instructing federal agencies to revise grant conditions accordingly,

and defining "gender ideology" as a "false claim" that "replaces the biological category of sex with an ever-shifting concept of self-assessed gender identity," and that "includes the idea that there is a vast spectrum of genders that are disconnected from one's sex." Exec. Order No. 14,168, 90 Fed. Reg. 8615 (Jan. 20, 2025).

An EO titled *Establishing and Implementing the President's "Department of Government Efficiency"* ("First DOGE EO") required the head of each federal agency to establish a team of at least four DOGE employees within their agency. Exec. Order. No. 14,158, 90 Fed. Reg. 8441 (Jan. 20, 2025). As per the EO, DOGE would be "dedicated to advancing the President's 18-month DOGE agenda." *Id.*

An EO titled *Implementing the President's "Department of Government Efficiency" Cost Efficiency Initiative* ("Second DOGE EO") purports to begin the Executive's "transformation in Federal spending on contracts, grants, and loans." Exec. Order No. 14,222, 90 Fed. Reg. 11095 (Feb. 26, 2025). This EO required federal agencies to review all existing grants with an eye toward termination. *See id.* According to DOGE's self-described "Wall of Receipts," as of May 31, 2025, federal agencies had terminated over 15,000 grants, totaling roughly $40 billion that it termed, "savings."

4. Defendants' Grant Terminations

The Defendant agencies carried out these Executive Orders through keyword searches of grant applications and terminating grants that used words such as

"diversity" or "climate change." As the federal district court explained:

> Plaintiffs allege that Agency Defendants implemented the Equity Termination Orders by identifying grant proposals reflecting "dangerous ideas," based on keywords in their titles, and then terminating the identified projects. (Compl. ¶ 68.) The record supports Plaintiffs' understanding. NSF Acting Director Brian Stone states that the NSF identified grants for termination using "keyword searches and analytics.

Thakur, 787 F. Supp. 3d at 978; App. 60a. An NEH used keyword searches for phrases including "environmental justice" and "gender ideology."

Since the Trump Administration took office in January 2025, NSF terminated more than a billion dollars in scientific grants that had previously been approved and awarded through the merit review process and that NSF was legally obligated to provide. In an apparent attempt to justify the terminations, NSF in April 2025 published a "Statement of NSF Priorities", explaining that "[r]esearch projects with more narrow impact limited to subgroups of people based on protected class or characteristics do not effectuate NSF priorities." https://perma.cc/K7FP-VMWY. NSF also issued an accompanying set of FAQ's, which indicated that awards not aligned with NSF priorities include, but are "not limited to those on diversity, equity, and inclusion (DEI), environmental justice, and misinformation/disinformation." *Id.*

A review of the awards terminated by NSF suggests that many were flagged for termination because of disfavored words in the project titles. *See, e.g.*, "Effects of Leaf ***Diversity*** on Aquatic Insect Colonizer ***Diversity***"; "Revealing the Vast ***Diversity*** Within the Legume-Rhizobia Mutualism"; "The ***Evolution*** of Evolvability in Microbial Populations"; and "Ecological Turnover at the Dawn of the Great Ordovician Bio***diversification*** Event-Quantifying the Cambro-Ordovician ***Transition*** Through the Lens of Exceptional Preservation" (emphasis added).

Similarly, in March 2025, NEH posted a webpage titled "NEH Implementation of Recent Executive Orders." https://perma.cc/B9L2-CE2J. The page stated NEH was updating the Funding Restrictions section of its Notices of Funding Opportunities "to comply with several recent Executive Orders, including 'Ending Radical and Wasteful Government DEI Programs and Preferencing,' 'Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,' and 'Ending Radical Indoctrination in K-12 Schooling.'" *Id.*

On approximately April 2, 2025, recipients of grant funding began receiving emails that included form termination letters. On April 24, 2025—three weeks after NEH began terminating existing grants—the agency issued a press release titled "An Update on NEH Funding Priorities and the Agency's Recent Implementation of Trump Administration Executive Orders." https://perma.cc/P2WE-ABF6. It stated NEH had taken steps to "ensure that all future awards will, among other things, be merit-based, awarded to projects that do not promote extreme ideologies based upon race or gender, and that

help to instill an understanding of the founding principles and ideals that make America an exceptional country." *Id.*

As part of the press release, NEH issued a new "Statement on NEH Priorities" and "Frequently Asked Questions":

> Q: What types of awards are being cancelled?
>
> A: In collaboration with the Administration, NEH has cancelled awards that are at variance with agency priorities, including but not limited to those on diversity, equity, and inclusion (or DEI) and environmental justice, as well as awards that may not inspire public confidence in the use of taxpayer funds.

NEH's new "priorities" directly contradict the agency's statutory mandate to make grants that "reflect the diversity and richness of our American cultural heritage" and "give particular regard to scholars, and educational and cultural institutions, that have traditionally been underrepresented." 20 U.S.C. § 956(c)(4), (10).

B. Procedural History

On June 4, 2025, Plaintiffs filed their Class Action Complaint for Declaratory and Injunctive Relief. A day later, Plaintiffs filed their Motion for Temporary Restraining Order which the District Court later converted to a Motion for a Preliminary Injunction. Plaintiffs concurrently filed a Motion for Class Certification. The district court granted limited expedited discovery and heard the motions on an emergency basis.

On June 23, 2025, the district court granted Plaintiffs' motion for preliminary injunction, finding they were likely to succeed on two claims: that the termination of grants without explanation was arbitrary and capricious in violation of the Administrative Procedure Act, and that the termination of grants based on the perceived viewpoint expressed in the research violated the First Amendment. The court concluded that "the balance of equities and the public interest strongly favor the entry of a preliminary injunction." *Thakur*, 787 F. Supp. 3d at 996; App. 97a.

The district court also certified two classes of researchers: (a) those whose grants were terminated by the Agency Defendants because the research ostensibly touched on blacklisted DEI topics (the "Equity Termination Class"), and (b) those whose grants were terminated by Agency Defendants via form letter without any grant-specific explanation (the "Form Termination Class"). *Id.* at 998.

Defendants filed a notice of appeal and a motion to stay the preliminary injunction. Defendants' motion sought a stay only as to two Agency Defendants: the Environmental Protection Agency and the National Endowment for the Humanities. On August 21, 2025, the Ninth Circuit denied the government's request to stay the preliminary injunction. *See Thakur v. Trump*, 148 F.4th 1096, 1101 (9th Cir. 2025).

On September 22, 2025, the district court granted Plaintiffs' motion to amend their Complaint to include the Department of Transportation, Department of Defense, and the National Institutes of Health (a part of the Department of Health and Human Services). *Thakur*,

800 F. Supp. 3d at 1053. The district court then granted Plaintiffs' motion to have the two certified classes apply to these agencies, as well as to apply the preliminary injunction to them.[3]

On December 23, 2025, the Ninth Circuit amended its earlier ruling on the government's motion to stay the preliminary injunction. It held that the district court lacked jurisdiction to hear plaintiffs' claim that the denial of grants was arbitrary and capricious in violation of the Administrative Procedure Act because of this Court's ruling in *Nat'l Institutes of Health v. American Public Health Association*, 145 S.Ct. 2658 (2025). The Ninth Circuit ruled that such claims had to be presented, under the Tucker Act, in the Court of Federal Claims. But the Ninth Circuit repeated that there was not a basis for staying the district court's preliminary injunction as to the First Amendment issue. *Thakur v. Trump*, 163 F.4th 1198, 1206 (9th Cir. 2025).

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3. As the district court noted, these other agencies also engaged in viewpoint discrimination in cutting off grants. For example, the Department of Transportation terminated grants based on the perceived viewpoint expressed in the research. *See Thakur v. Trump*, 800 F. Supp.3d 1044, 1068 (N.D. Cal. 2025). The district court explained: "Furthermore, Secretary of Transportation Sean Duffy stated that DoT would 'identify and eliminate' programs that promote, among other things 'environmental justice, and other partisan objectives.' And Duffy identified [National Center for Science Teaching and Learning] funding as a 'woke university grant . . . used to advance a radical DEI and green agenda.'" *Id.* The district court observed that "[m]uch like DoD, the record suggests that HHS and NIH have likely engaged in viewpoint discrimination against UC researchers by terminating grants, pursuant to Equity Termination Orders, based on disfavored speech contained in the grant applications." *Id.* at 1069.

Plaintiffs sought rehearing and rehearing *en banc* on the APA issue, arguing that no prior Supreme Court decision had addressed whether the Tucker Act bars district court jurisdiction where the Court of Federal Claims could not hear the claims of those who were not parties to the grants from the federal government. The Ninth Circuit denied rehearing and rehearing *en banc*.

On May 26, 2026, the Ninth Circuit issued its decision reviewing the preliminary injunction, which is the basis for the Petition for a Writ of Certiorari. *See Thakur v. Trump*, 176 F.4th 1187 (9th Cir. 2026) (per curiam). The court reaffirmed its earlier conclusions that the district court lacked jurisdiction to hear the Administrative Procedure Act claim and that the Defendants' termination of plaintiffs' grants violated the First Amendment. *Id.* at 1197, 1199.

REASONS FOR DENYING THE WRIT

Certiorari is Unwarranted Because the Ninth Circuit Applied Clearly Established Law and There is No Conflict with Decisions of Any Other Court.

The district court and the United States Court of Appeals for the Ninth Circuit applied long-established First Amendment principles in holding that the Defendants' termination of grants based on the perceived viewpoint of the research likely violates the First Amendment. There is thus no conflict between the Ninth Circuit's decision and the rulings of this Court or of other Circuits.

Quite importantly, in their Petition for a Writ of Certiorari, the Defendants do not claim there is a

split among the Circuits. Instead, their argument for certiorari is that "[t]he Ninth Circuit's holding that the grant terminations here violated the First Amendment conflicts with decisions of this Court." Pet. 11. But no such conflict exists.

The district court and the Ninth Circuit applied one of the most fundamental and well-established principles of First Amendment law: the government cannot discriminate based on the viewpoint of the speech. As this Court recently declared: "'Viewpoint discrimination' . . . represents 'an egregious form' of content regulation, and governments in this country must nearly always 'abstain' from it." *Chiles v. Salazar*, 607 U.S. 627, 641 (2026) (citations omitted). This Court has explained that "the 'bedrock First Amendment principle' [is] that the government cannot discriminate" based on viewpoint. *Iancu v. Brunetti*, 588 U.S. 388, 393 (2019). This Court has explicitly held that this principle applies when the government is making decisions concerning funding, explaining that the government cannot use its enormous leverage in funding to control the viewpoint of what is expressed or to suppress what it deems to be dangerous ideas. *See, e.g.*, *Finley*, 524 U.S. at 587; *Rosenberger*, 515 U.S. at 830.

Defendants erroneously conflate two distinct funding contexts in arguing that the government has the ability to choose what to fund (or not fund). They quote this Court's decision in *Rosenberger* that "the government may itself promote favored viewpoints, including by 'disburs[ing] public funds to private entities.'" 515 U.S. at 833; Pet. 12. Defendants also quote this Court's decision in *Rust v. Sullivan*, that the "government 'can, without violating

the Constitution, selectively fund a program to encourage certain activities it believes to be in the public interest' at the exclusion of other activities." 500 U.S. at 19; Pet. 9. But these cases, and all of the decisions cited by Defendants, are distinguishable from the facts of this case, which involves post hoc abrupt cancellation of research that the government had elected to fund.

First, no prior case involved the government terminating funding based on its perception of the viewpoint of the speech. There is no dispute that Congress can choose what programs to create and what priorities to set. But even when the government makes these choices, the First Amendment limits what it can do. As this Court explained in *Legal Services Corp. v. Velazquez*, "[w]here private speech is involved, even Congress' antecedent funding decision cannot be aimed at the suppression of ideas thought inimical to the Government's own interest." 531 U.S. 533, 548-49 (2001) (citations omitted).

This case, unlike the precedents that Defendants cite, involves cutting off funds already approved. It is one thing for Congress to set priorities in funding and quite another for the President to terminate already approved funding because of the viewpoints perceived to be expressed in the research. Those receiving grants have justifiably relied on them and, as found by the lower courts in this case, suffer enormous harm when the funding is suddenly terminated. What begins as material harm – loss of money, staff, graduate and post-doctoral students – quickly becomes expressive harm: the inability to publish research and affect public discourse. This is a quintessential First Amendment violation.

The Ninth Circuit understood this. It explained that the Defendant's argument "overlooks that there is a critical distinction between creating or ceasing a particular program (or subsidy, or forum), on one hand, and discriminating against disfavored speaker viewpoints within a program (or subsidy, or forum), on the other. The government may impose restrictions on subsidies 'to define the limits and purposes of [that] program.' But it cannot 'leverage its power to award subsidies . . . into a penalty on disfavored viewpoints.'" *Thakur v. Trump*, 176 F.4th at 1202; App. 20a (citations omitted).

Nor does *Rust v. Sullivan* provide support for Defendants' action in cutting off existing grants on the basis of the perceived viewpoint expressed in the research. *Rust v. Sullivan* simply held that Congress could choose to not fund projects that counseled abortions. This Court explained that "[t]here is a basic difference between direct state interference with a protected activity and state encouragement of an alternative activity consonant with legislative policy." 500 U.S. at 193 (citation omitted).

This case obviously does not involve "state encouragement of alternative activity consonant with legislative policy." *Id.* To the contrary, the termination of grants often was blatantly inconsistent with specific statutory mandates for funding. As described above, Defendant agencies operate under mandates to fund programs furthering diversity. *See, e.g.*, 20 U.S.C. § 956(c) (directing the NEH to support diverse and underrepresented viewpoints).

Second, the decisions relied on by Defendants all stress that the government cannot use its power over funding to engage in viewpoint discrimination. Defendants lean heavily on this Court's decisions in *National Endowment for the Arts v. Finley* and *Rosenberger v. Rector & Visitors of the University of Virginia*. *See, e.g.*, Pet. 13-19. But these cases actually support the decisions of the district court and the Ninth Circuit, not the Defendants' position.

In *Finley*, the Court rejected a facial challenge to a federal statute which required the National Endowment for the Arts to award competitive grants based on "artistic excellence and artistic merit . . . taking into consideration general standards of decency and respect." 524 U.S. at 572. But the Court in that case stressed that the statutory provisions at issue, "by their nature, do not engender the kind of directed viewpoint discrimination that would prompt this Court to invalidate a statute on its face." *Id*. at 583. The Court emphasized that it would be very different if the government actually engaged in viewpoint discrimination. The Court explained:

> Respondents do not allege discrimination in any particular funding decision. . . . Thus, we have no occasion here to address an as-applied challenge in a situation where the denial of a grant may be shown to be the product of invidious viewpoint discrimination. If the NEA were to leverage its power to award subsidies on the basis of subjective criteria into a penalty on disfavored viewpoints, then we would confront a different case. We have stated that, even in the provision of subsidies, the Government may not 'ai[m] at the suppression of dangerous

> ideas,' and if a subsidy were 'manipulated' to have a 'coercive effect,' then relief could be appropriate.

Id. at 586-87 (citations omitted).

That is exactly what occurred in this case: the government chose to cut off funds based on its perception of the viewpoint expressed in the research. The Ninth Circuit explained that "the critical difference is between a facial challenge to a program that by its design excludes categories of activities or speakers (e.g., those that tend to violate general standards of decency and respect), and an as-applied challenge to the government's decision to discriminate on the basis of viewpoint in a particular funding decision (e.g., as Plaintiffs allege here)." *Thakur v. Trump*, 176 F.4th at 1203; App. 23a-24a.

Defendants, invoking *Finley* and *Rust*, say: "The general requirement of viewpoint neutrality does not require taxpayers to continue funding projects that the government concludes no longer serve the public interest even if that conclusion is based in part on the viewpoint furthered by the projects." Pet. 14. But that is not case here: the termination of grants to Plaintiffs was *entirely* based on the perceived viewpoint of the research.

Defendants rely on *Rosenberger*, but that decision expressly disapproved of viewpoint discrimination in funding. In *Rosenberger*, this Court declared unconstitutional a state university's refusal to give student activity funds to a Christian group that published an expressly religious magazine. The Court explained that although the government has wide discretion when it

chooses to allocate scarce financial resources, "[i]t does not follow . . . that viewpoint-based restrictions are proper when the University does not itself speak or subsidize transmittal of a message it favors but instead expends funds to encourage a diversity of views from private speakers." 515 U.S. at 834. In words especially apt for this case, the Court reviewed earlier cases and stated that while "the Government is not required to subsidize the exercise of fundamental rights, we reaffirmed the requirement of viewpoint neutrality in the Government's provision of financial benefits by observing that '[t]he case would be different if Congress were to discriminate invidiously in its subsidies in such a way as to 'ai[m] at the suppression of dangerous ideas.'" *Id.* (citations omitted).

In this case, Defendants do not dispute that funding was terminated because they wanted to suppress what they regarded as undesirable ideas. This Court repeatedly has made clear that such actions violate the First Amendment. In *Perry v. Sinderman*, 408 U.S. 593, 597 (1972) (citations omitted), this Court explained that the "government may not deny a benefit to a person on a basis that infringes his constitutionally protected interests," because such a denial would "penalize[e]" and "inhibit[]" the exercise of constitutional rights to "produce a result which [the government] could not command directly." As the Court declared in *Regan v. Taxation With Representation of Washington*, notwithstanding the "especially broad latitude" for creating tax classifications, Congress could not "discriminate invidiously in its subsidies in such a way as to 'aim[ ] at the suppression of dangerous ideas.'" 461 U.S. 540, 547-48 (1983).

Third, Defendants argue that this Court's repeated declaration that the government cannot use its funding to "leverage its power to award subsidies . . . into a penalty on disfavored viewpoints" means only that "the government may not condition grants or subsidies on the recipient's engaging or refraining from engaging in expressive conduct 'that [is] separate and independent from the project that receives funds.'" Pet. 15 (citations omitted). But no case, and certainly not *Finley*, says that the First Amendment is violated *only* when the government seeks to leverage funding to regulate speech outside the contours of the program.

Defendants' reliance on this Court's decision in *Agency for International Development v. Alliance for Open Society International, Inc.*, 570 U.S. 205, 214 (2013), is likewise misplaced. Pet. 15. In that case, the Court held that it violated the First Amendment for the government to require as a condition of federal funding that organizations adopt a policy expressing opposition to prostitution and human trafficking. But it did *not* say that the First Amendment was violated *only* by such leveraging. The Court had no occasion to express views on a situation like this where the government terminated grants solely based on the perceived viewpoints expressed in the research.

The Ninth Circuit expressly addressed this and explained:

> To be sure, the government may violate unconstitutional-conditions principles when it imposes restrictions on speech outside the contours of a program, but the government

> offers no support for the assertion that this is the *only* constraint on the government's funding decisions. If that were so, it would be hard to reconcile with the Supreme Court's cautionary warning in *Finley* that 'even *in the provision of subsidies*, the Government may not 'ai[m] at the suppression of dangerous ideas.' *Thakur*, 176 F.4th at 1204; Pet. App. 24a-25a.

That is because, as this Court has repeatedly stated: "On the spectrum of dangers to free expression, there are few greater than allowing the government to change the speech of private actors in order to achieve its own conception of speech nirvana." *Moody v. NetChoice*, 603 U.S. 707, 741-42 (2024).

Simply put, as the Defendants admit, leveraging of funds to control speech separate and independent from the project that receives funds is sufficient to violate the First Amendment, and no case ever has ruled that the First Amendment is violated only by viewpoint discrimination in such circumstances. A simple example illustrates the flaw in the government's argument. Imagine that the government were to declare its belief that only those who voted for the President can be trusted to adequately carry out the research agenda of the administration and the government terminated grants to all others. This would be entirely based on its views of what would be necessary to carry out the purpose of the program, rather than the type of leveraging which Defendants say is impermissible. But surely there is no dispute that this would be unconstitutional.

The conclusion is that there is no conflict between the Ninth Circuit's decision and any ruling of this Court. As Defendants note, there is only one other case that has addressed the issue presented here: *American Council of Learned Societies v. NEH*, No. 25-cv-3657, 2026 WL 1256454 (S.D.N.Y. May 7, 2026), appeals pending, Nos. 26-1829 & 26-1996 (2d Cir.). That district court came to the identical conclusion as the district court and the Ninth Circuit here. Defendants say that there are other cases where this issue is being presented. Pet. 22-23. But that is a reason to deny certiorari here and allow the issue to percolate so this Court will have the benefit of other courts' rulings.

CONCLUSION

For these reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

Erwin Chemerinsky
Counsel of Record
Claudia Polsky
U.C. Berkeley School of Law
Law Building
Berkeley, CA 94720
(510) 642-6483
echemerinsky@berkeley.edu

Anthony P. Schoenberg
Linda S. Gilleran
Kyle A. McLorg
Dylan M. Silva
Farella Braun + Martel LLP
One Bush Street, Suite 900
San Francisco, CA 94104

Elizabeth J. Cabraser
Richard M. Heiman
Kevin R. Budner
Annie M. Wanless
Clare D. Perez
Lieff Cabraser Heimann & Bernstein
275 Battery Street, 29th Floor
San Francisco, CA 94111

Counsel for Respondents