UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PATSY WIDAKUSWARA, et al.,

Plaintiffs,

v.

KARI LAKE,
Senior Advisor to the Acting CEO of the United States Agency for Global Media, et al.,

Defendants.

Civil Action No. 25-1015 (RCL)

MOTION TO DISMISS AND MOTION FOR RELIEF FROM LOCAL RULE 7(N)(1)'S REQUIREMENTS AND MEMORANDUM IN SUPPORT THEREOF

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

Statutes, Rules, Regulations, and Other Authorities

Defendants, Kari Lake, in her official capacity as Senior Advisor to the Acting Chief Executive Officer ("CEO") of the U.S. Agency for Global Media ("Global Media"), Victor Morales, in his official capacity as Acting CEO, and Global Media (collectively "Defendants") through their undersigned counsel, respectfully move to dismiss the Complaint (ECF No. 1) pursuant to Federal Rules of Civil Procedure ("Rules") 12(b)(1) and 12(b)(6). Defendants also move for relief under Local Civil Rule ("Local Rule") 7(n)(1)), which Plaintiffs oppose.

INTRODUCTION

Plaintiffs are Patsy Widakuswara, the Voice of America White House Bureau Chief, Jessica Jerreat, the Voice of America Press Freedom Editor, Kathryn Neeper, the Director of Strategy and Performance Assessment at USAGM, "John Doe 1" and "John Doe 2" are journalist and "full-time equivalent federal employees," "John Doe 3" and "John Doe 4"[1] are independent freelance journalist and were previously operating under a contract with Voice of America, and the remainder of the plaintiffs are organizations, including Reporters Sans Frontieres ("RSF"), Reporters Without Borders, Inc. ("RSF USA"), American Federation of State, County and Municipal Employees ("AFSCME"), American Federation of Government Employees ("AFGE"), American Foreign Service Association ("FSA"), and NewGuild-CWA. Plaintiffs in this action, however, seek to micromanage Global Media, including controlling day-today operations and personnel decisions. If Plaintiffs' claims were otherwise allowed to proceed, the Court would be engaged in judicial review that would eliminate the discretion entrusted to Global Media to run its

[1] Defendants have asked Plaintiffs numerous times to provide the identities of John Does 1-4 because the information is necessary to the government's defense. To date, Plaintiffs have refused. To the extent Plaintiffs continue to withhold this essential information, Defendants will have no other choice but to seek judicial intervention, including, but not limited to, moving to compel the names of John Does 1-4 or requesting that the Court dismiss them from this case due to their refusal to provide their identity.

day-to-day operations. Instead of the Executive Branch faithfully executing the laws of Congress, substantial aspects of a cabinet-level agency's operations would instead be put under the control of this Court.

As discuss further below, this Court should dismiss the Complaint in its entirety. As a threshold matter, this Court lacks jurisdiction over Plaintiffs' claims. Plaintiffs also fail to challenge any discrete agency action under the Administrative Procedure Act ("APA") and Plaintiffs have other adequate alternative remedies which forecloses relief under the APA. Also, Plaintiffs fail to state a viable First Amendment, Mandamus Act, or Writs Act claim. And finally, with respect to Plaintiffs' *ultra vires* claims, they miss the mark completely because there is alternative review for their claims.

BACKGROUND

I. Statutory Background

The mission of United States Agency for Global Media is to inform, engage, and connect people around the world in support of freedom and democracy. *See* https://www.usagm.gov/whowe-are/mission/. In furtherance of that mission, Global Media oversees multiple entities, including Voice of America. *See id.*; *see also* 22 U.S.C. § 6208a. To effectuate its oversight authority, Congress granted Global Media's CEO the authority to, among other things: "direct and supervise all broadcasting activities conducted" by such entities; "review and evaluate the mission and operation of, and to assess the quality, effectiveness, and professional integrity of, all such [entities'] activities within the context of the broad foreign policy objectives of the United States"; and "[t]o undertake such studies as may be necessary to identify areas in which broadcasting activities under its authority could be made more efficient and economical." 22 U.S.C. §§ 6204(a)1, (a)(2), (a)(8). Among other requirements, Congress directed that all government-funded and operated international broadcasts under the Global Media umbrella

"shall" be "consistent with the broad foreign policy objectives of the United States," and "shall include" "a balanced and comprehensive projection of United States thoughts and institutions." *Id.* § 6202(a)(1), (b)(2); *see also id.* § 6202(c)(2) (same for Voice of America broadcasts).

In December 2016, Congress passed, and then-President Obama signed, the 2017 National Defense Authorization Act, which established Global Media's current governing structure. National Defense Authorization Act of 2017, Pub. L. 114-328, 130 Stat. 2000, 2549, § 1288. That law restructured governance of the Global Media broadcast networks by dissolving a governing board structure and centralizing control in a single CEO. 22 U.S.C. §§ 6203, 6204(a)(1), (b). Congress vested the CEO with the many powers previously held by the board, including to "ensure" broadcast activities are consistent with the standards Congress established, including that they be "balanced and comprehensive," *id.* §§ 6204(a)(3), 6202(b)(2), and to "appoint such personnel for the [CEO] as the [CEO] may determine to be necessary." *Id.* § 6204(a)(11). The current Acting CEO of Global Media is Victor Morales, who holds broad supervisory authority accorded to him by statute. 22 U.S.C. § 6204(a).

II. Executive Order 14,238

On January 20, 2025, and as amended on March 4, 2025, Charles Ezell, the Acting Director of the U.S. Office of Personnel Management ("OPM"), issued a memorandum (the "OPM Memorandum") titled "Guidance on Probationary Periods, Administrative Leave and Details." *See* https://www.opm.gov/media/yh3bv2fs/guidance-on-probationary-periods-administrative leaveand-details-1-20-2025-final.pdf. The OPM Memorandum provided that agencies "have the discretion to grant paid administrative leave to employees to help manage their workforces when it is in their best interest to do so." OPM Mem. at 2. On March 14, 2025, the President issued Executive Order 14,238, which directed that Global Media's "non-statutory components and functions" be eliminated and that its "performance of [its] statutory functions and associated

personnel" be reduced to "the minimum presence and function required by law." Exec. Order No. 14238, 90 Fed. Reg. 13043 (Mar. 14, 2025).

In furtherance of the OPM Memorandum and the Executive Order, as of June 27, 2025, Global Media has approximately 209 active personnel. Wuco Decl. ¶ 20 (ECF No. 54-1); *see also* Ex. 1 annexed to Wuco Decl. (ECF No. 54-2) (shows a breakdown of the offices where the employees work). The number of active personnel is anticipated to change with anticipated flux, including a reduction in force, and as Global Media responds to current events as needed. Wuco Decl. ¶ 20 (ECF No. 54-1). Also, recognizing that Voice of America may need to staff up as need arises, Global Media has exercised recalls, as appropriate and is initiating internal details and hiring Personal Services Contractors[2] as needed, to maintain required levels of statutorily required activity. *Id.* ¶ 20.

III. Procedural Background

On March 21, 2025, Plaintiffs filed this action in the Southern District of New York against Defendants for allegedly placing employees and contractors on paid administrative leave, temporarily ceasing broadcasting and programming operations, cancelling personal services contracts, and allegedly dismantling Global Media. *See generally Compl.* (ECF No. 1). Plaintiffs alleges violations of the First Amendment, the APA, and the statutory firewall and bring claims under the Mandamus Act and the Writs Act and an *ultra vires* claim.

A few days later, on March 24, 2025, Plaintiffs moved for a temporary restraining order and preliminary injunction. On March 28, 2025, the Southern District of New York granted the Plaintiffs' temporary restraining order, *see* ECF No. 54, and a few days later, the Southern District

[2] Global Media has a contractual relationship with Personal Service Contractors, who are not Global Media employees, but have an employer employee relationship governed by contract.

of New York transferred this matter to this District, *see* ECF No. 61. After this case was transferred to this District, Defendants filed their opposition to Plaintiffs' motion for a preliminary injunction, *see* ECF No. 88, and the Court subsequently held oral arguments, *see* Min. Entry for Motion Hearing held on Apr. 17, 2025. On April 22, 2025, the Court entered a preliminary injunction, requiring Defendants to: (1) take all necessary steps to return Global Media employees and contractors to their status prior to the March 14, 2025, those who were placed on leave or terminated; (2) restore the FY 2025 grants with Global Media Networks Radio Free Asia and Middle East Broadcasting Networks; (3) restore Voice of America programming such that Global Media fulfills its statutory mandate that Voice of America "serve as a consistently reliable and authoritative source of news," *id.* § 6202(c). *See* Order (ECF No. 99).

On April 24, 2025, Defendants filed a notice of interlocutory appeal, *see* ECF No. 100, and moved for an emergency stay in the D.C. Circuit case on April 25, 2025. The D.C. Circuit granted the emergency motion to stay on May 3, 2025. *See Widakuswara v. Lake*, No. 25-5144, 2025 WL 1288817, at *6 (D.C. Cir. May 3, 2025). Provision (1) of the Court's April 22, 2025, preliminary injunction remains stayed pending the D.C. Circuit's resolution of the merits of Defendants' appeal. *See Widakuswara v. Lake*, No. 25-5144, 2025 WL 1521355, at *1 (D.C. Cir. May 28, 2025).

On or around May 19, 2025, Plaintiffs served Defendants with the Complaint. And on May 28, 2025, Plaintiffs filed an order to show cause as to Defendants' compliance with Provision 3 of the Court's April 22, 2025, preliminary injunction regarding Voice of America. *See* Pls.' Mot. (ECF No. 112). Contrary to Plaintiffs' assertions raised in their motion, Defendants have demonstrated that Voice of America is meeting its statutory obligations under the International Broadcasting Act and complying with the Court's requirement that it serve, pursuant to its statutory

mandate, as a "consistently reliable and authoritative source of news," *see* 22 U.S.C. § 6202(c). *See generally* Defs.' Responses (ECF Nos. 117, 123, 127). As of today, Defendants filed their second supplemental response and Plaintiffs' motion for an order to show cause is fully briefed, *see* ECF No. 127.

Defendants now move to dismiss Plaintiffs' Complaint in its entirety.

LEGAL STANDARDS

Under Rule 12(b)(1), a plaintiff bears the burden of establishing jurisdiction by a preponderance of the evidence. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). A court considering a Rule 12(b)(1) motion must "assume the truth of all material factual allegations in the complaint and 'construe the complaint liberally, granting plaintiff the benefit of all inferences that can be derived from the facts alleged.'" *Am. Nat'l Ins. Co. v. FDIC*, 642 F.3d 1137, 1139 (D.C. Cir. 2011) (quoting *Thomas v. Principi*, 394 F.3d 970, 972 (D.C. Cir. 2005)). A court may examine materials outside the pleadings as it deems appropriate to resolve the question of its jurisdiction. *See Herbert v. Nat'l Acad. of Scis*., 974 F.2d 192, 197 (D.C. Cir. 1992).

Under Rule 12(b)(6), the Court may dismiss a Complaint where a plaintiff fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). When resolving a motion to dismiss pursuant to Rule 12(b)(6), the pleadings are construed broadly so that all facts pleaded therein are accepted as true, and all inferences are viewed in a light most favorable to the plaintiff. *See Iqbal*, 556 U.S. at 678. However, a court is not required to accept conclusory allegations or unwarranted factual deductions as true. *Id.* "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id*. Likewise, a court need not "accept as true a legal

conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986). Ultimately, the focus is on the language in the complaint and whether that sets forth sufficient factual allegations to support a plaintiff's claims for relief.

ARGUMENT

I. Several of the Plaintiffs Lack Article III Standing.

Plaintiffs RSF and RSF USA, AFSCME, AFGE, AFSA, and NewGuild-CWA lack Article III standing. Under any theory of standing, "the irreducible constitutional minimum" requires that, (1) the plaintiff have suffered an "injury in fact" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical"; (2) there must exist "a causal connection between the injury and the conduct complained of"; and (3) it must be "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of Animals v. Jewell*, 828 F.3d 989, 991–92 (D.C. Cir. 2016) (quoting *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 560–61 (1992)). Membership-based associations like Plaintiffs can establish standing in one of two ways: they can assert "associational standing" to sue on behalf of their members, *see Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977), or "organizational standing" to sue on behalf of themselves, *see People for Ethical Treatment of Animals v. U.S. Dep't of Agric. (PETA)*, 797 F.3d 1087, 1093 (D.C. Cir. 2015).

Plaintiffs RSF and RSF USA, AFSCME, and AFGE bring this action on behalf of themselves and their members (*see* Compl. ¶¶ 12, 24, 99, 100) and it is unclear whether Plaintiffs NewGuild-CWA AFSA brings this matter on its own behalf or on behalf of its members (*id.* ¶¶ 13, 98, 101). As discussed further below, whether they are bringing this matter on behalf of themselves and their members but regardless, they fail to make the showing required for either associational standing or organizational standing.

A. Plaintiffs Fail to Demonstrate Associational Standing.

Plaintiffs RSF and RSF USA, AFSCME, AFGE, AFSA, and NewGuild-CWA bring this action on behalf of their members. To show associational standing, an organization must demonstrate that "(1) at least one of its members would have standing to sue in his own right, (2) the interests the association seeks to protect are germane to its purpose, and (3) neither the claim asserted, nor the relief requested requires that an individual member of the association participate in the lawsuit." *Sierra Club v. EPA*, 292 F.3d 895, 898 (D.C. Cir. 2002).

Plaintiffs RSF and RSF USA, AFSCME, AFGE, AFSA, and NewGuild-CWA assert that at least one of their members are injured because the members will be harmed if Global Media is dismantled and because their members were placed on administrative and since receiving the administrative-leave notices, members have been contacting the union seeking information and guidance, they are forced to make critical decisions, some have chosen to retire, and receiving the notices has caused substantial stress, fear, and confusion. *See* Compl. ¶¶ 94, 97–101; *see also, e.g.*, Pls. Exs. M, N (ECF Nos. 16-13, 16-14). Plaintiffs fail to meet the "constitutional minimum," demonstrating that at least one of its members suffered an injury that is "concrete and particularized" as well as "actual or imminent." *Lujan*, 504 U.S. at 560 (citation omitted); *Summers*, 555 U.S. at 498. Plaintiffs' emotional harm certainly is not impending. Although Plaintiffs fear what may happen next in the future, this "amounts to nothing more than speculation about future events that may or may not occur," especially given Global Media and Voice of America remain operational, contrary to what Plaintiffs suggest. *Mahorner v. Bush*, 224 F. Supp. 2d 48, 50 (D.D.C. 2002) ("The plaintiff's allegation that he will suffer an increased chance of losing his life if President Bush initiates a military conflict with Iraq, amounts to nothing more than speculation about future events that may or may not occur."), *aff'd* 2003 WL 349713 (D.C. Cir. 2003); *Indigenous People of Biafra v. Blinken*, 639 F. Supp. 3d 79, 85 (D.D.C. 2022)

(concluding that the John Does who "reasonably fear[] injury at the hands of the Nigerian government"—after the United States's sale of aircrafts to the Nigerian government—failed to plead a sufficient injury-in-fact). Without injury, Plaintiffs fail to demonstrate associational standing to bring this action and seek any relief.

Further, "[w]hen a petitioner claims associational standing, it is not enough to aver that unidentified members have been injured." *Chamber of Com. of U.S. v. EPA*, 642 F.3d 192, 199 (D.C. Cir. 2011). "Rather, the petitioner must specifically 'identify members who have suffered the requisite harm.'" *Id.* (citation omitted). Plaintiffs RSF and RSF USA and NewGuild-CWA have not identified a specific member who has been allegedly harmed by Defendants' actions. *See* Compl. (ECF No.1) ¶¶ 97-98; *see also* Pls. Exs. O and P (ECF Nos.16-15, 16-16).

Accordingly, Plaintiffs have failed to allege any associational standing.

B. Plaintiffs Fail to Demonstrate Organizational Standing.

Any attempt by RSF and RSF USA, AFSCME, AFGE, AFSA, and NewGuild-CWA to establish organizational standing fares no better. To establish organizational standing, a plaintiff must demonstrate "that the defendant's actions cause a 'concrete and demonstrable injury to the organization's activities' that is 'more than simply a setback to the organization's abstract social interests.'" *Elec. Priv. Info. Ctr. v. Presidential. Advisory Comm'n on Election Integrity*, 878 F.3d 371, 378 (D.C. Cir. 2017) (cleaned up). "For an organizational plaintiff to demonstrate that it has suffered an injury in fact, it must show 'more than a frustration of its purpose,' since mere hindrance to a nonprofit's mission 'is the type of abstract concern that does not impart standing.'" *Coal. for Humane Immigrant Rts. v. Dep't of Homeland Sec.*, Civ. A. No. 25-00943 (TNM), 2025 WL 1078776, at *4 (D.D.C. Apr. 10, 2025) (quoting *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 919 (D.C. Cir. 2015) (cleaned up)). Thus, to determine whether a plaintiff's allegations are sufficient to convey organizational standing, a court must find that the plaintiff satisfied two

prongs: (1) the defendants' "action or omission . . . injured [the plaintiff's] interest;" and (2) that the plaintiff "used its resources to counteract that harm." *Elec. Priv. Info. Ctr.*, 878 F.3d at 378 (quoting *PETA*, 797 F.3d at 1094).

Here, RSF and RSF USA allege that they will suffer irreparable harm because "the loss of [Voice of America] would weaken [their] ability to amplify press freedom concerns throughout the world." Compl. ¶ 97. The other unions claim that if Global Media is dismantled, their "mission of promoting press freedoms [is] severely damaged by the shuttering of [Global Media] operations" and they would no longer be able to represent their members and would lose hundreds of dues-paying members, their bargaining position would be diminished, and their ability to carry out their missions would be impaired. *Id.* ¶¶ 99–101. Plaintiffs fail to demonstrate a "concrete and demonstrable injury to [its] activities," *Citizens for Responsibility & Ethics in Wash. ("CREW") v. Off. of Special Counsel*, 480 F. Supp. 3d 118, 127 (D.D.C. 2020), rather their claims are purely speculative. Indeed, Voice of America has not been dismantled and Global Media remains operational. Further, the organizations insist that they have devoted a considerable number of resources responding to members concerns and providing guidance pertaining to the reduction in the force. *See* Compl. (ECF No. 1) ¶¶ 98–101. Fundamentally, however, "an organization that has not suffered a concrete injury caused by a defendant's action cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action." *FDA v. All. For Hippocratic Med.*, 600 U.S. 367, 394 (2024). Plaintiffs do not contend that Global Media ensuring its compliance with Executive Order 14,238 has impacted their interest. *See id.* And without such a showing, Plaintiffs cannot "spend its way into standing." *All. for Hippocratic Med.*, 600 U.S. at 294. At bottom, Plaintiffs cannot demonstrate that Defendants' alleged actions "perceptibly impaired" their ability to fulfill their stated missions.

And regardless, even if Plaintiffs could claim their organizations' missions have been compromised, that is not enough. *CREW*, 480 F. Supp. 3d at 128 (citing *Abigail All. for Better Access to Dev. Drugs v. Eschenbach*, 469 F.3d 129, 133 (D.C. Cir. 2006)). Further, the mere fact that Defendants actions may make it "more difficult" for some but not necessarily all their operations, Plaintiffs do not meet their burden to establish organizational standing. *See Coal. For Humane Immigrant Rts.*, 2025 WL 1078776, at *6 (organizational standing not satisfied where challenged government action merely "has made [] advocacy efforts more difficult to achieve" (cleaned up)). Accordingly, Plaintiffs fail to demonstrate organizational standing to bring this action and seek any relief.

II. This Court Lacks Jurisdiction Over Plaintiffs' Employment Claims.

Plaintiffs challenge Defendants' personnel decisions, including placing them and other Voice of America employees on administrative leave. *See generally* Compl. (ECF No.1); *see also id.*, Prayer of Relief ¶ (a)(i). This Court lacks jurisdiction over these claims for two reasons.

First, some of Plaintiffs' claims are precluded under the Federal Service Labor–Management Relations Statute ("FSL-MRS"), the Civil Service Reform Act ("CSRA"), and the Foreign Service Act ("FSA"). Congress has precluded district court jurisdiction over Plaintiffs' challenges to Defendants' personnel decisions, including placing employees on paid administrative leave. Indeed, in *Widakuswara*, 2025 WL 1288817, at * 2, the D.C. Circuit recently stated, in relevant part,

> We have long held that federal employees may not use the Administrative Procedure Act to challenge agency employment actions… Congress has instead established comprehensive statutory schemes for adjudicating employment disputes with the federal government… Federal employees may not circumvent [the requisite statutes'] requirement and limitations by resorting to the catchall APA to challenge agency employment actions.

The D.C. Circuit stayed Provision (1) of the Court's April 22, 2025, preliminary injunction and said, "[t]he district court likely lacked jurisdiction over [Global Media's] personnel actions." *Id.* at * 2, 6. Also, in *New York v. McMahon*, Civ. A. No. 25-10601-MJJ, 2025 WL 1463009, at *19 (D. Mass. May 22, 2025) and *Somerville Pub. Sch. v. McMahon*, 139 F.4th 63, 71 (1st Cir. 2025), the government argued the district court was barred from considering plaintiffs' constitutional and APA claims challenging the Department of Education's personnel decisions, including reduction in force, because the CSRA provided exclusive procedure for challenging federal personnel decisions. Both rejected the government's arguments that the CSRA deprived the district court of jurisdiction. *See New York*, 2025 WL 1463009, at *19–20; *Somerville Pub. Sch.*, 139 F.4th at 76. Recently, however, the Supreme Court stayed the preliminary injunction, which amongst other things, enjoined the Department from carrying out the reduction in force and ordered the government to reinstate the Department employees who were fired as part of a reduction in force. *See McMahon v. New York*, No. 24A1203, 2025 WL 1922626, at *1 (U.S. July 14, 2025). Similarly, in *Trump v. Am. Fed'n of Gov't Emps.*, No. 24A1174, 2025 WL 1873449, at *1 (U.S. July 8, 2025), the Supreme Court recently stayed a district court's injunction pausing large-scale reductions in force and reorganizations. Plaintiffs' employment claims, which are like the plaintiffs in those matters, are subject to dismissal.

Second, Plaintiffs John Does 3 and 4 are not civil service employees appointed under 5 U.S.C. § 2105(a)(1). Instead, they were hired by Voice of America under personal services contracts, which are governed by the Contract Disputes Act; the Court of Federal Claims enjoys exclusive jurisdiction over such claims. In fact, in *Dep't of Educ. v. California*, 145 S. Ct. 966, 967 (2025), the Supreme Court stayed a temporary restraining order that had "enjoin[ed] the Government from terminating various education-related grants." The Supreme Court held that the

government was "likely to succeed in showing the District Court lacked jurisdiction to order the payment of money under the [Administrative Procedure Act]," *id.* at *1–2, reasoning that "the Tucker Act grants the Court of Federal Claims jurisdiction over suits based on 'any express or implied contract with the United States.'" *Id.* at *2 (quoting 28 U.S.C. §1491(a)(1)).

A. The Civil Service Reform Act and Federal Service Labor-Management Relations Statute Preclude Plaintiffs' Claims.

Although district courts have jurisdiction over civil actions arising under federal law, see 28 U.S.C. § 1331, "Congress may preclude district court jurisdiction by establishing an alternative statutory scheme for administrative and judicial review." *Am. Fed'n of Gov't Emps., AFL-CIO v. Trump ("AFGE")*, 929 F.3d 748, 754 (D.C. Cir. 2019). As detailed below, Congress has precluded jurisdiction for the claims brought by Plaintiffs Widakuswara, Jearret, Neeper, and John Does 1 and 2. *Am. Foreign Serv. Ass'n v. Trump ("AFSA")*, Civ A. No. 25-0352 (CJN), 2025 WL 573762, at *8 (D.D.C. Feb. 21, 2025) (quoting *U.S. Info. Agency v. Krc*, 989 F.2d 1211, 1217 (D.C. Cir. 1993)). Namely, the Court lacks jurisdiction over these claims because Congress has established a detailed statutory scheme for adjudicating disputes related to federal employment, and Plaintiffs' claims must follow that process.

The CSRA and FSL-MRS together provide a comprehensive "scheme of administrative and judicial review" for resolving both disputes between employees and their federal employers and disputes brought by unions representing those employees. *AFGE*, 929 F.3d at 752 (regarding FSL-MRS); *see Graham v. Ashcroft*, 358 F.3d 931, 933 (D.C. Cir. 2004) (regarding CSRA more broadly). In these statutes, Congress provided that most federal labor and employment disputes must first be administratively exhausted before the employing agency and the applicable administrative review board—either the Merit Systems Protection Board for employment disputes, the Federal Labor Relations Authority for labor disputes, or the Office of Special Counsel for

certain "prohibited personnel practices." For foreign service officers, the Foreign Service Act of 1980 ("FSA") "provides an analogous system for reviewing allegedly adverse actions taken against those employees." *U.S. Info. Agency v. Krc*, 989 F.2d 1211, 1217 (D.C. Cir. 1993)). Judicial review, if any, is generally available only following the exhaustion of administrative review. *See AFGE*, 929 F.3d at 752 (citing 5 U.S.C. §§ 7105, 7123(a), (c)); *United States v. Fausto*, 484 U.S. 439, 448–50 (1988)); *see also* 5 U.S.C. § 7703(b) (providing for judicial review in the Federal Circuit or other court of appeals).

"Personnel actions" that fall within the Office of Special Counsel's ("OSC") purview include "any. . . significant change[s] in duties, responsibilities, or working conditions." 5 U.S.C. § 2302(a)(2)(A)(xii). The CSRA enumerates thirteen circumstances under which personnel actions become "prohibited personnel practices," which must be brought before OSC in the first instance. *Id.* § 2302(b). One of those thirteen "prohibited personnel practices" occurs when a "personnel action" violates "any law, rule, or regulation implementing, or directly concerning, the merit system principles" listed in the statute. *Id.* § 2302(b)(12). These principles require, in relevant part, "proper regard for [employees'] constitutional rights." *Id.* § 2301(b)(2). Consequently, personnel actions that implicate violations of constitutional rights, including alleged violations of the First Amendment, are prohibited personnel practices that generally fall within the CSRA's exclusive remedial scheme. *See, e.g., Weaver v. Info. Agency*, 87 F.3d 1429, 1432 (D.C. Cir. 1996).

In *AFGE*, the D.C. Circuit applied the "two-step framework set forth in *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994)," to conclude that the union plaintiffs in that case could not challenge in district court three executive orders related to federal employment. *AFGE*, 929 F.3d at 754. Under that framework, district courts lack jurisdiction over suits like this one when

the intent for exclusive review in the court of appeals is "(i) fairly discernible in the statutory scheme, and (ii) the litigant's claims are of the type Congress intended to be reviewed within [the] statutory structure." *See id.* at 755 (citations omitted).

The Supreme Court repeatedly has held that the CSRA provides the exclusive means of redressing employment disputes involving federal employees. *See Elgin v. Dep't of Treasury*, 567 U.S. 1, 10–15 (2012); *Fausto*, 484 U.S. at 455. Likewise, the D.C. Circuit repeatedly has recognized that the FSL-MRS and the CSRA readily satisfy the first prong of the *Thunder Basin* framework. *See AFGE*, 929 F.3d at 755 (concluding that union plaintiffs could not challenge in district court three executive orders related to federal employment); *Fornaro v. James*, 416 F.3d 63, 66 (D.C. Cir. 2005); *but see Axon Enterprise, Inc. v. FTC*, 598 U.S. 175 (2023). In other words, Congress intended to make the FSL-MRS and CSRA the exclusive scheme, and they satisfy the first step of the two-step *Thunder Basin* framework.

As to covered actions, beyond restricting judicial review of covered constitutional claims, the CSRA prevents district courts from deciding the merits of APA claims challenging an agency's "'systemwide'. . . policy interpreting a statute," its "implementation of such a policy in a particular case," *Nyunt v. Chairman, Broad. Bd. of Govs.*, 589 F.3d 445, 449 (D.C. Cir. 2009) (quoting *Fornaro*, 416 F.3d at 67–69), or its decision to engage in "'a type of personnel action' the [CSRA] does not cover," *Mahoney v. Donovan*, 721 F.3d 633, 635–36 (D.C. Cir. 2013); *see generally Grosdidier v. Chairman, Broad. Bd. of Govs.*, 560 F.3d 495, 497 (D.C. Cir. 2009) (holding that federal employees "may not circumvent the [CSRA's] requirements and limitations by resorting to the catchall APA to challenge agency employment actions").

With respect to constitutional claims, even in cases centering on CSRA–covered actions, the Supreme Court has considered the availability of "meaningful review" in an Article III judicial

forum when evaluating the scope of the CSRA's exclusive remedial scheme, *Elgin*, 567 U.S. at 10, and the D.C. Circuit has similarly consistently determined that federal employees have "a right to federal court review of their constitutional claims," *Weaver*, 87 F.3d at 1433. Although there exists a narrow exception to the exhaustion rule for employees covered under the CSRA when the raise "constitutional claim issues totally unrelated to the CSRA procedures," *Steadman v. Gov., U.S. Soldiers & Airmen's Home*, 918 F.2d 963, 967 (D.C. Cir. 1990), this exception is a narrow one, and does not excuse exhaustion requirement for claims, that, while framed as constitutional challenges, are in truth a disguised "vehicle" to challenge CSRA–covered personnel actions or practices. *Elgin*, 567 U.S. at 22; *Turner v. U.S. Agency for Global Media*, 502 F. Supp. 3d 333, 366 (D.D.C. 2020).

Plaintiffs Widakuswara, Jerreat, Neeper, and John Doe 1 and 2 do not allege that they exhausted their administrative remedies. *See generally* Compl. (ECF No. 1). And to the extent Plaintiffs insist their claims do not fall within employment statutes, they are wrong. Placement on administrative leave is an action covered by the CSRA. *See e.g., California*, 2015 WL 1008354, at *1 ("[t]he APA's waiver of sovereign immunity does not apply 'if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.'" (quoting 5 U.S.C. § 702)). Importantly, another judge of this Court recently described that statutory scheme when addressing analogous claims by unions of federal employees challenging executive actions that they asserted would "systematically dismantle" the agency that employed them. *AFSA*, 2025 WL 573762, at *1 (quoting plaintiffs' complaint). For civil servants, the "applicable statutory scheme is set forth in the FSL-MRS and the CSRA[.]" *Id.* at *8. At bottom, Plaintiffs' complaints are employment claims cloaked as constitutional or APA challenges.

Here, all factors point toward preclusion. First, a finding of preclusion will not thwart meaningful judicial review. In essence, Plaintiffs Widakuswara, Jearret, Neeper, and John Does 1 and 2 challenges conditions of their employment, their inability to access their "work email and offices," their placement on administrative leave, and the perceived consequences or incidental effects that will flow from that placement, whether related to financial benefits or repatriation. But an employee's placement on administrative leave can be challenged under the CSRA or FSL-MRS. *Nat'l Treasury Emps. Union v. Trump*, Civ. A. No. 25-0420 (RC), 2025 WL 561080, at *5 (D.D.C. Feb. 20, 2025) (recognizing that the FSLMRS and CSRA together precluded district court's jurisdiction over federal employees' unions' challenges to terminations of their members, reductions in force, and offers of deferred resignation). As can the other actions they complain of, namely, access to their work email and their physical offices.

Further, to the extent that Plaintiffs are challenging the reduction in force or mass employees being placed on administrative leave or terminated, the CSRA would still foreclose those claims. Indeed, the CSRA contains no statutory exception based on the number of employees affected or the purported effect of terminations. Hence, courts have upheld the CSRA's exclusivity against "collateral, systemwide challenge," explaining that "what you get under the CSRA is what you get." *Fornaro*, 416 F.3d at 67.

Moreover, NewGuild-CWA, challenges the federal employees' terminations or placement on administrative leave; however, NewGuild-CWA, does not represent federal employees, *see* Compl. ¶¶ 13, 98. Beneficiaries of government services – who are, at most, indirectly affected by a termination – should not be able to leapfrog the employees whom the legislative scheme seeks to protect and potentially coopt the remedies that those employees may or may not seek in CSRA proceedings. Allowing separate litigation by collaterally affected parties would "seriously

undermine[]" "[t]he CSRA's objective of creating an integrated scheme of review," *Elgin*, 567 U.S. at 14, and harm "the development of a unitary and consistent Executive Branch position on matters involving personnel action," *Fausto*, 484 U.S. at 449.

In short, Congress has precluded district-court jurisdiction for employment disputes by establishing an alternative, comprehensive statutory scheme for administrative and judicial review to resolve disputes between employees and their federal employers. *See AFGE*, 929 F.3d at 754 (discussing the Federal Service Labor Management Relations Statute); *see Graham*, 358 F.3d at 933 (discussing the Civil Service Reform Act more broadly). Plaintiffs do not allege that they have exhausted their administrative remedies, and their employment claims—which complain about Agency personnel being placed on administrative leave or terminated—are plainly subject to the statutory schemes discussed.

Indeed, numerous courts in recent months and years have concluded that similar federal-employment suits are precluded. *See*, *e.g.*, *AFGE*, 929 F.3d at 761 (challenge to three executive orders governing collective bargaining and grievance processes); *American Foreign Serv. Ass'n* v. *Trump*, Civ. A. No. 25-0352, 2025 WL 573762, at * 8-*11 (D.D.C. Feb. 21, 2025) (challenge to employees' placement on administrative leave); *National Treasury Emps. Union* v. *Trump*, Civ. A. No. 25-420, 2025 WL 561080, at *5–8 (D.D.C. Feb. 20, 2025) (challenge to terminations of probationary employees, anticipated RIFs, and deferred-resignation program); *AFGE* v. *Ezell*, Civ. A. No. 25-10276, 2025 WL 470459, at *1–3 (D. Mass. Feb. 12, 2025) (challenge to deferred-resignation program); *see also Maryland* v. *USDA*, No. 25-1338, 2025 WL 1073657, at *1 (4th Cir. Apr. 9, 2025) ("The Government is likely to succeed in showing the district court lacked jurisdiction over Plaintiffs' claims" challenging the "terminat[ion] [of] thousands of probationary

federal employees"); *but see AFGE* v. *OPM*, Civ. A. No. 25-1780, 2025 WL 900057, at *1 (N.D. Cal. Mar. 24, 2025) (asserting jurisdiction over challenge to probationary-employee terminations).

Accordingly, Plaintiffs' claims are precluded.

B. This Court Lacks Jurisdiction Over the Contract Claims of Plaintiffs John Doe 3 and 4 Because the Claims Must Be Brought in the Court of Federal Claims.

Generally, the federal government is "immune from suit in federal court absent a clear and unequivocal waiver of sovereign immunity." *Crowley Gov't Servs., Inc. v. GSA*, 38 F.4th 1099, 1105 (D.C. Cir. 2022). Although the APA provides "a limited waiver of sovereign immunity for claims against the United States" seeking non-monetary relief, *id.*, that waiver does not apply "if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought," *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 215 (2012). (cleaned up). That carve-out "prevents plaintiffs from exploiting the APA's waiver to evade limitations on suit contained in other statutes." *Id.*

When a party seeks to challenge the terms of a contract that it has entered with the United States, the proper remedy is typically suit under the Tucker Act, not the APA. The Tucker Act provides that the "United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded" on "any express or implied contract"—including agreements like those that Plaintiffs John Doe 3 and 4 have—"with the United States." 28 U.S.C. § 1491(a). As the D.C. Circuit has explained, "the Tucker Act impliedly forbids" the bringing of "contract actions" against "the government in a federal district court" under the APA. *Albrecht v. Comm. on Employee Benefits of the Federal Reserve Employee Benefits Sys*., 357 F.3d 62, 67–68 (D.C. Cir. 2004) (cleaned up); *see also Conf. of Catholic Bishops v. Dep't of State*, 770 F. Supp. 3d 155, 166 (D.D.C. Mar. 11, 2025), *dismissed sub nom. United States Conf. of Cath. Bishops v. United States Dep't of State*, No. 25-5066, 2025 WL 1350103 (D.C. Cir. May 2, 2025).

At the outset, there is no dispute that Global Media has been given express statutory authority for engaging in personal services contracts. In 2002 Congress passed the "Foreign Relations Authorization Act," which gave the Director of the International Broadcasting Bureau the authority to establish a "pilot program [] for the purpose of hiring United States citizens or aliens as personal services contractors." Pub. L. 107-228 § 504(a), 116 Stat. 1350 (2002) (codified at 22 U.S.C. § 6206 note). As directed, these "personal services contractors" were offered "without regard to Civil Service and classification laws, for service in the United States as broadcasters, producers, and writers in the International Broadcasting Bureau to respond to new or emerging broadcast needs or to augment broadcast services." *Id.* Crucially, Congress contemplated that these personal service contractors would be hired "without regard to Civil Service and classification laws." An "employee" is defined as "an individual who is . . . appointed in the civil service" by a federal employee acting in an official capacity. 5 U.S.C. § 2105(a)(1). The Foreign Relations Authorization Act also placed certain conditions on the Director's use of personal services contractors and required that contracts not exceed more than two years. *Id.* § 504(b).

In this case, Plaintiffs John Does 3 and 4 fail to allege that they are "employees" of Global Media or Voice of America. *See* Compl. (ECF No. 1) ¶¶ 22, 23. Nor could they, as Plaintiffs John Does 3 and 4 acknowledge that they are on personal services contracts with the agency. *Id.* And in determining whether "a particular action" is "at its essence a contract action" subject to the Tucker Act or instead a challenge properly brought under the APA, this Court looks at both "the source of the rights upon which the plaintiff bases its claims" and "the type of relief sought (or appropriate)." *Megapulse, Inc. v. Lewis*, 672 F.2d 959, 968 (D.C. Cir. 1982). In this case, both of those considerations make clear that this Court lacks jurisdiction over Plaintiffs John Does 3 and 4 claims and any claims challenging the termination of their and other's personnel service contracts.

A review of Plaintiffs John Does 3 and 4's contracts clarifies that this Court lacks jurisdiction over their claims. The personal services contracts at issue contain a termination clause (clause four): "Termination of this Contract shall be conducted in accordance with the terms of the attached [Global Media] Personal Services Contractor Handbook." Article 15 of the Personal Services Handbook governs terminations of the contracts. *See* Ex. 3, Personal Services Contractor Handbook (ECF No. 88-3). Article 15(a) provides: "Either party may terminate this Contract with the Agency at any time for any reason by providing the other party with 15 calendar days' written notice. Should the Agency decide to terminate this Contract for Convenience of the Government, the required written notice will be provided by the [Contracting Officer]. The written notice will explain the basis for the termination, and the effective date of the termination. [Global Media] reserves the right to require the [personal services contractor] to telework while the Agency determines whether to issue a termination notice. [Global Media] may also place a [Personal Services Contractor] on administrative leave while determining whether to issue a termination notice." *Id.* On March 15, 2025, in accordance with the terms of the contracts and the Personal Services Contract Handbook, Global Media notified personal services contractors, to apparently include John Does 3 and 4, that their contracts would be terminate effective March 31, 2025. *See* Compl. ¶¶ 22, 23 (ECF No. 1).

Clause five of both personal services contracts, titled "status as a personal contractor," states that "the [Personal Services Contractor] will be performing services under this contract. The [Personal Services Contractor] understands and acknowledges that [Personal Services Contractor] is not a [Global Media] employee within the competitive or excepted service or for any other purposes under the law. The [Personal Services Contractor] understands and acknowledges that this applies notwithstanding any and all provisions of this contract." *See* Exs. 1, 2, John Doe 3

and 4 Contract (Redacted) (ECF Nos. 88-1, 88-2) at 1. Clause 10 is titled, "Disputes," states that "[t]his contract is subject to the Contract Disputes Act of 1978. *Id.* at 2. All dispute resolution between the [Personal Services Contractor] and the Government arising out of this Contract shall be conducted in accordance with the procedures included in the Personal Services Contractor Handbook." *Id.* Some personal services contracts also state that certain clauses of the Federal Acquisition Regulation ("FAR") are incorporated into the contract. For example, it may incorporate FAR 212-4, Contract Terms and Conditions, which renders the contract subject to disputes under 41 U.S.C. Chapter 71 (the Contract Disputes Act). *See* https://www.acquisition.gov/far/52.212-4 (last visited July 12, 2025).

Simply put, Plaintiffs' contract claims are barred under the provisions of the Contract Disputes Act, specifically 41 U.S.C. § 7103(a), because they were not first . . . submitted to and denied by a contracting officer. *Id.* The Contract Disputes Act "applies to any express or implied contract…made by an executive agency for…the procurement of services." 41 U.S.C. § 7102(a)(2). Under the Act, "[e]ach claim by a contractor against the [f]ederal [g]overnment relating to a contract shall be submitted to the contracting officer for a decision." 41 U.S.C. § 7103(a)(1). After such a claim has been made, "a contractor may bring an action directly on the claim in the United States Court of Federal Claims." 41 U.S.C. § 7104(b)(1). That plainly did not occur here.

Moreover, there is no genuine dispute that the Court of Federal Claims enjoys exclusive jurisdiction over claims arising out of the Contracts Disputes Act. *See Cecile Indus., Inc. v. Cheney*, 995 F.2d 1052, 1055 (Fed. Cir. 1993) ("The [Contract Disputes Act] exclusively governs

Government contracts and Government contract disputes.").[3] Put differently, "[w]hen the Contract Disputes Act applies, it provides the exclusive mechanism for dispute resolution; the Contract Disputes Act was not designed to serve as an alternative administrative remedy, available at the contractor's option." *Dalton v. Sherwood Van Lines, Inc.*, 50 F.3d 1014, 1017 (Fed. Cir. 1995).

In any event, the latter *Megapulse*, 672 F.2d at 968, factor is dispositive here. The nature of relief Plaintiffs John Does 3 and 4, seek sounds in contract. *See United States Conf. of Cath. Bishops v. Dept of State*, 770 F. Supp. 3d 155, 164–65 (D.D.C. 2025), *dismissed sub nom. United States Conf. of Cath. Bishops v. Dep't of State*, No. 25-5066, 2025 WL 1350103 (D.C. Cir. May 2, 2025). It asks the Court to "order Defendants to take all necessary steps to return [Global Media] and its employees, contractors, and grantees to their status prior to the March 14, 2025, Executive Order…including by reinstating and permitting employees or contractors that were placed on leave, furloughed, terminated, experienced a reduction in force, or had their contracts changed, canceled or modified…to return to work." Compl. (ECF No. 1) at 53. Thus Plaintiffs "seek the classic contractual remedy of specific performance." *Spectrum Leasing Corp. v. United States*, 764 F.2d 891, 894 (D.C. Cir. 1985). But this Court cannot order the Government to continue to perform under a contract. *Id.* Such a request for an order that the government "must perform" on its contract is one that "must be resolved by the Claims Court." *Ingersoll-Rand Co. v. United States*, 780 F.2d 74, 80 (D.C. Cir. 1985); *see also California*, 2025 WL 1008354 at *1 (the "Government is likely to succeed in showing the District Court lacked jurisdiction to order the

[3] Similarly, the Federal Circuit has acknowledged that "the Tucker Act, in conjunction with the [Contract Disputes Act], purports to make the Court of Federal Claims the exclusive trial court for hearing disputes over government contracts that fall under the [Contract Disputes Act]." *Quality Tooling, Inc. v. United States*, 47 F.3d 1569, 1572–73 (Fed. Cir. 1995).

payment of money under the APA," and "as we have recognized, the APA's limited waiver of immunity does not extend to orders 'to enforce a contractual obligation to pay money[.]'") (cleaned up). In sum, this Court lacks jurisdiction over John Does 3 and 4's contract claims.

In short, Plaintiffs' claims sound in contract, appear to arise under the Contract Disputes Act, and should be brought in the Court of Federal Claims. This Court accordingly lacks jurisdiction over them.

III. This Court Lacks Jurisdiction Over Plaintiffs' Grant Cancellations or Termination Claims.

Plaintiffs appear to challenge the cancellation or termination of contracts with third parties and Global Media. *See Compl.* ¶ 134; *see also id.* Prayer of Relief ¶ (a)(ii). Insofar as Plaintiffs seek reinstatement of any grants or contracts, the proper course would be for the parties to those contracts to seek appropriate recourse under the terms of the contracts—not for Plaintiffs, as nonparties, to seek such relief through this suit. Any challenges to the cancellation or termination of grants and contracts are not subject to this Court's jurisdiction. As discussed above, to determine whether an action is "at its essence a contract action," this Court looks at both "the source of the rights upon which the plaintiff bases its claims" and "the type of relief sought (or appropriate)." *Megapulse, Inc.*, 672 F.2d at 968 (cleaned up). In this case, both *Megapulse* factors make it clear that this Court lacks jurisdiction over any claims challenging the cancellation of the grant agreements or contracts.

In their complaint, Plaintiffs request that the Court reverse the cancelation or termination of their contractual agreements, and they now seek to enforce the terms of the restored contracts and to require the Defendants to pay them money to third parties due under those agreements. Under the Supreme Court's analysis in *California*, this Court lacks jurisdiction to hear Plaintiffs' claims, which are committed to the exclusive jurisdiction of the Court of Federal Claims. And

while Plaintiffs assert that these actions violate the APA or the Constitution, the requested relief is premised on—and ultimately seeks to enforce—existing agreements or contracts with the United States. In short, Plaintiffs ask for specific performance of grant or contractual agreements, to which they are not a party. Those essential facts—that Plaintiffs are seeking to enforce contractual rights and seeking contractual remedies—triggers jurisdiction in the Court of Federal Claims under the Tucker Act. And citation to the APA is irrelevant, as the APA itself will not grant jurisdiction where another statutory scheme, here the Tucker Act, applies. *See Albrecht v. Comm. on Emp. Benefits of Fed. Reserve Emp. Benefits Sys.*, 357 F.3d 62, 67-68 (D.C. Cir. 2004) ("the Tucker Act impliedly forbids" the bringing of "contract actions" against "the government in a federal district court" under the APA (cleaned up)).

Where a party seeks funding that it believes the government is obligated to pay pursuant to a contract or grant, however, the Tucker Act already affords an adequate remedy in a court, therefore judicial review is not available under the APA in such circumstances. The Tucker Act provides that the "United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded" on "any express or implied contract with the United States." 28 U.S.C. § 1491(a)(1). And the Tucker Act's jurisdiction, and its waiver of sovereign immunity for monetary relief, is exclusive. *See U.S. Conf. of Catholic Bishops*, *United States Conf. of Cath. Bishops*, 770 F. Supp. 3d at 162 (The D.C. Circuit has long "interpreted the Tucker Act as providing the *exclusive* remedy for contract claims against the government.") (quoting *Transohio Sav. Bank v. Dir. Off. Of Thrift Supervision*, 967 F.2d 598, 609 (D.C. Cir. 1992) (emphasis in original)). Put another way, "[t]he only remedy to which the United States has consented in cases of breach of contract is to the *payment of money damages* in either the Court of Claims [now the Court of Federal Claims], if the amount claimed is in excess of $10,000, 28 U.S.C.

§ 1491(a)(1), or the district courts, where the amount in controversy is $10,000 or less. 28 U.S.C. § 1346(a)(1)." *Coggeshall Dev. Corp. v. Diamond*, 884 F.2d 1, 3 (1st Cir. 1989) (emphasis in original). And "[f]ederal courts do not have the power to order specific performance by the United States of its alleged contractual obligations." *Id.* at 3. And thus, the latter *Megapulse*, 672 F.2d at 968, factor is dispositive here.

Further, since *California*, courts have been reacting by withholding or staying orders that would have required the types of remedies sought here. *See, e.g., Am. Ass'n of Colleges for Teacher Ed., et al. v. McMahon*, No. 25-1281 (4th Cir. Apr. 10, 2025) (granting the Government's motion to stay a preliminary injunction because of California); *Mass. Fair Housing Cent. et al v. HUD*, Civ. A. No. 25-30041 (D. Mass Apr. 14, 2025) (dissolving temporary restraining order considering the Supreme Court's decision in California).

In sum, to the extent Plaintiffs' claims rest on the cancellation of grants, that is fundamentally a contract dispute that belongs in the Court of Federal Claims.

IV. Claims Relating to Any "Closure" of Global Media Are Not Ripe.

This Court lacks subject matter jurisdiction over any claims, including, but no limited Counts III, V, VI, relating to Global Media closing because these claims are not ripe.

The ripeness doctrine requires that a litigant's claims be "constitutionally and prudentially ripe," so as to protect: (1) "the agency's interest in crystallizing its policy before that policy is subjected to judicial review," (2) "the court's interests in avoiding unnecessary adjudication and in deciding issues in a concrete setting," and (3) "the petitioner's interest in prompt consideration of allegedly unlawful agency action." *Asante v. Azar*, 436 F. Supp. 3d 215, 224 (D.D.C. 2020) (quoting *Nevada v. Dep't of Energy*, 457 F.3d 78, 83–84 (D.C. Cir. 2006). "Ripeness is a justiciability doctrine designed to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to

protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Nat'l Park Hosp. Ass'n v. Dep't of the Interior*, 538 U.S. 803, 807–08 (2003) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148–49 (1967)). Moreover, in making prong two determinations, courts consider pragmatic issues that would arise from considering the agency action to be reviewable. *Fed. Trade Comm'n v. Standard Oil Co. of Cal.*, 449 U.S. 232, 242-43 (1980) (considering that reviewing particular agency action would "interfere[] with the proper functioning of the agency" and turn "prosecutor into defendant before adjudication concludes").

Here, Plaintiffs cannot demonstrate that their claims are prudentially ripe. Indeed, prudence restrains courts from intervening into matters that may be reviewed at another time, especially where constitutional issues are raised. *See Roman Cath. Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 89 (1st Cir. 2013). "The critical question concerning fitness for review is whether the claim involves uncertain and contingent events that may not occur as anticipated or may not occur at all." *McInnis-Misenor v. Me. Med. Ctr.*, 319 F.3d 63, 70 (1st Cir. 2003) (citation omitted). Here, Plaintiffs' insistence that Global Media is closed, or that Voice of America went dark, are wrong. Contrary to Plaintiffs' allegations, Global Media is not closed and has employees to provide mission support and Voice of America is meeting its statutory obligations. *See generally* Defs.' Responses (ECF Nos. 117, 123, 127).

Therefore, dismissal is warranted. *See Oregonians for Floodplain Prot.*, 334 F. Supp. 3d at 73–74 (dismissing on ripeness grounds in part to not interfere with the administrative process); *Food and Water Watch v. EPA*, 5 F. Supp. 3d 62, 80–81 (D.D.C. 2013) (same). And any "theoretical possibility of future hardship arising from the Court's decision to withhold review

until the agency's position is settled does not overcome the finding that the case is not yet 'fit' for judicial resolution." *Belmont Abbey Coll. v. Sebelius*, 878 F. Supp. 2d 25, 41 (D.D.C. 2012).

V. Plaintiffs' First Amendment Claims Fail.

Setting aside the jurisdictional bars to Plaintiffs' constitutional claims, Plaintiffs fail to state a viable First Amendment claim for the reasons discussed below.

A. Plaintiffs Fail to Plead Sufficient Facts That Defendants Engaged in Viewpoint Discrimination under the First Amendment (Count I).

Plaintiffs allege that "Defendants' conduct in dismantling Global Media, placing virtually the entire staff of Global Media (including VOA and Radio y Televisión Martí) on administrative leave, and shuttering Global Media's operations in preparation for a final dismantling of its programming, and ending grants to grantee organizations like RFE/RL, RFA and other government-supported outlets violates the First Amendment's guarantees of free speech and freedom of the press; and (c) unconstitutionally interfering with editorial discretion.." *See* Compl. (ECF No. 1) ¶¶ 103–05. Plaintiffs' viewpoint discrimination claim fails.

The First Amendment's Free Speech Clause does not apply to the government's own speech. *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 467 (2009); *see also id.* at 464 ("the placement of a permanent monument in a public park is best viewed as a form of government speech and is therefore not subject to scrutiny under the Free Speech Clause"). A government entity may "speak for itself," and "select the views that it wants to express." *Id.* at 467–68. Indeed, it is the government's duty to incorporate public opinion and act accordingly, including through speech. *See Nat'l Endow. for Arts v. Finley*, 524 U.S. 569, 598 (1998) (Scalia, J., concurring in judgment) ("It is the very business of government to favor and disfavor points of view."). "Were the Free Speech Clause interpreted otherwise, government would not work." *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 207 (2015).

Global Media's actions apply to the entire agency's efforts to reduce its operations to statutorily mandated activities to comply with Executive Order 14238 and are not targeted to suppress specific viewpoints or content. *See, e.g., Sanjour v. EPA*, 56 F.3d 85, 97 (D.C. Cir. 1995) (invalidating, on First Amendment grounds, federal regulations that prohibited EPA employees "from receiving travel expense reimbursement from private sources for unofficial speaking or writing engagements concerning the subject matter of the employees' work, while permitting such compensation for officially authorized speech on the same issues"); *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 837 (1995) (public university's refusal to reimburse printing costs of student magazine which published Christian viewpoints violated First Amendment, where other student news were eligible for funding); *Reed v. Town of Gilbert*, 576 U.S. 155, 171–72 (2015) (holding as invalid under the First Amendment town code governing outdoor signs which treated certain types of signs more favorably, and "temporary directional signs" for events such as Sunday church services less favorably).

Plaintiffs' claims do not rest on allegations that these journalists' speech as citizens is chilled; rather, they claim that their speech "pursuant to their official duties" is being chilled by the fear that they may face "employer discipline" for it. *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006); *see* Compl. (ECF No. 1) ¶¶ 102–08 (alleging that Defendants violated the First Amendment by "depriving" Global Media journalists and their "colleagues who support them in the dissemination of news and opinion, of their First Amendment rights to freedom of speech and freedom of the press" by interfering in Global Media's "editorial independence by ceasing agency operations," "chill[ing] news coverage" and "expressing certain viewpoints and chill[ing] journalistic activities").

Such allegations do not give rise to a First Amendment claim. *Garcetti*, 547 U.S. at 421–22. In *Garcetti*, a deputy district attorney brought a First Amendment claim alleging that he was disciplined for preparing a memorandum as part of his official duties recommending that a prosecution being pursued by his office be dropped. *Id.* at 413–15. The Court, citing its analysis in *Pickering v. Board of Education of Township High School District 205, Will County*, 391 U.S. 563 (1968), and subsequent cases, recognized that "[w]hen a citizen enters government service, the citizen by necessity must accept certain limitations on his or her freedom" and that "[w]hen [public employees] speak out, they can express views that contravene governmental policies or impair the proper performance of governmental functions." *Garcetti*, 547 U.S. at 418–19. As a result of these concerns, the Court held that "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes," and thus have "no First Amendment cause of action based on his or her employer's reaction to the speech." *Id.* at 418, 421. The Court further noted that "[r]estricting speech that owes its existence to a public employee's professional responsibilities does not infringe any liberties the employee might have enjoyed as a private citizen." *Id.* at 421–22. Since *Garcetti*, the D.C. Circuit has made clear that public employee speech is made "'pursuant to . . . official duties" and not protected even when the speech at issue is outside the employee's job description, and that this "official duties" exception encompasses speech about the employee's job duties in certain circumstances. *See, e.g., Mpoy v. Rhee*, 758 F.3d 285, 290–91 (D.C. Cir. 2014). Courts have applied the *Garcetti/Pickering* test in analyzing First Amendment retaliation claims asserted by Voice of America personnel. *See, e.g., Jangjoo v. Bd. of Govs.*, 244 F. Supp. 3d 160, 170–73 (D.D.C. 2016); *see also Navab-Safavi v Glassman*, 637 F.3d 311, 317 (D.C. Cir. 2011).

Here, the speech on which Plaintiffs' claims are based is speech made pursuant to Global Media journalists' "official duties." *Garcetti*, 547 U.S. at 421. The speech at issue is, indeed, the core duty that the journalists were hired to perform. Plaintiffs do not complain of any purported retaliation against journalists for speech as private "citizens about matters of public concern." *Garcetti*, 547 U.S. at 419. Instead, their complaint exclusively revolves around the allegations that their agency head is chilling news coverage expressed in the Voice of America's official content. *See, e.g.*, Compl. (ECF No. 1) ¶ 104. Any alleged discipline or retaliation for the speech these journalists were hired to make on behalf of the United States, under the supervision of Global Media leadership, does not violate the First Amendment.

In sum, Plaintiffs have failed to plead sufficient facts to plausibly allege that Defendants have engaged in viewpoint discrimination.

B. Plaintiffs' Right to Receive Information Under the First Amendment Claim Fails (Count II).

Count II alleges that Defendants' actions violated the First Amendment rights of the members of RSF and its RSF USA and of The NewsGuild-CWA, AFL-CIO ("TNG-CWA"), "to receive information," insofar as temporarily suspending the operations of the Global Media networks deprived these members of "a [vital] source of information." Compl. (ECF No. 1) ¶¶ 110–16. As alleged, RSF is an international non-profit organization with "correspondents around the globe who rely on reporting from [Global Media] broadcasters," *id.* ¶ 11, while RSF USA allegedly oversees RSF correspondents working in North America and similarly "rel[ies] on VOA as an indispensable source of information." *Id.* ¶ 24. TNG-CWA is the "largest labor union representing journalists and media workers in North America," and represents a bargaining unit of about 100 employees of USAGM grantee RFA. *Id.* ¶ 30.

The right to receive information is not as broad as the right of free speech from which it stems." *Student Press Law Ctr. v. Alexander,* 778 F. Supp. 1227, 1233 (D.D.C. 1991). While the First Amendment protects an individual's right to speak on whatever subject he or she chooses, the First Amendment does not protect an individual's right to receive information on every subject. As such, "[t]he right to receive information . . . is not established in every case where a person wishes to receive information." *Gregg v. Barrett*, 771 F.2d 539, 547 (D.C. Cir. 1985). A plaintiff does not state a First Amendment violation by simply claiming that he was denied government information he wanted, because "'[t]here is no constitutional right to have access to particular government information, or to require openness from the bureaucracy.'" *Houchins v. KQED, Inc.*, 438 U.S. 1, 14 (1978) (quoting Stewart, *Or of the Press*, 26 Hastings L.J. 631, 636 (1975)). Which is precisely the case in this matter. Thus, the First Amendment does not require the government to provide access to information it possesses on demand, and it certainly does not require the government to gather information. *See Gregg*, 771 F.2d at 547; *Kline v. Republic of El Salvador*, 603 F. Supp. 1313, 1319 (D.D.C. 1985).

Further, the First Amendment right to receive information requires only that the government not engage in conduct that impermissibly silences a willing speaker. *See Martin v. EPA*, 271 F. Supp. 2d 38, 48 (D.D.C. 2002). And "when a First Amendment claim fails to allege that a willing speaker's speech has been chilled, the claim should be dismissed for failing to state a claim." *Id.*; *c.f. Hardy v. Hamburg*, 69 F. Supp. 3d 1, 19–20 (D.D.C. 2014) ("Claim nine repeatedly alludes to "employees or [ ]contractors" as individuals who have potentially had their speech "chilled" as a result of the defendants targeted surveillance . . . These generic terms—which reflect mere conjecture—do not meet the level of specificity needed to satisfy the constitutional requirement of standing when pleading a violation of the First Amendment right to receive

information (cleaned up). Moreover, "to assert a First Amendment right-to-receive claim, a plaintiff must specifically identify information it is denied access to by reason of a government action." *Nat'l Ass'n for Advancement of Colored People v. U.S. Dep't of Educ.*, Civ. A. No. 25-1120 (DLF), 2025 WL 1196212, at *2 (D.D.C. Apr. 24, 2025). Plaintiffs fail to identify "the willing speaker" or "specifically identify information it is denied access to by reason of a government action"; thus, Plaintiffs' claim should be dismissed.

VI. Plaintiffs Fail to Sufficiently Allege Claims Under the APA (Count III, V, VI).

Plaintiffs fail to sufficiently allege any claims under the APA for several reasons.

A. Plaintiffs Do Not Seek Judicial Review of a Discrete Final Agency Action.

As a threshold matter, Plaintiffs do not identify a discrete and circumscribed agency action that Global Media has taken and that could specifically be redressed by a federal court. Plaintiffs must plead "an identifiable action or event" and "direct [their] attack against some particular 'agency action' that causes [them] harm." *Lujan v. Nat'l Wildlife Fed'n.*, 497 U.S. 871, 891 (1990); *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 62 (2004) (APA limits judicial review to "circumscribed, discrete agency actions"). These final agency actions must be "circumscribed [and] discrete." *S. Utah*, 542 U.S. at 62. The APA does not provide for "general judicial review of [an agency's] day-to-day operations," *Lujan*, 497 U.S. at 899, like "constructing a building, operating a program, or performing a contract," *Vill. of Bald Head Island v. U.S. Army Corps. of Eng'rs*, 714 F.3d 186, 193 (4th Cir. 2013). The APA thus contains "a prohibition on programmatic challenges," meaning "challenges that seek 'wholesale improvement' of an agency's programs by court decree." *Alabama- Coushatta Tribe of Tex. v. United States*, 757 F.3d 484, 490 (5th Cir. 2014) (cleaned up). "Because 'an on-going program or policy is not, in itself, a final agency action under the APA,' [a court's] jurisdiction does not extend to reviewing generalized complaints about agency behavior." *Cobell v. Kempthorne*, 455 F.3d 301, 307 (D.C. Cir. 2006) (citation omitted).

Plaintiffs' claims and requested relief in this action present exactly the type of wholesale challenge that the APA forbids. Plaintiffs' allegations reveal that they do not seek judicial review of a discrete agency action. Rather, they seek wholesale judicial review of Global Media's management of the agency. Rather than presenting the court with a "narrow question to resolve," *Cobell*, 455 F.3d at 307, Plaintiffs challenge a host of individual actions—some that have occurred and some that have not. *See, e.g.*, Compl. ¶ 9 (alleging that Defendants have purged from their positions by placing them on indefinite administrative leave ahead of likely Reduction in Force ("RIF") terminations or cancelling their contracts); *id.* ¶¶ 74–93 (alleging that Defendants have shut down Global Media); *id.* ¶ 81 (challenging Global Media employees being placed on administrative leave); *id.*, Prayer of Relief ¶ (a) (seeking wholesale reinstatement to rehire all employees, cancel the termination of personal service contracts, cease from reducing the size of Global Media and the cancelation of grants). Addressing this type of claim would require the Court to supervise all the agency's activities and determine how the agency would accomplish each statutorily-mandated function—an even more extreme kind of supervisory claim than was at issue and rejected in *Lujan*, 497 U.S. at 892–93. Such a claim would completely circumvent the purpose of the APA's discrete agency action requirement, which is to "protect agencies from undue judicial interference with their lawful discretion, and to avoid judicial entanglement in abstract policy disagreements which courts lack both expertise and information to resolve." *Norton*, 542 U.S. at 66–67.

As the court recognized in *Ass'n for Educ. Fin. & Pol'y, Inc. v. McMahon*, Civ. A. No. 25-0999 (TNM), 2025 WL 1568301, at *1 (D.D.C. June 3, 2025), "the APA was never meant to be a bureaucratic windbreak insulating agencies from political gales. It cannot comprehensively undo multifaceted agency transformations wrought by political decisions." The Court further

observed "[i]t is not this Court's place to breathe life back into wide swathes of the [the Agency's] cancelled programs and then monitor the agency's day-to-day statutory compliance" which is essentially what Plaintiffs seek here. *Id.* As a result, because Plaintiffs seek wholesale judicial review the Court should dismiss Plaintiffs' APA claims for failure to identify discrete agency actions.

B. There are Other Adequate Alternative Remedies Available.

There are adequate alternative remedies available to foreclose Plaintiffs' APA challenges. Review under the APA is available only where "there is no other adequate remedy in a court." 5 U.S.C. § 704. The requirement that a plaintiff have "no other adequate remedy in court," *id.*, reflects that "Congress did not intend the general grant of review in the APA to duplicate existing procedures for review of agency action," *Bowen v. Massachusetts*, 487 U.S. 879, 903 (1988). As the D.C. Circuit has observed, "the alternative remedy need not provide relief identical to relief under the APA, so long as it offers relief of the 'same genre.'" *Garcia v. Vilsack*, 563 F.3d 519, 522 (D.C. Cir. 2009) (citation omitted). Further, a remedy may be adequate even if "the arguments that can be raised [in the alternative proceeding] are not identical to those available in an APA suit." *Elm 3DS Innovations LLC v. Lee*, Civ. A. No. 16-1036, 2016 WL 8732315, at *6 (E.D. Va. Dec. 2, 2016). If there exists an alternative adequate judicial remedy, a plaintiff lacks a cause of action under the APA. *See Perry Cap. LLC v. Mnuchin*, 864 F.3d 591, 621 (D.C. Cir. 2017); *see also Versata Dev. Corp. v. Rea*, 959 F. Supp. 2d 912, 927 (E.D. Va. 2013) (dismissing putative APA claim under Rule 12(b)(6) because decision at issue was not a final agency action and an alternative adequate remedy existed by way of appeal to the Federal Circuit). As already described above in § II, this is, in essence, an employment action, and there are CSRA, FSL-MRS, or FSA remedies. And for contract claims, including personal services contracts and any claims relating

to grant cancelations or terminations, then Court of Federal Claims is available for Plaintiff. Thus, there are adequate alternatives and Plaintiffs' APA claims fail.

C. Global Media's Action are Committed to Agency Discretion by Law.

The International Broadcasting Act provides no meaningful standard by which a court might adjudicate Plaintiffs' claims; satisfaction of § 6204(b) is "committed to agency discretion by law." 5 U.S.C. § 701(a)(2). Agency action is "committed to agency discretion by law" when a "statute is drawn to that a court would have no meaningful standard against which to judge the agency's exercise of discretion," which renders "meaningful judicial review impossible." *Steenholdt v. FAA*, 314 F.3d 633, 638 (D.C. Cir. 2003) (quoting *Heckler v. Chaney*, 470 U.S. 821, 830 (1985)). This is true "even where Congress has not affirmatively precluded review." *Heckler*, 470 U.S. at 830. Hallmarks of a decision committed to agency discretion include a statute that puts the onus on the agency, not the courts, to apply a standard, *see Webster v. Doe*, 486 U.S. 592, 600 (1988), and general criteria that make it difficult for courts to meaningfully second-guess an agency's determination, *see id.* ("advisable in the interests of the United States" is unreviewable).

Section 6204(b) is just such a law. It calls on Global Media's CEO to "respect" the "professional independence" of (among others) the broadcast networks. When read in conjunction with the broad supervisory authority that Congress bestowed on the CEO, neither statutory term in § 6204(b) is capable of judicial application. Congress required the CEO to "supervise" the networks, to "assess the professional integrity" of the networks, and to "ensure" that coverage is "balanced and comprehensive." 22 U.S.C. § 6204(a); *id.* § 6202(b). The statutory scheme, considered as a whole, requires the CEO to determine the appropriate balance between competing factors—his supervisory demands and the networks' independence. But how to strike that balance is left to the CEO's discretion. *Cf. United States Sugar Corp. v. EPA*, 830 F.3d 579, 640 (D.C. Cir. 2016).

D. Plaintiffs Can Not Challenge the Executive Order.

Lastly, although Plaintiffs attempt to cloak this action as an "administrative" challenge or a Constitutional challenge, at bottom, this appears to be an end-run challenge to the underlying Executive Order issued by the President on March 14, 2025. Because an executive order is a presidential action, and not an agency action, any challenges to Executive Order 14,238 under the APA are not reviewable. *See Louisiana v. Biden*, 622 F. Supp. 3d 267, 288 (W.D. La. 2022) (cleaned up) (holding that a challenge to EO 14008 "cannot be reviewed under the APA because the President is not an agency").

VII. Plaintiffs Are Not Likely to Succeed in their Claims that Defendants Have Violated the Statutory Firewall (Count IV).

Plaintiffs' claim that Defendants have violated the Statutory Firewall. *See* Compl. (ECF No. 1) ¶¶ 126–31. Plaintiffs' violation of the statutory firewall claim fails.

The statutory firewall is violated "only when the [Global Media] CEO engages in day-to-day control." *Open Tech. Fund ("OTF") v. Pack*, 470 F. Supp. 3d 8, 26 (D.D.C. 2020), *opinion vacated, appeal dismissed*, No. 20-5195, 2021 WL 11096700 (D.C. Cir. Mar. 16, 2021). "The CEO may not, for example, tell broadcasters what stories to cover or how to cover them. Nor may the CEO fire a particular staff member or command that a piece be assigned to a specific reporter. He may and must, however, oversee the operations of the Networks by exercising the statutory powers Congress gave him[.]" *See id.* (citing *Ralis v. RFE/RL, Inc.*, 770 F.2d 1121, 1126 (D.C. Cir. 1985) (explaining that while Global Media does not have "control of [the Networks'] operations," it is "obviously an important and powerful actor on this stage," and its "powers and duties" are "substantial")).

Section 6204(b) requires that Global Media "respect the professional independence and integrity of the Board, its broadcasting services, and the grantees of the Board." 22 U.S.C.

§ 6204(b). This provision promotes the national interest, not private interests, because Congress recognized that for Global Media to accomplish its foreign policy mission of promoting democratic values it must be able to balance its supervisory functions against a degree of network independence. *See OTF*, 470 F. Supp. 3d at 12–13; *see also* 22 U.S.C. § 6202(a) (requiring U.S. international broadcasting efforts to support U.S. foreign policy objectives among other American values); *id.* § 6204(a)(2) (assigning the CEO of Global Media with the responsible to "assess the . . . professional integrity" of activities within the context of foreign policy objectives). Given that purpose, and the discretion it plainly accords Global Media in its application, it is doubtful that Congress intended for any private party to sue to enforce its terms. *See e.g., Turner*, 502 F. Supp. 3d at 366 (noting that the court lacked jurisdiction over claims brought under the International Broadcasting Act given CSRA channeling).

Voice of America has not been ordered to cover certain stories or how to cover them. The relevant statute provides that Voice of America will "serve as a consistently reliable and authoritative source of news" and that it will be "accurate, objective, and comprehensive." 22 U.S.C. § 6202(c)(1). Notably, the Executive Order does not prevent Voice of America from fulfilling these statutory principles, rather, the Executive has determined that—while continuing to operate—Global Media will do so at its statutory minimum. Voice of America has not been "dismantled," as Plaintiffs allege. Rather, Voice of America is meeting its statutory obligations under the International Broadcasting Act and Global Media complying with the Executive Order. At bottom, Plaintiffs are unhappy with the direction in which Voice of America is heading, but Plaintiffs' allegations do not demonstrate a cognizable violation of the statutory firewall.

VIII. Plaintiffs' Mandamus Act and All Writs Act Claims Fail (Count VII).

Plaintiffs' claims under the Mandamus Act and All Writs Act fail for the simple reason that they are not causes of action that are meant to be sustained in the alternative. For a court to

issue a remedy of mandamus, a plaintiff must show "(1) a clear and indisputable right to relief, (2) that the government agency or official is violating a clear duty to act, and (3) that no adequate alternative remedy exists." *Am. Hosp. Ass'n v. Burwell*, 812 F.3d 183, 189 (D.C. Cir. 2016). Regarding a defendant's duty to act, "[t]he law must not only authorize the demanded action, but require it; the duty must be clear and indisputable." *Lozada Colon v. Dep't of State*, 170 F.3d 191, 191 (D.C. Cir. 1999). Here, Plaintiffs' complaint is devoid of any non-discretionary duty, and as discussed, they have ample adequate alternative remedies to bring their claims.

Similarly, as to the All-Writs Act, courts of appeals have rejected its use to create remedies when sources of law already provide parallel ones. *Fla. Med. Ass'n, Inc. v. Dep't of Health, Ed. & Welfare*, 601 F.2d 199, 202 (5th Cir. 1979) ("While the All Writs Act empowers a district court to fashion extraordinary remedies when the need arises, it does not authorize a district court to promulgate an Ad hoc procedural code whenever compliance with the Rules proves inconvenient."). Accordingly, the Court should dismiss Plaintiffs' Count VII.

IX. Plaintiffs Fail to Sufficiently Plead an *Ultra Vires* Claim (Counts VIII and IX).

Plaintiffs fail to state a separation of powers *ultra vires* claim (Count VIII) and appointments clause *ultra vires* (Count IX) *ultra vires* claim. *See* Compl. (ECF No. 1) ¶¶ 148–54.

The leading Supreme Court decision on *ultra vires* review is *Leedom v. Kyne*, 358 U.S. 184 (1958). That case arose from an improper certification of a collective-bargaining unit—an interlocutory order excluded from the judicial-review provision of the National Labor Relations Act. *See id.* at 185, 187. Nonetheless, the Supreme Court held that district-court review was available because the order was "made in excess of [the agency's] delegated powers and contrary to a specific prohibition" in the National Labor Relations Act. *Id.* at 188–89. Time and again, courts have stressed that *ultra vires* review has "extremely limited scope." *Griffith v. FLRA*, 842 F.2d 487, 493 (D.C. Cir. 1988); *see Bd. of Governors of Fed. Rsrv. Sys. v. MCorp Fin., Inc.*, 502

U.S. 32, 43 (1991) (*Kyne* does not "authoriz[e] judicial review of any agency action that is alleged to have exceeded the agency's statutory authority"); *Boire v. Greyhound Corp.*, 376 U.S. 473, 479–80 (1964) (*Kyne* was "characterized by extraordinary circumstances"). And the *Kyne* exception does not apply simply because an agency has arguably reached "a conclusion which does not comport with the law." *Nuclear Regul. Comm'n v. Texas*, 145 S. Ct. 1762, 1776 (2025) (citation omitted). Rather, "it applies only when an agency has taken action entirely in excess of its delegated powers and contrary to a *specific prohibition* in a statute." *Id.* (emphasis in original). The D.C. Circuit has described a *Kyne* exception as "essentially a Hail Mary pass—and in court as in football, the attempt rarely succeeds." *Nyunt v. Chairman, Broad. Bd. of Governors*, 589 F.3d 445, 449 (D.C. Cir. 2009).

To sufficiently allege an *ultra vires* claim, the plaintiff must aver: "(i) the statutory preclusion of review is implied rather than express; (ii) there is no alternative procedure for review of the statutory claim; and (iii) the agency plainly acts in excess of its delegated powers and contrary to a specific prohibition in the statute that is clear and mandatory." *DCH Reg'l Med. Ctr. v. Azar*, 925 F.3d 503, 509 (D.C. Cir. 2019) (cleaned up). The third requirement is especially demanding. *FedEx v. Dep't of Comm.*, 39 F.4th 756, 764 (D.C. Cir. 2022) ("Only error that is patently a misconstruction of the" pertinent statute, "that disregards a specific and unambiguous statutory directive, or that violates some specific command of a statute will support relief." (cleaned up)). In other words, an agency violates a "clear and mandatory" statutory command only when the error is "so extreme that one may view it as jurisdictional or nearly so." *Griffith*, 842 F.2d at 493. Plaintiffs fail to meet that demanding standard.

To begin, there is no dispute that Plaintiffs have possible remedies via the CSRA, FSL-MRS, or FSA or for their contract claims in the Court of Federal Claims. And second, the

exclusive review procedures of the FSL-MRS, CSRA, or FSA and the Court of Federal Claims will also provide Plaintiffs with a meaningful and adequate opportunity for judicial review of their claims. *See Elgin*, 567 U.S. at 21 (finding "constitutional claims can receive meaningful review within the CSRA scheme"); *AFGE*, 929 F.3d at 757 ("[U]nions here are not cut off from review and relief. Rather, they can ultimately obtain review of and relief from the executive orders by litigating their claims through the statutory scheme in the context of concrete bargaining disputes."); *see also Ingersoll-Rand*, 780 F.2d at 78 (Tucker Act governs challenge to contract termination, "despite plaintiff's allegations of statutory and constitutional violations" (cleaned up). Consequently, *ultra vires* review is inappropriate—no federal statute has precluded all judicial review of the agency's conduct. *See e.g., FedEx*, 39 F.4th at 764. Thus, Plaintiffs have "an alternative review" for their claims, rendering them unable to prevail on either the first or second prongs of the *ultra vires* test. *Id.*; *Nuclear Regul. Comm'n*, 145 S. Ct. at 1776.

Although the availability of a statutory remedy is alone sufficient to defeat Counts VII and IX on the first two prongs of the *ultra vires* test, Plaintiffs' claim also fails on the third prong, because Defendants have not violated any "clear and mandatory" statutory command. Allegations of constitutional error do not establish ultra vires action. *See Eagle Tr. Fund v. USPS*, 365 F. Supp. 3d 57, 68 n.6 (D.D.C. 2019) (Jackson, J.) ("[A] constitutional claim is separate from an ultra vires claim."). Neither do claims that "simply involve a dispute over statutory interpretation." *Dart v. United States*, 848 F.2d 217, 231 (D.C. Cir. 1988). Rather, an officer may be said to act ultra vires "only when he acts 'without any authority whatever.'" *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101–02 n.11 (1984); *see also Larson v. Domestic & Foreign Com. Corp.*, 337 U.S. 682, 689 (1949) (suit must allege that official is "not doing the business which the sovereign has empowered him to do").

Moreover, Plaintiffs' separation of powers and appointment clause claims likewise fail on separate grounds. First, Plaintiffs' separation of powers *ultra vires* claim is barred at the outset because it is purely statutory. Plaintiffs cannot succeed by repackaging their statutory claims as alleged constitutional violations. Plaintiffs claim that the challenged actions run afoul of various statutory provisions, but those are statutory claims, not constitutional claims. The Supreme Court has made clear that "claims simply alleging that the President has exceeded his statutory authority are not 'constitutional' claims, subject to judicial review . . ." *Dalton v. Specter*, 511 U.S. 462, 473 (1994). This keeps with the long tradition of "distinguish[ing] between claims of constitutional violations and claims that an official has acted in excess of his statutory authority." *Id.* at 472. The Constitution is implicated only if executive officers rely on it as "[t]he only basis of authority" or if the executive officers rely on an unconstitutional statute. *Id.* at 473, n.5. Neither of those situations applies here nor does the allegations in Plaintiffs' Complaint suggest otherwise. Thus, Plaintiffs cannot bring an independent constitutional claim. *See e.g., Ctr. for Biological Diversity v. Trump*, 453 F. Supp. 3d 11, 51–54 (D.D.C. 2020) (dismissing constitutional claims challenging border wall construction based on *Dalton*).

Contending that the challenged actions violate the separation of powers, Plaintiffs are advancing the similar arguments the Supreme Court rejected in *Dalton*. Plaintiffs' alleged separation-of-powers claims hinge entirely on, respectively, whether Defendants acted in accordance with statutory obligations and Global Media regulations. *See generally* Compl. (ECF No. 1) ¶¶ 148–52. The outcome of the issues Plaintiffs raise depends on resolution of statutory and regulatory claims rather than any unique separation-of-powers principles. If Plaintiffs' argument were accepted, then every garden-variety action by a federal agency alleged to be in violation of a statutory provision could also for the same reason be alleged to violate the

constitutional separation of powers. "Under *Dalton*, [Plaintiffs] cannot recast these types of claims as constitutional." *Ctr. for Biological Diversity*, 453 F. Supp. 3d at 53; *see Dalton*, 511 U.S. at 474 (stating that the "distinction between claims that an official exceeded his statutory authority, on the one hand, and claims that he acted in violation of the Constitution, on the other, is too well established to permit this sort of evisceration.").

Second, in terms of Plaintiffs' appointment clause *ultra vires* claim, Plaintiffs allege that Defendant Lake's actions are outside of her authority, because she is "purporting to exercise the authority of the [Global Merida] Chief Executive Officer without Presidential appointment or Senate confirmation." Compl. (ECF No. 1) ¶ 159. To the extent Defendant Lake is exercising authority delegated to her by Global Media's Chief Executive Officer, Defendant Lake's actions fall within the bounds of law. Express statutory authority for delegation is not required to delegate powers to a subordinate within the agency. *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 565 (D.C. Cir. 2004 ("When a statute delegates authority to a federal officer or agency, subdelegation to a subordinate federal officer or agency is presumptively permissible absent affirmative evidence of a contrary congressional intent.") (citing decisions).

Accordingly, Plaintiffs' *ultra vires* claim fails.

* * *

At bottom, Plaintiffs challenge the Executive Order initiated by the President—and implemented by his subordinates—to bring Global Media to its statutory minimum. But Defendants' actions fit comfortably within the Executive Branch's expertise and constitutional role and the federal court should be loath to disrupt this exercise of discretion. Plaintiffs create their own constitutional problem: They ask a court to superintend an agency by declaring the sum of agency actions unconstitutional, which would itself create separation of powers concerns by

effectively authorizing a "broad programmatic attack" and the kind of "day-to-day oversight of the executive's administrative practices" for which courts are "ill-suited." *City of New York v. Dep't of Def.*, 913 F.3d 423, 431 (4th Cir. 2019). Indeed, judges were never meant to be czars overseeing the day-to-day affairs of agencies. *Ass'n for Educ. Fin. & Pol'y, Inc. v. McMahon*, Civ. A. No. 25-0999 (TNM), 2025 WL 1568301, at *7 (D.D.C. June 3, 2025).

X. Defendants Should Be Relieved of Their Obligation to Comply with Local Civil Rule 7(n)(1).

Defendants respectfully request that the Court relieve them of any obligation to comply with Local Rule 7(n)(1). Namely, the Court should excuse Defendants from filing a certified list of the contents of an administrative record and serving an administrative record simultaneously with this dispositive motion. An administrative record is not necessary to resolve Defendants' motion, which argues, amongst other things, that this Court lacks jurisdiction and judicial review is not available in this case—which are threshold legal issues that do not require review of the administrative record.

First, this Court should determine whether it has jurisdiction over this case before requiring Defendants to compile and certify the administrative record. The Court must determine that it has jurisdiction before proceeding to the merits. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) ("Without jurisdiction the court cannot proceed at all in any cause.") (citation omitted); *see also Talal Al-Zahrani v. Rodriguez*, 669 F.3d 315, 318 (D.C. Cir. 2012) ("Because a federal court without jurisdiction cannot perform a law-declaring function in a controversy, 'the Supreme Court [has] held "that Article III jurisdiction is always an antecedent question" to be answered prior to any merits inquiry.'") (citation omitted); *Ass'n of Battery Recyclers, Inc. v. EPA*, 716 F.3d 667, 674 (D.C. Cir. 2013) ("this Circuit treats prudential standing as a jurisdictional issue which cannot be waived or conceded" (citations and quotations omitted)).

Moreover, even if this Court has jurisdiction and judicial review were available, the production of an administrative record at this stage is unnecessary—Defendants seek dismissal not based on an administrative record, but instead based on the facts alleged in the Complaint and the arguments described above. *See Diakanua v. Rubio*, Civ. A. No. 24-1027 (TJK), 2025 WL 958271, at *11 n.10 (D.D.C. Mar. 31, 2025) ("[T]he Court will 'follow the general practice' and deny that motion because 'the administrative record is not necessary for the Court's decision.'" (citation modified; quoting *Arab v. Blinken*, 600 F. Supp. 3d 59, 65 n.2 (D.D.C. 2022))). In all events, Defendants respectfully request that the Court relieve them of any purported obligation to comply with this rule. *See, e.g.*, *id.*; *Sharifymoghaddam v. Blinken*, Civ. A. No. 23-1472 (RCL), 2023 WL 8047007, at *3 (D.D.C. Nov. 17, 2023) ("In any case, courts in this District routinely allow agencies to waive compliance with Rule 7(n)(1) if 'the administrative record is not necessary for the court's decision.'" (quotation omitted)).

Indeed, courts in this district routinely grant the government's requests to defer the filing of a certified list of the contents of the administrative record when it is unnecessary in deciding a dispositive motion. *See, e.g.*, *Connecticut v. U.S. Dep't of Interior*, 344 F. Supp. 3d 279, 294 (D.D.C. 2018) (Court waived Federal Defendants compliance with Local Civil Rule 7(n)); *Mdewakanton Sioux Indians of Minn. v. Zinke*, 264 F. Supp. 3d 116, 123 n.12 (D.D.C. 2017) (same); *Carroll v. Office of Fed. Contract Compliance Programs, U.S. Dep't of Labor*, 235 F. Supp. 3d 79, 81 n.1 (D.D.C. 2017) (same); *PETA v. U.S. Fish & Wildlife Serv.*, 59 F. Supp. 3d 91, 94 n.2 (D.D.C. 2014) (waiving compliance with Local Civil Rule 7(n) and dismissing complaint).

As a result, waiving the requirement to file a certified list of the administrative record and serve the administrative record at this juncture would promote judicial economy and conserve resources.

CONCLUSION

For these reasons, the Court should dismiss Plaintiffs' Complaint and relieve Defendants of their obligation to file a certified list of the administrative record and serve the administrative record simultaneously with their Motion to Dismiss.

Dated: July 18, 2025

Respectfully submitted,

JEANINE FERRIS PIRRO
United States Attorney

By: */s/ Stephanie R. Johnson*
STEPHANIE R. JOHNSON,
D.C. Bar # 1632338
BRENDA GONZÁLEZ HOROWITZ
D.C. Bar # 017243
Assistant United States Attorneys
Civil Division
601 D Street, NW
Washington, DC 20530
Main: (202) 252-2500

Attorneys for the United States of America