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-cv-1015 (RCL)
MICHAEL ABRAMOWITZ, 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-cv-0887 (RCL)

REPLY IN SUPPORT OF
MOTION TO DISSOLVE OR, ALTERNATIVELY, MODIFY
PRONG (3) OF THE APRIL 22, 2025, PRELIMINARY INJUNCTION

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The reasons Defendants gave for dissolving or modifying prong (3) of the April 22 preliminary injunction stand largely unrebutted. Plaintiffs offer no substantive defense of prong (3)'s vagueness or explanation of how it could satisfy Rule 65. They cite no controlling authority to rebut Defendants' point that several of the statutory provisions the Court has read into prong (3) contain aspirational principles that supply no judicially enforceable standards. And Plaintiffs are silent regarding their lack of standing or a cause of action to enforce particular statutes the Court's recent orders have suggested are incorporated in prong (3).

Rather than show why prong (3) should stand unmodified, Plaintiffs urge the Court to move forward expeditiously with their motions for summary judgment. Defendants have no objection to that as a procedural next step if the Court's resolution of those motions does not carry forward prong (3)'s deficiencies. But if the Court intends to conduct further enforcement proceedings under prong (3), the Court should, at minimum, first modify it to address the legal deficiencies that have become apparent over the past nine months.

ARGUMENT

1. Plaintiffs' lead argument is that the Court should defer Defendants' motion until it resolves Plaintiffs' motions for summary judgment. ECF 182 at 6–8.[1] From an order-of-operations perspective, Defendants would not object to the Court's expeditiously replacing the preliminary injunction with a final judgment—as long as the final judgment does not repeat the defects identified in Defendants' motion.[2] Notably, however, Plaintiffs seek similarly problematic relief at final judgment through their request for an injunction requiring Defendants to "provide all

[1] Citations to "ECF" are to docket entries in *Widakuswara v. Lake*, 25-cv-1015-RCL (D.D.C.).

[2] Defendants also maintain their objections to a final judgment that would include other defects that have been raised by Defendants in the course of this litigation and will be incorporated in their forthcoming opposition brief.

broadcasting and programming required by statute." ECF 166-5 at 3. Defendants will incorporate their arguments against such relief into their forthcoming opposition brief. For now, they note that any suggestion that simply ruling on the pending summary-judgment motions would necessarily moot Defendants' concerns with prong (3) is disingenuous. In any event, if the Court intends to conduct any further enforcement proceedings under prong (3) of the preliminary injunction, then Defendants request that the Court first consider their motion, ECF 175, modify the preliminary injunction as appropriate, and provide an opportunity for Defendants to comply with the modified order.

2. At minimum, the Court should modify prong (3) to bring it into compliance with Federal Rule of Civil Procedure 65. Plaintiffs' primary response to the argument that prong (3) is too vague to satisfy Rule 65 is to cast it as a challenge to the entry of the injunction at all and argue that Defendants did not raise it soon enough. ECF 182 at 12. But Defendants are not trying to resuscitate a foregone appeal. Defendants did not appeal prong (3) because they interpreted it as simply requiring programming to resume—not as authorizing the Court to superintend compliance with all supposed statutory mandates applicable to the U.S. Agency for Global Media (USAGM). Defendants complied on the former understanding and filed the pending motion after it became apparent—based on multiple adverse rulings on Plaintiffs' serial motions for orders to show cause and for enforcement—that the Court did not share that understanding. Defendants could not have anticipated that an order requiring fulfillment of USAGM's "statutory mandate" silently incorporated a swath of provisions not cited as part of the order's "specific[]" terms, *see* Fed. R. Civ. P. 65(d)(1)(B)—including provisions that were not being implemented even during the "status quo" as it existed before March 2025, *see* ECF 175 at 24 (noting that Croatian broadcasting ended in 2011). *Contra* ECF 182 at 10 (arguing that the Court "entered the injunction to restore the status

quo"). At minimum, now that the issue has been raised and briefed, the Court should modify the injunction to comply with Rule 65 and controlling caselaw by identifying with precision what Defendants must do to comport with their "statutory mandate."[3]

3. Regarding the scope of the "statutory mandate" that could be lawfully reflected in a modified prong (3), Defendants' motion explained why it should not be based on aspirational principles that the Court's post-April 22 orders improperly incorporated. ECF 175 at 17–22. In response, Plaintiffs argue that the word "shall" in § 6202 makes those aspirational principles enforceable. ECF 182 at 10. But that one word does not override the caselaw cited in Defendants' motion, which shows that broadly worded "findings," "declarations," "standards," and "principles" such as appear in §§ 6201 and 6202 are not judicially enforceable legal obligations. *See* ECF 175 at 16–17. If a statute stated that the Voice of America Director "shall act in the best interests of the United States," a court could not enjoin the Director to "act in the best interests of the United States" or superintend compliance with that injunction. Doing so would enmesh the court in discretion-laden agency operations and elevate judicial judgments about those operations above those of the Executive branch. That would offend the separation of powers. *See, e.g.*, Dan Dobbs, Law of Remedies § 2.9(5) (2d ed. 1993) ("If the judicial interference is substantial, judges themselves may lose their distinctive judicial character if they become managers of executive departments by way of injunction."). No wonder, then, that the International Broadcasting Act (IBA) specifically gives the USAGM CEO—not courts—the responsibility to "ensure that United States international broadcasting is conducted in accordance with the standards and principles contained in section 6202." 22 U.S.C. § 6204(a)(3).

[3] Modification (not clarification) is appropriate because Defendants seek an order excluding from prong (3)'s scope a number of statutory provisions that the Court's previous orders suggested dictate some of Defendants' obligations under the injunction.

Plaintiffs seek to distinguish the cases in Defendants' motion by arguing that they addressed whether a cause of action exists. ECF 182 at 11. But Plaintiffs under-read those cases. In *Pennhurst*, for example, the Court expressly did not reach the question whether a "private cause of action" exists under 42 U.S.C. § 6010, because it held that provision "confers no substantive rights" at all. *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 28 n.21 (1981); *see also id.* at 10–11. In so holding, the Court concluded that Congress's "findings" regarding treatment that "should be provided" were merely "general statements of federal policy." *Id.* at 22–23. Similarly, while the district and appellate courts in *Edwards* addressed the presence or absence of a cause of action, both courts also agreed that a section of the United States Housing Act of 1937 describing federal "policy" was merely a "precatory statement of Congress' designs." *Edwards v. District of Columbia*, 821 F.2d 651, 656 (D.C. Cir. 1987) (cleaned up); *accord Edwards v. District of Columbia*, 628 F. Supp. 333, 341 (D.D.C. 1985). (The part of the D.C. Circuit's decision that plaintiffs describe as noting "that the statute could be enforced . . . via the APA," ECF 182 at 11, addressed a different section of the statute, *see Edwards*, 821 F.2d at 658.) In short, without an enforceable substantive legal entitlement, it does not matter whether the APA or another statute might provide a general-purpose cause of action. And the IBA's "findings and declaration of purposes," "standards," and "principles" contain exactly the type of "general statements" that *Pennhurst* and progeny rejected as a source of enforceable entitlements. *See* 22 U.S.C. §§ 6201–02.

4. Next, Plaintiffs ignore the problems with non-IBA provisions that the Court has suggested feed into prong (3). *See* ECF 175 at 22–24. They do not explain why these appropriations-adjacent provisions impose any continuing legal obligations or otherwise respond to Defendants' arguments. Thus, Plaintiffs have conceded Defendants' arguments regarding those

provisions. *See, e.g.*, *Wonders v. Dep't of the Army Off. of Gen. Couns.*, 749 F. Supp. 3d 122, 131 (D.D.C. 2024), *aff'd*, No. 24-5214, 2025 WL 717386 (D.C. Cir. Feb. 28, 2025); *Abdullah v. Trump*, No. CV 05-0023 (EGS), 2025 WL 1865033, at *2 (D.D.C. July 6, 2025); LCvR 7(b). The Court should not incorporate those provisions into a modified prong (3).

5. Plaintiffs also do not make any argument that they have standing to seek relief specific to particular hours or languages of programming or respond to Defendant's argument that the record does not support an APA cause of action focused on those services. *See* ECF 175 at 25–29. Specifically, Plaintiffs have not established Article III standing based on alleged violations of Kurdish and North Korean broadcasting requirements, including because they have shown no cognizable injury based on those violations. *See id.* at 26; *Murthy v. Missouri*, 603 U.S. 43, 61 (2024) (holding that plaintiffs "must demonstrate standing for each claim that they press against each defendant, and for each form of relief that they seek" (cleaned up)). Nor have Plaintiffs made a record that would support a cause of action under the APA to enforce the Kurdish and North Korean requirements. *See* ECF 175 at 27. They have not met their burden to identify a discrete and final agency action Defendants have taken regarding these requirements. *See Bennett v. Spear*, 520 U.S. 154, 177–78 (1997); 5 U.S.C. § 704. And they have not identified any "egregious" delay in performing a required duty that would support a claim for agency *inaction* under the mandamus-like standard in 5 U.S.C. § 706(1). *See In re Core Commc'ns, Inc.*, 531 F.3d 849, 855 (D.C. Cir. 2008).

Plaintiffs' lack of response to Defendants' arguments on these issues is telling. Abandoning the APA's long-settled threshold requirements would open the door to impermissible judicial superintendence of "an agency's general mode of operations." *See Ctr. for Biological Diversity v. Zinke*, 260 F. Supp. 3d 11, 27 (D.D.C. 2017) (Jackson, J.); *see also Norton v. S. Utah*

Wilderness All., 542 U.S. 55, 66 (2004) (stating that the agency-action requirement "protect[s] agencies from undue judicial interference with their lawful discretion"). Modification is required if prong (3) is not dissolved.

6. Indeed, the Court can and should take a Gordian approach and simply dissolve prong (3). It is no longer necessary: Defendants have already complied by bringing Voice of America (VOA) back online. *See* ECF 175 at 11–14. The public interest does not support keeping in place injunctive relief designed to remedy a specific problem that no longer exists. *See Petties ex rel. Martin v. District of Columbia*, 662 F.3d 564, 569 (D.C. Cir. 2011) (explaining that a court may vacate relief when a "significant change either in factual conditions or in law renders continued enforcement detrimental to the public interest" (cleaned up)); *SEC v. Vision Commc'ns, Inc.*, No. CIV. A. 94-0615, 1995 WL 109037, at *2 (D.D.C. Mar. 6, 1995) (holding that "[a]n injunction may be dissolved where . . . changed circumstances eviscerate the justification therefor"); *cf. Consol. Edison Co. of N.Y., Inc. v. Fed. Power Comm'n*, 511 F.2d 372, 378 (D.C. Cir. 1974) (noting that a "continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need" (citation omitted)).

Moreover, Defendants' actions since April make clear that the resumption of VOA programming is voluntary and will not revert. For example, the December 8, 2025, Wuco Declaration provides details on how Defendants are providing statutorily required programming in several languages and restarting programming in Korean and Kurdish. ECF 174-1. The declaration attached as Exhibit A to this brief provides additional information responsive to Plaintiffs' December 22, 2025, declarations. The declaration includes details about how the planned move from the Cohen building to the NASA space is not expected to interfere with statutorily required programming. January 2, 2026, Declaration of Frank Wuco ¶ 6. The

declaration also provides more detail on the plans for Korean and Kurdish programming, including plans to bring more employees and Personal Services Contractors on board. *Id.* ¶¶ 8–9. In short, it is time to dissolve prong (3) and avoid further micromanagement of an Executive agency.

CONCLUSION

The Court should grant Defendants' motion.

Dated: January 2, 2026

Respectfully submitted,

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