IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MICHAEL ABRAMOWITZ, *et al.*, *Plaintiffs,* –v.– KARI LAKE, *et al.*, *Defendants.*	**Case No. 1:25-cv-887-RCL**
PATSY WIDAKUSWARA, *et al.*, *Plaintiffs,* –v.– KARI LAKE, *et al.*, *Defendants.*	**Case No. 1:25-cv-1015-RCL**

PLAINTIFFS' REPLY MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT AND MEMORANDUM IN OPPOSITION TO DEFENDANTS' CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT

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INTRODUCTION

Over ten months ago, United States Agency for Global Media (USAGM) leadership decided to drastically downsize Voice of America (VOA) and USAGM in mechanical response to an executive order. Pls.' Mem. (ECF 103-1) at 18.[1] The decision is memorialized in a memorandum, which stated that VOA would be reduced to 11 positions. *Id.*, Ex. B (ECF 103-4). Defendants concede in their briefing that they made, and implemented, a decision to radically downsize the Agency. Defs.' Opp'n (ECF 117) at 25 ("Plaintiffs challenge a host of individual actions—essentially every discrete agency action that went into *Global Media's reduction to a statutory minimum*." (emphasis added)).

That decision guided numerous other actions taken by Agency leadership in quick succession. Those actions include, among others, stopping all VOA broadcasting for over two months, placing nearly all USAGM staff on administrative leave, terminating all professional service contractors (PSCs), shutting down transmitters, and notifying union officials that hundreds of union members would be terminated. Pls.' Mem. at 11-12. Ten months later, only a skeletal VOA operation has returned, *id.* at 12, which is probably attributable to this Court's preliminary injunction and proceedings related to compliance with it, *id.* at 10 n.3.

None of this is in dispute. Nor is the fact that Defendants have never, in the entire history of this litigation, addressed the merits of Plaintiffs' APA and statutory claims. At the preliminary injunction stage, this Court remarked that "[i]n their briefing before this Court, [Defendants] do not even use the words 'arbitrary' or 'capricious' anywhere." *Widakuswara v. Lake*, 779 F. Supp. 3d 10, 34 (D.D.C. 2025). With respect to the merits, that remains true today. Defendants have never offered a rationale, beyond reflexive reaction to the text of an executive order, for why they

[1] Unless otherwise noted, docket citations pertain to 25-cv-887.

undertook to radically downsize VOA and USAGM. Simply put, they have not come close to meeting the requirements of the APA. *See* Pls.' Mem. at 25-33 (discussing how Defendants' decision to radically downsize and their statutory-minimum plan are arbitrary and capricious and not in accordance with law).

Instead, Defendants return to a tired playbook. They return often to threshold arguments, which this Court already has squarely rejected, for why the Court should never consider their compliance with the law. When Defendants do discuss their own conduct, they rely on mischaracterization of the record, of the law, and of Plaintiffs' arguments.

First, Defendants do little more in their briefing than rehash arguments they have made before, and they admit as much. *See, e.g.*, Defs.' Opp'n at 10 (stating, in context of CSRA channeling, that "[t]he parties have rehashed these arguments, and Defendants incorporate the arguments in their motion to dismiss and reply as though fully stated herein"); *id.* at 17-18 (same, with respect to the Tucker Act); *id.* at 19-22 (same, with respect to standing); *id.* at 22 (same, with respect to ripeness). Defendants return to arguments about discrete agency action. *Id.* at 25. And they again assert that their actions are committed to agency discretion. *Id.* at 32. These arguments are not new to this Court and should be rejected as they have been before.

Second, Defendants find it significant that VOA and USAGM are not closed and remain operating at *some* level. Defs.' Opp'n at 20. But Plaintiffs' motion does not depend on the Agency being closed. *Contra id.* at 22 (incorrectly arguing that Plaintiffs' claims are not ripe because the Agency is not closed). The record indisputably shows that Defendants made, and then implemented, a decision to radically downsize the Agency to an unreasoned "statutory minimum," and documented that decision in the Statutory Minimum Memorandum. Notably, Defendants do not acknowledge the existence of this Memorandum even once in their brief.

Third, Defendants ignore the uncontested facts of this case and insist on a version of events without record support. They once again argue that Plaintiffs challenge employment actions, Defs.' Opp'n at 8-9, while ignoring the undisputed evidence that Defendants made, and then implemented, an across-the-board decision to drastically reduce all of VOA's and USAGM's operations, a piece of which was indiscriminately sidelining staff. They suggest that Plaintiffs lack standing, Defs.' Opp'n at 20-21, by incorrectly arguing that Plaintiffs have not identified an at-issue decision despite that the bulk of Plaintiffs' briefing concerns Defendants' radical downsizing decision and the actions to implement it.

Fourth, Defendants pepper throughout their assertion that "Plaintiffs continuously seek to micromanage" USAGM and VOA by "controlling day-to-day operations and personnel decisions." *Id.* at 1. Plaintiffs have never asked for this. Throughout this litigation and now, Plaintiffs have sought to vacate Defendants' illegal actions and to restore the status quo that existed prior. That is the appropriate remedy under the APA. Pls.' Mem. at 33-35. It does not interfere with Defendants' proper discretion.

In sum, for the reasons discussed in Plaintiffs' memorandum in support of their motion for partial summary judgment, Plaintiffs remain entitled to partial summary judgment in their favor and an order vacating Defendants' illegal actions and restoring the status quo *ex ante*. With respect to arguments raised by Defendants that the parties have already addressed (and this Court has rejected), Plaintiffs incorporate their prior counterarguments, just as Defendants did. Plaintiffs briefly address below certain points raised by Defendants in their briefing.

Finally, it bears repeating that as a result of Defendants' decision and the actions taken to implement it, hundreds of dedicated civil servants—approximately 500 from VOA alone—remain sidelined while being paid to do no work and hundreds more have been fired, in defiance of statutes

binding VOA and USAGM and Congress's appropriations. Meanwhile, hundreds of millions of people across the globe who relied on VOA's vital reporting have nowhere to turn to get reliable, trustworthy, and objective news. Vacating Defendants' illegal decision would remedy these ongoing harms. It would ensure that the Government acts within the bounds set by the APA and by Congress. And it would do all of this while still preserving the executive's proper role.

ARGUMENT

I. THIS COURT IS THE PROPER FORUM.

In opposition, Defendants raise four threshold issues—CSRA channeling, the Tucker Act and Contract Disputes Act, standing, and ripeness—that the parties have repeatedly previously addressed. 21-cv-887, ECF 63 at 12-19 (CSRA), 19-22 (Tucker Act and Contracts Disputes Act); ECF 26 at 2-8 (CSRA), 8-12 (Tucker Act and Contracts Disputes Act), 19-20 (standing); 25-cv-1015, ECF 17 at 41-47 (standing); ECF 89 at 3-8 (Tucker Act), 8-18 (CSRA); ECF 92 at 6-7 (standing), 8-9 (CSRA), 9-11 (Tucker Act), 8-9 (ripeness); ECF 131 at 23-28 (CSRA), 29-32 (Tucker Act); 18-23 (standing); 32-33 (ripeness); ECF 144 at 8-12 (CSRA); ECF 159 at 13-19 (CSRA). The Court has previously rejected most of these arguments. *Widakuswara*, 779 F. Supp. at 26-28 (standing), *id.* at 28-31 (related issues to Tucker Act and Contracts Disputes Act), *id.* at 30-31 (CSRA). Those prior findings on these issues were correct then and they are now. Plaintiffs incorporate their prior briefing and briefly respond to certain of Defendants' arguments below.

A. CSRA Channeling Does Not Apply.

For the reasons discussed in Plaintiffs' opening memorandum, the CSRA does not channel Plaintiffs' claims to any administrative agency. Pls.' Mem. at 36-42. Defendants' channeling arguments rest on the mistaken premise that Plaintiffs' challenge personnel actions. Because Plaintiffs' motion does not challenge such actions—it challenges Defendants' drastic decision to reduce VOA's and USAGM's operation across the board—Defendants' arguments fail.

At the outset, Defendants' invocation of CSRA channeling should be rejected because, at a bare minimum, the claims of Plaintiffs RSF and TNG-CWA are not channeled. *Id.* at 40-41. This Court also already found that these Plaintiffs were harmed by Defendants' unlawful actions, and those harms do not flow from these Plaintiffs' loss of employment. *Widakuswara,* 779 F. Supp. 3d at 30. Defendants have no support for their stunning assertion that a plaintiff who is harmed by an agency's decision to sideline its staff in pursuit of an unlawful plan that disrupts the government services upon which the plaintiffs rely have no recourse because relief might implicate federal personnel matters. Defs.' Opp'n at 12-13.

What Defendants seem to miss in arguing "[i]t would be odd if strangers to the employment relationship . . . could seek judicial review" is that RSF and TNG-CWA are not seeking review of action that purportedly violates merit principles; they are seeking to review the agency's compliance with the APA in taking actions to dismantle the agency's function. That alone distinguishes this case from *Maryland v. U.S. Department of Agriculture,* in which the states sued to vindicate a violation of *federal civil service law*. 151 F.4th 197, 205 (4th Cir. 2025). The Fourth Circuit held that states had no standing to do so because their injury arose only from a provision of the civil service laws requiring notice to the states before the federal government effectuated mass layoffs—the only entities suffering true harm from the violation at issue were terminated probationary federal employees not before the court. *Id*. at 210. Here, RSF and TNG-CWA, relied on USAGM's programming as listeners and suffered their own APA harms from the government's unlawful action; there is no basis to exclude them from court.

Defendants also argue that the "D.C. Circuit already has spoken on this issue" by citing the Circuit's stay-posture opinion related to the preliminary injunction. Defs.' Opp'n at 10. The stay-posture decision does not bind this Court with respect to summary judgment now. *See Ala. Ass'n*

of Realtors v. U.S. Dep't of Health & Hum. Servs., 557 F. Supp. 3d 1, 7 (D.D.C. 2021) (discussing cases). And regardless, Defendants once again ignore that the stay panel did not have the last word on this Court's authority to address personnel issues as part of relief; Chief Judge Srinivasan, joined by six members of the en banc court, left it to this Court to assess that question. *Widakuswara v. Lake*, No. 25-5144, 2025 WL 2787974, at *1 (D.C. Cir. May 28, 2025).

Trying another tack, Defendants argue that this Court may not order reinstatement under the APA. Defs.' Opp'n at 15. This issue has no bearing on Defendants' jurisdictional argument but instead goes to the appropriate remedy. Further, this Court does not need to order "reinstatement" here—it simply must vacate Defendants' illegal actions under the APA. Defendants' argument hinges on the premise that APA remedies can go no further than those available at equity, without citing any authority for that proposition. The text of the APA says no such thing and Defendants cite no case holding as much. That lack of support in the law makes sense, given that the APA is a Congressional statutory creation with its own specific, and often mandatory, statutory remedies, including vacatur of unlawful agency action. *See* 5 U.S.C. § 706. Defendants do not explain why the APA is tied to equity, and the Supreme Court's *CASA* decision expressly carved the APA out of its equity analysis. *See Trump v. CASA, Inc.*, 606 U.S. 831, 847 n.10 (2025).

In addition, Defendants' cited authority is inapposite. Among myriad other distinctions, nearly all the cases they cite, *id.* at 15-16, do not concern reinstatement of federal government employees and do not concern this Court's power under the APA.[2] *Sampson v. Murray*, which

[2] Even in that context, the D.C. Circuit has rejected the government's argument on a stay posture. *See Aviel v. Gor*, No. 25-5105, 2025 WL 1600446, at *2 (D.C. Cir. June 5, 2025) (discussing *Harris v. Bessent*, No. 25-5037, 2025 WL 1021435, at *2 (D.C. Cir. Apr. 7, 2025) (en banc) and noting that the en banc emergency panel "found the government unlikely to succeed in its

does concern a federal employee, confirms courts' authority to "grant interim injunctive relief to a discharged Government employee," 415 U.S. 61, 63 (1974), if the employee can make the requisite showing of irreparable harm. Moreover, the D.C. Circuit has held outright that "[r]einstatement clearly is among those equitable remedies available to" a federal *employee*. *Hubbard v. U.S. E.P.A. Adm'r*, 809 F.2d 1, 11-12 (D.C. Cir. 1986) (citations omitted); *see Vitarelli v. Seaton*, 359 U.S. 535, 546 (1959) (ordering reinstatement of Department of Interior employee). To the extent the Court understands Plaintiffs' relief as requesting reinstatement here, no doubt it is available.

Finally, with respect to Plaintiff Abramowitz, Defendants claim that because Abramowitz contested his illegal attempted removal, which this Court enjoined, ECF 75, 76, he now cannot maintain a claim related to Defendants' unlawful downsizing decision. Defs.' Opp'n at 13-14. But Federal Rule of Civil Procedure 56(a) explicitly states that "[a] party may move for summary judgment, identifying each claim or defense—or *the part of each claim* or defense—on which summary judgment is sought." (emphasis added). Defendants' attempt later in this litigation to illegally remove Abramowitz (which this Court held was unlawful) does not somehow mean that Abramowitz is seeking employment-related relief by challenging Defendants' unlawful plan. As before, Abramowitz would have the same APA claim related to Defendants' illegal decision made in March 2025 regardless of any actions taken against him.

For the reasons stated in Plaintiffs' opening summary judgment brief, their prior briefing, and above, this Court retains jurisdiction.

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contention that reinstatement is rarely if ever an available remedy for unlawfully removed officials").

B. The Tucker Act and Contracts Disputes Act Have No Bearing on This Case.

Reviving an argument from their preliminary injunction and motion to dismiss briefing, Defendants argue that several claims brought by PSC Plaintiffs, and any claims at all implicating contracts, must be brought in the Court of Federal Claims. Defs.' Opp'n at 17. Plaintiffs have already addressed these arguments, which they incorporate here. *See supra* § I. Beyond issues already extensively briefed by the parties, Defendants suggest that Plaintiffs must "identify each specific canceled or terminated contract" in order to seek relief in this case. Defs.' Opp'n at 17. Yet, Defendants identify no authority for that proposition and Plaintiffs are aware of none. Moreover, this Court has already rejected Defendants' Tucker Act argument on grant-related issues in this litigation. *Widakuswara*, 779 F. Supp. 3d at 28-30. If this Court has jurisdiction to consider grant terminations, it certainly may consider under the APA issues only tangentially relating to contracts, such as certain Plaintiffs' ability to challenge the unlawful downsizing decision.

Importantly, Plaintiffs are not parties, but instead are third-party beneficiaries, to many of the contracts and grant agreements that Defendants claim are implicated here, as Defendants admit. Defs.' Opp'n at 17 ("Plaintiffs seek to reverse canceled or terminated contracts, grants, and lease agreements with third parties and Global Media[.]"). But "[t]o maintain a cause of action pursuant to the Tucker Act that is based on a contract, the contract must be between the plaintiff and the government[.]" *Cienega Gardens v. United States*, 194 F.3d 1231, 1239 (Fed. Cir. 1998) (first alteration in original). There are limited exceptions to this privity requirement, such as where a plaintiff can meet the "stringent" requirements for "third-party beneficiary status" by showing not merely that the "contract would benefit" it, but that the contract "was intended for [its] direct benefit." *Pac. Gas & Elec. Co. v. United States*, 838 F.3d 1341, 1361 (Fed. Cir. 2016).

Plaintiffs therefore would have no claim under the Tucker Act. The D.C. Circuit has "reject[ed] the suggestion that a federal district court can be deprived of jurisdiction by the Tucker

Act when no jurisdiction lies in the Court of Federal Claims." *Tootle v. Sec'y of Navy*, 446 F.3d 167, 176 (D.C. Cir. 2006); *see also Md. Dep't of Hum. Res. v. Dep't of Health & Hum. Servs.*, 763 F.2d 1441, 1449 (D.C. Cir. 1985) (in absence of substantive claim over which Tucker Act jurisdiction lies, "there is no possibility that the preclusive effects of the Tucker Act, whatever their scope, can come into play"). To hold that Plaintiffs have no forum to challenge an agency decision that affects them merely because it may implicate the government's contract with a third party would be "contrary to common sense, [and in] conflict[] with the 'strong presumption favoring judicial review of administrative action' that is embodied in the APA." *Cmty. Legal Servs. in E. Palo Alto v. United States Dep't of Health & Hum. Servs.*, 137 F.4th 932, 939 (9th Cir. 2025) (quoting *Mach Mining, LLC v. EEOC*, 575 U.S. 480, 486 (2015)); *see also Am. Ass'n of Univ. Professors v. Trump*, No. 25-CV-07864-RFL, 2025 WL 3187762, at *21 (N.D. Cal. Nov. 14, 2025) ("The Tucker Act is inapplicable for the additional reason that Plaintiffs cannot bring a breach of contract claim as non-parties to the grant agreements at issue.").

C. Plaintiffs Have Standing and Their Claims Are Ripe.

Defendants assert that Plaintiffs lack standing to seek their requested relief in this case but do little to explain why. This Court has already rejected Defendants' standing argument. *Widakuswara*, 779 F. Supp. 3d at 26-28 (finding, among other things, that certain Plaintiffs have organizational and associational standing). Defendants have not attempted to rebut the record evidence demonstrating Plaintiffs' injuries. Defendants' basic argument depends on a complete misunderstanding of Plaintiffs' claims. As discussed above, the relief requested as part of Plaintiffs' instant motion for partial summary judgment does not depend on VOA or USAGM being closed—it challenges Defendants' decision to drastically reduce VOA and USAGM. Nor is such a closure required for Plaintiffs to state an APA claim here: in their opening brief, Plaintiffs marshaled the facts that show Defendants decided to drastically reduce VOA and USAGM's operation across the

board and worked to implement that downsizing decision. That decision is "concrete and particularized," *see* Defs.' Opp'n at 20, and caused Plaintiffs' injuries and gives them standing to sue.

In the same vein, Defendants misunderstand standing doctrine. Defendants do not appear to challenge that Plaintiffs, have, in fact, suffered injuries. Instead, they assert that Plaintiffs must tie those injuries to "specific staffing decisions or canceled or terminated contract or agreement[s]." Defs.' Opp'n at 20. But nothing in standing doctrine requires what Defendants seek. Article III requires an injury, caused by challenged conduct, that is redressable by the Court. That exists here. Plaintiffs were injured when Defendants implemented their radical downsizing decision, which Plaintiffs seek to vacate. Plaintiffs thus have standing. 5 U.S.C. § 702 ("A person *suffering legal wrong because of agency action*, or *adversely affected or aggrieved by agency action* within the meaning of a relevant statute, is entitled to judicial review thereof." (emphases added)); *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 807-08 (2024) ("We have explained that § 702 requires a litigant to show, at the outset of the case, *that he is injured in fact by agency action*." (cleaned up and emphasis added)).

Finally, Plaintiffs' claim is ripe. As elsewhere, Defendants contend that because VOA and USAGM continue operating at *some* level, Plaintiffs cannot seek relief. But, as discussed above, Plaintiffs' APA claim and entitlement to relief does not depend on VOA and USAGM being totally shuttered. Defendants made and implemented an illegal decision to radically reduce the operation of USAGM and VOA. Plaintiffs' claim concerned with that agency action is plainly ripe.

II. THIS COURT CAN DECIDE PLAINTIFFS' APA CLAIMS.

Beyond threshold issues, Defendants resurrect a host of arguments related to the APA and the propriety of relief. Many of these have been rejected by this Court already. As above, Plaintiffs briefly respond to a few points.

A. Plaintiffs Challenged Discrete Agency Action.[3]

Under the banner of arguing that Plaintiffs have not challenged discrete agency action under the APA, Defendants raise a host of issues, the vast majority of which are addressed at length in Plaintiffs' summary judgment brief. Pls.' Mem. at 18-23. Defendants do not address Plaintiffs' arguments and there is thus little to respond to, beyond a few clarifying points.

Defendants evidently misunderstand Plaintiffs' discussion of both the principal discrete agency action that Plaintiffs challenge—the decision to reduce, mechanically and without thought, VOA and USAGM to an unreasoned "statutory minimum" as reflected in the Memorandum—and the actions taken to implement that decision. Defs.' Opp'n at 25-26. As Plaintiffs explained in their summary judgment brief, the fact that steps had to be taken to implement Defendants' radical downsizing decision does not make the decision any less discrete and does not deprive this Court of the ability to vacate the decision and the actions that flowed from it. Pls.' Mem. at 19. These are the lessons of cases like *Biden v. Texas*, 597 U.S. 785 (2022) and *Hispanic Affairs Project v. Acosta*, 901 F.3d 378 (D.C. Cir. 2018). Defendants' discussion of *Biden v. Texas* recounts some facts about the case but does nothing to challenge Plaintiffs' reliance on its legal holdings.

Relatedly, Plaintiffs explicitly argued that, in the alternative, the actions Defendants took to implement the downsizing decision are each individually discrete. Pls.' Mem. at 21-22. Defendants do not explain in their briefing why it would be improper for Plaintiffs to so argue—and of course it is not. *See, e.g.*, *Sellers v. Anthem Life Ins. Co.*, No. CV 16-2428 (TJK), 2022 WL 1154712, at *11 (D.D.C. Apr. 19, 2022) ("Plaintiffs argue that, *for several alternative reasons*, the

[3] Though Defendants gesture towards a *final* agency action argument, they make no substantive argument on the issue. Plaintiffs explained the finality of the agency action here in their opening brief. Pls.' Mem. at 20-21. Defendants also argue that Plaintiffs may not use the APA to challenge an executive order, but Plaintiffs have consistently been clear that they challenge the legality of Defendants' decision, not the executive order pertaining to USAGM and VOA.

[agreements] are unenforceable, and they seek summary judgment on this issue." (emphasis added)). Plaintiffs have maintained throughout this litigation that the proper way to understand their challenge in this case, both on the facts and on the law, is as a challenge to a single decision to radically decrease VOA's and USAGM's operation to the so-called statutory minimum. That Plaintiffs also argued in the alternative cannot be held against them.

Offering yet another variation on a theme, Defendants appear to argue that references to VOA and USAGM's effective full closures in March 2025 in earlier filings in this litigation somehow bear on summary judgment now. It is of course true that certain facts have come more into focus over the length of this litigation, as is often the case. Here, such clarity comes largely as a result of the Court's own action. That Plaintiffs have moved for summary judgment in a manner that reflects that is entirely appropriate. And any slight revisions in Defendants' downsizing plan or slight increases in programming or broadcasting resulting from the preliminary injunction *after this Court entered a preliminary injunction*—do not make the challenged action here any less discrete. *See, e.g.*, *Kingdom v. Trump*, No. 1:25-cv-691-RCL, 2025 WL 1568238, at *9 (D.D.C. June 3, 2025) (explaining that the "possibility that a decision may later be revised based on new information does not render 'an otherwise definitive decision nonfinal'" (citation omitted)). What has not changed is Defendants' decision that is challenged here: the decision to drastically reduce VOA and USAGM. In any event, this issue has nothing to do with whether Plaintiffs have identified a discrete agency action—Defendants never explain how it would.

Finally, Defendants misunderstand Plaintiffs' argument that the at-issue agency action in this case may be considered a "rule." Defs.' Opp'n at 27-28. Most obviously, relying on both *Biden v. Texas* and *Venetian Casino Resort, L.L.C. v. E.E.O.C.*, 530 F.3d 925 (D.C. Cir. 2008), Plaintiffs explained that the Court *need not identify the precise type of agency action that is challenged* so

long as that action is both final and discrete. Pls.' Mem. at 19. Plaintiffs' argument that the challenged agency action here—the decision to reduce VOA and USAGM's operation across the board down to the "statutory minimum"—could be considered a rule was made only insofar as the Court felt it necessary to categorize the action. With respect to the actual merits of the argument, Defendants contend that "Plaintiffs do not point to any official agency statement in support of" their likening of the illegal decision here to a rule. Defs.' Opp'n at 28. Yet Plaintiffs do, repeatedly, including in their discussion of the Statutory Minimum Memorandum, which Defendants do not even mention in their brief, *see* Pls.' Mem. at 20-21, and which Defendants filed with the Court, ECF 54-3. *See also* Pls.' Mem. at 8-10 (recounting other statements reflecting Defendants' downsizing decision). To the extent that Defendants really mean that the agency statement must be written—a requirement nowhere in the APA—Plaintiffs' briefing likewise identifies such written statements reflecting the agency action here. *Id.*[4]

B. Defendants' Decision Is Not Committed to Agency Discretion.

A recounting of the facts of this case demonstrates that the agency action at issue is not committed to agency discretion by law. Defendants decided, without any reasoning or thought or consideration of a variety of factors, including statutes that bind VOA and USAGM and their hundreds of millions of dollars of appropriations, or reliance interests, to decimate the entities. Pls.' Mem. at 8-12.[5] To undertake such a drastic reduction in programming and agency operations,

[4] Defendants' argument that other remedies are available is nothing more than a repackaging of their jurisdictional arguments.

[5] Recently the House and Senate appropriators agreed for FY 2026 to provide approximately $653 million to fund USAGM, which includes $199.5 million to fund VOA. Scott Nover, *Congress agrees to fund Voice of America, bucking Trump shutdown order*, THE WASHINGTON POST (Jan. 13, 2026), https://perma.cc/N92P-ZCXL. The House passed the appropriations bill which would provide these funds last week. *House Passes H.R. 7006, Strengthening National Security, Protecting Economic Growth, and Restoring Regular Order*, House Committee on Appropriations (Jan. 14, 2026), https://perma.cc/DV7D-TM2D.

Defendants must comply with the APA and act in a manner that is not arbitrary or capricious. That cannot be controversial. *See, e.g., id.* at 23-24 (citing, *inter alia, Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 18 (2020); *Biden v. Texas*, 597 U.S. at 808; *Nat'l Lifeline Ass'n v. Fed. Commc'ns Comm'n*, 921 F.3d 1102, 1113 (D.C. Cir. 2019)).

In an attempt to avoid judicial review, Defendants point to certain statutory provisions in § 6204 that are broadly worded or lay out the powers of the CEO of USAGM. Defs.' Opp'n at 32. But that argument misunderstands both the law and the facts. As to the former, given the APA's "basic presumption of judicial review," "[t]he exception for agency action committed to agency discretion by law is a very narrow one, reserved for those rare instances where statutes are drawn in such broad terms that in a given case there is no law to apply." *Drake v. F.A.A.*, 291 F.3d 59, 70 (D.C. Cir. 2002) (first quotation); *Hi-Tech Furnace Sys., Inc. v. F.C.C.*, 224 F.3d 781, 788 (D.C. Cir. 2000) (second quotation, cleaned up). To determine whether this narrow exception applies, courts consider "both the nature of the administrative action at issue"—essentially, whether it is a type of action "presumptively outside the bounds of judicial review"[6]—and "the language and structure of the statute that supplies the applicable legal standards for reviewing that action." *Drake*, 291 F.3d at 70. Here, the question is not the precise contours of how USAGM must run. It is whether the Defendants considered the factors they must when drastically reducing VOA and USAGM's operation across the board, and whether their decision was arbitrary and capricious or in accordance with law. The lack of any documented consideration of the IBA, VOA Charter, and relevant appropriations answer that question with a resounding "no." *See In re Aiken County*, 725 F.3d 255, 259 (D.C. Cir. 2013) ("[A]bsent a lack of funds or a claim of unconstitutionality that has

[6] Defendants do not argue that this case fits into any of the "narrow categories" of agency action that does not enjoy the presumption of reviewability, such as declining to take an enforcement action. *See, e.g., Cody v. Cox*, 509 F.3d 606, 610 (D.C. Cir. 2007).

not been rejected by final Court order, the Executive must abide by statutory mandates and prohibitions."); *see also Robbins v. Reagan*, 780 F.2d 37, 45 (D.C. Cir. 1985) (even when "there are no clear statutory guidelines[] courts often are still able to discern from the statutory scheme a congressional intention to pursue a general goal").

C. Vacatur Of Defendants' Illegal Actions Is Appropriate and Is a Narrowly Tailored Remedy.

Vacatur is the appropriate remedy in this case. Pls.' Mem. at 33-35. Defendants' argument that the APA as an absolute matter does not allow for vacatur is not the law. *See United States v. Texas*, 599 U.S. 670, 701 (2023) (Gorsuch, J., concurring) (recognizing the argument, raised by the plaintiffs, that "vacatur has been the ordinary result when the D. C. Circuit determines that agency regulations are unlawful"). Quite to the contrary, "vacatur[] is the presumptively appropriate remedy for a violation of the APA" in the D.C. Circuit; that is even more so where it is necessary to "prevent significant harm resulting from keeping the agency's decision in place." *Sierra Club v. Van Antwerp*, 719 F. Supp. 2d 77, 78, 80 (D.D.C. 2010) (citing extensive D.C. Circuit and Supreme Court precedent). Defendants' invocation of *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), lends no support to their vacatur arguments, either. In *CASA* the Court was explicit that "[n]othing we say today resolves the distinct question whether the Administrative Procedure Act authorizes federal courts to vacate federal agency action." *Id.* at 847 n.10. That is because, as relevant here, the APA authorizes courts to "hold unlawful and *set aside* agency action." 5 U.S.C. § 706(2); *see Am. Gateways v. U.S. Dep't of Just.*, No. CV 25-01370 (AHA), 2025 WL 2029764, at *11 (D.D.C. July 21, 2025) ("[T]he APA requires this Court to hold unlawful and set aside arbitrary and capricious agency action. . . . That the invalidated agency action was a nationwide policy does not mean Plaintiffs are seeking relief on behalf of legal aid organizations who are not parties to this suit." (cleaned up)).

Beyond this, *CASA* concerned *universal injunctions*—injunctions through which "district courts assert[] the power to prohibit enforcement of a law or policy against anyone." *Id.* at 837. Neither the preliminary injunction in this case, nor the relief that Plaintiffs seek through their summary judgment motion, is a universal injunction. Plaintiffs simply seek the vacatur of an illegal action implemented by Defendants that harmed each Plaintiff, not an order barring any officials from enforcing a challenged law as to anyone, including those beyond the parties to the lawsuit. Put differently, remedying harms to the Plaintiffs before this Court entitles them to vacatur; though strangers to these lawsuits may benefit from the ultimate relief, there is no "request[] for relief that extend[s] beyond the parties." *Id.* at 843.

Defendants' arguments against Plaintiffs' requested relief, Defs.' Opp'n at 38-40, are little more than a repackaging of their standing and vacatur contentions. Again, the requested relief in this case is meant to set aside the unlawful agency action (the decision to drastically reduce across the board VOA and USAGM's operation) and the actions that flowed from that decision. To muddy the waters, Defendants take aim at a provision in Plaintiffs' proposed order related to providing required programming and broadcasting. Defs' Opp'n at 39-40. That provision relates to Plaintiffs' § 706(1) claim, not their 706(2) claim, as is self-evident from the proposed order. For the reasons discussed *infra*, Plaintiffs' § 706(1) claim is sound. Though Plaintiffs do not need to jump through the hoops Defendants have constructed for any of their requested relief, it is especially clear that they do not need to identify "how they have standing to enforce every single statutory requirement or binding legal obligation," Defs.' Opp'n at 40, under § 706(2). Defendants' illegal downsizing decision caused Plaintiffs' injuries. Plaintiffs are entitled to a setting aside of that decision and its implementing actions. The relief specified in Plaintiffs' proposed order does just that.

D. Defendants Have Also Unlawfully Withheld Required Agency Action.

To review, Plaintiffs moved under both § 706(2) and § 706(1). For Plaintiffs to be entitled to the vast majority of the relief specified in their proposed order, the Court need not rely on § 706(1). That is because vacatur is the remedy under § 706(2), not § 706(1). Plaintiffs have, however, also made out the requisite showing under § 706(1). Plaintiffs will not, once again, wade into the morass of Defendants' non-compliance with the preliminary injunction or Defendants' constant moving of the goalposts, in response to this Court's orders, related to programming and broadcasting. *Compare* 25-cv-887, ECF 100 (RIF Order) at 8-11; ECF 62 (Order to Show Cause) at 7-9; *see generally* ECF 37, 49, 55, 61 (Pls.' Show-Cause Briefing); 25-cv-1015, ECF 112; ECF 120; ECF 124; ECF 129; ECF 136 (Show-Cause Briefing); ECF 144, ECF 159 (RIF briefing); *with* Defs.' Opp'n at 35. As Plaintiffs explained in their opening brief and this Court has found, while Defendants may have some discretion with respect to programming and broadcasting, that discretion is not boundless. Pls.' Mem. at 35-36; ECF 100 at 10 (explaining that "broad language contained in these standards leaves rooms for the USAGM leadership's judgment . . . [y]et the defendants do not even feign an effort to exercise such authority"). Because the utter refusal to broadcast at all to and program at all for certain regions and countries contravenes the "international broadcasting mandated by Congress." *Widakuswara*, 779 F. Supp. 3d at 37, this Court may compel the agency action.

III. CONSIDERATION OF EXTRA-RECORD EVIDENCE IS APPROPRIATE.[7]

The Court's resort to extra-record evidence in this case is proper. Pls.' Mem. at 42-43. It is especially so here because Defendants fault Plaintiffs for their inability to rely on the

[7] As Plaintiffs stated in their opening brief, resort to extra-record evidence is not necessary to find that Defendants acted unlawfully and that vacatur is warranted. Defendants do not demonstrate otherwise.

administrative record that Defendants *refused to provide*, even though they were required to do so simultaneously with their filing of their motion to dismiss in July. LCvR 7(n)(1). Defs.' Opp'n at 29 ("In support of their motion, Plaintiffs do not point to any evidence in the administrative record, nor could they. . . . There has been no administrative record provided in this case because Defendants moved to stay their obligation to do so pending their threshold dispositive motion."). Defendants should not be rewarded for their wrongful withholding of the administrative record. *See* ECF 63 at 36-38.

Further, Plaintiffs explained in their opening brief that while APA review is limited to the administrative record in most circumstances, Pls.' Mem. at 42, there are exceptions to that default, and resort to evidence beyond the record is warranted here, *id.* at 42-43. That is because in addition to wrongly withholding the administrative record Defendants failed to examine the relevant factors, have failed to explain their decisionmaking, and have acted in bad faith and improperly. *Id.* at 43. Defendants took these actions to thwart judicial review; extra-record evidence cures the issue. *Id.* Defendants dispute none of this other than their stating their belief—without any reasoning—that they were entitled to withhold the administrative record. Defs.' Opp'n at 29. That belief is incorrect. ECF 63 at 36-38. Beyond this, Defendants argue only that resort to extra-record evidence is improper because the Court lacks jurisdiction. But for the reasons stated above, in Plaintiffs' opening brief, and in their briefing throughout this case, this Court has jurisdiction. The Court can find so without resort to any extra-record evidence, but such evidence certainly confirms as much.

Defendants make two additional procedural arguments. First, Defendants contend that the Court should reject outright Plaintiffs' argument that the Court may consider extra-record evidence because Plaintiffs did not comply with Local Civil Rule 7(m), which requires the parties to confer

prior to filing a non-dispositive motion. But Plaintiffs did not file a separate motion (which might require consultation under Local Rule 7(m)) and instead raised this issue within the context of a dispositive motion (which does not). In any event, Defendants have made it clear in their memorandum that they would not have agreed to the consideration of extra-record evidence and there would have been no possibility of a narrowing of any disputed issues. If Plaintiffs misunderstood the rule, Courts have discretion to excuse compliance with Local Rule 7(m), especially in these circumstances. *See, e.g.*, *Kriebel v. Life Ins. Co. of N. Am.*, No. 1:15-cv-00151 (TSC/GMH), 2015 WL 11347968, at *2 (D.D.C. Oct. 14, 2015) ("[I]f the Court denies defendant's motion based on Local Rule 7(m), it is practically certain that defendant will refile precisely the same motion. There is no indication in plaintiff's briefing that there are . . . which could have been narrowed during a conference.") (collecting cases).

Second, Defendants cite no authority for their argument that because Plaintiffs obtained certain record evidence in the context of show-cause and possible contempt proceedings, that they may not refer to it in their summary judgment briefing. Moreover, the enforcement proceedings through which the extra-record evidence was obtained are inextricably intertwined with broader issues in this case, including Defendants' arbitrary and capricious actions, failure to explain their decisionmaking, and lack of a plan for operating VOA and USAGM. It would be aberrant to not consider such evidence, especially given that Defendants repeatedly rely on extra-record evidence in their briefing to try to excuse their non-compliance with the APA and to advance their contention that VOA and USAGM are meeting their statutory obligations.

CONCLUSION

For the reasons explained above, Plaintiffs respectfully request that the Court grant their motion for partial summary judgment, deny Defendants' cross-motion for summary judgment, and

set aside Defendants' unlawful actions and order the other actions identified in Plaintiffs' proposed order.

Dated: January 20, 2026

Respectfully submitted

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** The views expressed herein do not purport to represent the institutional views of Yale Law School, if any.

CERTIFICATE OF SERVICE

I hereby certify that, on January 20, 2026, I caused the foregoing to be served on counsel of record via the Court's electronic case filing system.

_____/s/_____
Georgina Yeomans