



Challenging Federal Award Terminations

Overcoming the Tucker Act

2026 Update

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Issue Brief

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I. INTRODUCTION

Whether recipients of federal grants and cooperative agreements may challenge the termination of their awards in federal district court has been the subject of much debate – and dozens of judicial opinions – since the Trump Administration’s second term began. We have previously written on the topic on three occasions,¹ first before the Supreme Court had weighed in and then after it issued each of its shadow docket orders on the question in *Department of Education v. California*, 604 U.S. 650 (2025), and *National Institutes of Health v. American Public Health Association*, 145 S. Ct. 2658 (2025).

The Supreme Court’s interim orders in *California* and *NIH* could be read as closing the door to arbitrary-and-capricious challenges to award terminations under the Administrative Procedure Act. In those brief, interim orders, the Court indicated that these claims were akin to breach of contract claims, and that the Tucker Act provides exclusive jurisdiction over such claims in the Court of Federal Claims. Most, but not all, courts that have addressed arbitrary-and-capricious challenges to grant terminations since *NIH* have held that the Tucker Act strips district courts of jurisdiction over them.

Even after *NIH*, however, there remain several pathways to challenging terminations of federal awards in district court.² We previously detailed three of these strategies: (1) bringing nonstatutory review claims, and in particular constitutional claims, rather than APA claims; (2) challenging the elimination of an entire statutory program that was accomplished via a mass termination, rather than seeking restoration of

¹ See Governing for Impact, *Challenging Federal Award Terminations; Overcoming the Tucker Act* (March 2025), <https://governingforimpact.org/wp-content/uploads/2025/03/Challenging-Federal-Award-Terminations-2.pdf>, Daniel Jacobson & John Lewis, *Overcoming the Tucker Act After Department of Education v. California*, Lawfare (Apr. 17, 2025), <https://www.lawfaremedia.org/article/overcoming-the-tucker-act-after-department-of-education-v.-california>; John Lewis, *Litigating in the Shadows: Federal Funding and the Supreme Court*, Lawfare (Dec. 2, 2025), <https://www.lawfaremedia.org/article/litigating-in-the-shadows--federal-funding-and-the-supreme-court>. These writings have largely been superseded by this Issue Brief.

² Although as explained below district courts might be a preferred forum for grant recipients, given among other things the courts’ ability to grant preliminary injunctive relief, GFI has written elsewhere about how litigants might proceed should they end up litigating in the Court of Federal Claims. See GFI, *Seeking Recovery for Unlawful Grant Terminations in the Court of Federal Claims* (Oct. 2025), <https://governingforimpact.org/wp-content/uploads/2025/10/CFC-Issue-Brief.pdf>.

individual awards; and (3) arguing that grants are not “contracts” subject to the Court of Federal Claims’ jurisdiction.

Recent case law has validated each of these strategies to different degrees and suggested at least one other. First, there is a growing consensus among courts that district courts have jurisdiction to hear constitutional challenges to grant terminations, and a number of courts have enjoined or vacated terminations on constitutional grounds. Second, some courts have ruled that entire program eliminations were unlawful, requiring the relevant agency to restore the program even if not the specific terminated awards at issue. Third, the Ninth Circuit recently held that cooperative agreements are generally not “contracts” that fall under the Court of Federal Claims’ jurisdiction, although whether that holding will survive any Supreme Court review remains to be seen. Fourth, a few courts have also permitted plaintiffs other than grant recipients to challenge terminations in district court.³

Below, we briefly summarize the Supreme Court’s decisions in *California* and *NIH* and then describe each of these four potential pathways to challenging terminations in district court.

³ There are yet additional circumstances where courts have held that “the Tucker Act is not relevant” and challenges may proceed in district court — for example, “where a challenge to a funding decision is brought under Title VI,” which “vests in federal courts jurisdiction to review agency action ‘terminating or refusing to grant or to continue financial assistance’” that “displaces the Court of Federal Claims’ exclusive jurisdiction.” *Chi. Transit Auth. v. U.S. Dep’t of Transp.*, No. 26-cv-3140, 2026 WL 810912, at *3 (N.D. Ill. Mar. 24, 2026) (quoting 42 U.S.C. § 2000d-2) (collecting cases) (some internal quotation marks omitted). Separate from grant terminations, litigants have also had success challenging grant terms and conditions in district court. See GFI, *Challenging Funding Conditions Imposed by the Executive Branch* 16–18 (Sept. 2025), <https://governingforimpact.org/wp-content/uploads/2025/09/Funding-Conditions-Issue-Brief-final.pdf>.

II. THE SUPREME COURT'S SHADOW DOCKET ORDERS AND FALLOUT

In *California* and *NIH*, the Supreme Court addressed the interplay between the APA and the Tucker Act. The APA and the Tucker Act each waive the United States' sovereign immunity for certain types of claims against the federal government seeking certain types of relief. The APA provides a generally applicable waiver for challengers to federal agency action, waiving sovereign immunity for APA claims brought by persons aggrieved by agency action if the claims “seek[] relief other than money damages.”⁴ But the same section of the APA also specifies that there is no sovereign immunity waiver for an APA claim “if any other statute ... expressly or impliedly forbids the relief which is sought” in the APA case.⁵

The Tucker Act provides a waiver of sovereign immunity for those asserting contract claims against the federal government and seeking money damages. Specifically, the act confers jurisdiction upon the CFC “to render judgment upon any claim against the United States founded ... upon any express or implied contract with the United States.”⁶ The CFC generally can award *only* monetary damages in contract actions.

In both *California* and *NIH*, the only claims before the Court were APA claims asserting that the termination of the plaintiffs' grants were arbitrary and capricious. In both cases, the Solicitor General argued that the APA's waiver of sovereign immunity could not be invoked, because the grantees' claims were contractual in nature and therefore were channeled to the Court of Federal Claims. Specifically, the government argued that the Tucker Act “impliedly forbids” the APA's sovereign immunity waiver from applying to such claims under 5 U.S.C. § 702.⁷

⁴ 5 U.S.C. § 702.

⁵ *Id.*

⁶ 28 U.S.C. § 1491(a)(1).

⁷ See App. for Stay, *Nat'l Insts. of Health v. Am. Pub. Health Ass'n*, No. 25A103 (U.S. filed July 24, 2025); App. to Vacate Order and for Admin. Stay, *Dep't of Educ. v. California*, No. 24A910 (U.S. filed Mar. 26, 2025).

In the short majority opinions, the Court held that the “APA’s limited waiver of sovereign immunity” did not apply.⁸ The Court elaborated in *NIH* that “[t]he Administrative Procedure Act’s limited waiver of sovereign immunity does not provide the District Court with jurisdiction to adjudicate claims ‘based on’ the” grants at issue “or to order relief designed to enforce any ‘obligation to pay money’ pursuant to those grants.”⁹

Several Justices further articulated their views in concurrences in *NIH*. Justice Barrett, in her controlling concurrence, differentiated between the plaintiffs’ challenges to the individual grant terminations (“which belong in the Court of Federal Claims”), and the plaintiffs’ APA challenge to the internal NIH guidance that led to their termination, which she concluded could be brought in district court.¹⁰ Justice Kavanaugh took a categorical view that plaintiffs’ claims were precluded, stating: “The core of plaintiffs’ suit alleges that the Government unlawfully terminated their grants. That is a breach of contract claim. And under the Tucker Act, such claims must be brought in the Court of Federal Claims, not federal district court.”¹¹

Since *NIH* and *California*, several courts of appeals and many district courts have held that the Supreme Court’s orders foreclose grantee from bringing APA arbitrary-and-capricious challenges to their grant terminations in district court.¹² The sole decisions that have permitted grantees’ arbitrary-and-capricious claims against grant terminations to go forward since *NIH* have held that the relevant award instruments were not “contracts” subject to Court of Federal Claims jurisdiction, as described further below.

⁸ *NIH*, 145 S. Ct. at 2659; *California*, 604 U.S. at 651.

⁹ *Id.* (quoting *California*, 604 U.S. at 651).

¹⁰ *Id.* at 2661–62 (Barrett, J., concurring); see *Chi. Transit Auth.*, 2026 WL 810912, at *3 (collecting cases finding district court jurisdiction over challenges to agency policies).

¹¹ *NIH*, 145 S. Ct. at 2665 (Kavanaugh, J., concurring in part and dissenting in part).

¹² See, e.g., *New York v. Trump*, No. 25-1236, 2026 WL 734941, at *17 (1st Cir. Mar. 16, 2026); *Sustainability Inst. v. Trump*, 165 F.4th 817, 825–29 (4th Cir. 2026); *Thakur v. Trump*, 163 F.4th 1198, 1204 (9th Cir. 2025); *Climate United Fund v. Citibank, N.A.*, 154 F.4th 809, 824 (D.C. Cir. 2025), *reh’g en banc granted, judgment vacated*, No. 25-5122, 2025 WL 3663661 (D.C. Cir. Dec. 17, 2025); *Harris Cnty., Texas v. Kennedy*, 786 F. Supp. 3d 194, 218 (D.D.C. 2025); *Vera Inst. of Just. v. U.S. Dep’t of Just.*, 805 F. Supp. 3d 12, 30 (D.D.C. 2025), *appeal pending*, No. 25-5248 (D.C. Cir.); *President & Fellows of Harvard Coll. v. U.S. Dep’t of Health & Hum. Servs.*, 798 F. Supp. 3d 77, 105 (D. Mass. 2025), *appeal pending*, No. 25-2231 (1st Cir.).

III. REMAINING PATHS FOR DISTRICT COURT CHALLENGES

Notwithstanding *NIH* and *California*, paths remain for challenging grant terminations in district court. Litigants might wish to pursue such paths rather than filing in the Court of Federal Claims for a number of reasons. First, if the case relates to a procurement contract, a contractor must proceed through the Contract Disputes Act’s administrative exhaustion process before filing in the Court of Federal Claims.¹³ Second, in a case relating to a contract termination (as opposed to a bid protest), that court generally can award only money damages and not equitable relief such as a preliminary injunction.¹⁴ Third, contractors cannot raise most constitutional and statutory claims in that court, because contractors may assert statutory or constitutional causes of action in the Court of Federal Claims only where the relevant statutory or constitutional provision on its face mandates the payment of money to the contractor, which is rare.¹⁵ To the extent litigants do proceed in the Court of Federal Claims, as noted above we have elsewhere described strategies that they might pursue there to maximize their potential recoveries.¹⁶

A. Nonstatutory Review Claims

Plaintiffs may consider bringing nonstatutory review claims against award terminations in lieu of APA claims.¹⁷ There are two distinct types of nonstatutory review claims that are often conflated with one another. First, a plaintiff may allege that “a federal actor has violated a federal *statute*.”¹⁸ Such claims asserting statutory violations — “often called *ultra vires* claims” — have been described as a “Hail Mary pass” because plaintiffs must show that the challenged conduct represents an

¹³ See 41 U.S.C. §§ 7101 *et seq.*

¹⁴ See *Bowen v. Massachusetts*, 487 U.S. 879, 905 (1988).

¹⁵ See *Maine Cmty. Health Options v. United States*, 590 U.S. 296, 322 (2020).

¹⁶ See GFI, *Seeking Recovery for Unlawful Grant Terminations in the Court of Federal Claims* (Oct. 2025), <https://governingforimpact.org/wp-content/uploads/2025/10/CFC-Issue-Brief.pdf>.

¹⁷ See generally GFI, *Nonstatutory Review* (May 2025), <https://governingforimpact.org/wp-content/uploads/2025/05/Nonstatutory-Review.pdf>.

¹⁸ See *Sustainability Inst.*, 165 F.4th at 829–30 (emphasis added).

extreme or blatant violation of a statute, and that the plaintiff has no other means of challenging the conduct.¹⁹ Distinctly, a plaintiff may assert “[n]onstatutory review claims alleging a constitutional violation.”²⁰ Although sometimes confusingly also referred to as “ultra vires” claims, such constitutional claims “are not subject to the same restrictions” as those challenging action merely in excess of statutory authority.²¹

Either type of nonstatutory review claim challenging a grant termination should be able to proceed in district court notwithstanding *NIH* and *California* because unlike other claims, including claims under the APA, nonstatutory review claims need not rely on a waiver of sovereign immunity. “[S]overeign immunity does not apply when a plaintiff files suit seeking equitable relief against federal officials ... alleging that those officials exceeded the scope of their authority and/or acted unconstitutionally.”²² In the context of such claims, the official’s actions “are considered individual and not sovereign actions.”²³ “So, there is no sovereign immunity to waive – it never attached in the first place.”²⁴ Thus, as one district court recently put it, “the Tucker Act’s limitation on the APA’s sovereign immunity waiver is irrelevant” to nonstatutory claims challenging grant terminations.²⁵

For constitutional claims, there is an additional, even more fundamental reason why district courts have jurisdiction to hear the claims. If a district court lacked jurisdiction to hear a terminated grantee’s constitutional claims, the grantee would have *no judicial forum* in which to present its constitutional challenges. The Court of Federal Claims only has jurisdiction to hear constitutional claims under provisions that are “money-mandating,” such as the Takings Clause. The Federal Circuit has squarely held that contractors may not bring First Amendment, equal protection, due process, or separation of powers claims in the Court of Federal Claims, because none

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*; see also *Am. Ass’n of Univ. Professors v. Trump (AAUP)*, 2025 WL 3187762, at *22 (N.D. Cal. Nov. 14, 2025).

²² *Strickland v. United States*, 32 F.4th 311, 363 (4th Cir. 2022).

²³ *Id.*

²⁴ *Chamber of Com. of U.S. v. Reich*, 74 F.3d 1322, 1329 (D.C. Cir. 1996); see also *Liffiton v. Keuker*, 850 F.2d 73, 78 (2d Cir. 1988) (where a “complaint alleges that the federal defendants acted outside of the scope of their statutory authority and outside constitutional limits, the claims for injunctive relief are not barred by sovereign immunity”).

²⁵ *AAUP*, 2025 WL 3187762 at *22.

of those claims rested on a constitutional provision that “mandate[d] payment of money by the government.”²⁶

The Supreme Court held in *Webster v. Doe*, 486 U.S. 592 (1988), that where a jurisdiction-stripping statute would leave a plaintiff with no forum to bring a constitutional claim, Congress’s “intent” to produce this outcome “must be clear.”²⁷ The Court “require[s] this heightened showing in part to avoid the serious constitutional question that would arise if a federal statute were construed to deny any judicial forum for a colorable constitutional claim.”²⁸ Applying this clear-statement rule, the Supreme Court has *never* read a federal statute to preclude a party from having any forum to challenge the constitutionality of government action, to “avoid squarely facing” the “serious constitutional question” such a circumstance would present.²⁹

There is no basis to conclude that the Tucker Act is the first federal statute to strip a plaintiff of any forum to challenge the constitutionality of a government action. The Tucker Act contains no clear statement that Congress intended to strip district courts of jurisdiction over constitutional challenges to grant terminations, and that is dispositive under *Webster*.³⁰

There is a growing consensus among post-*NIH* courts that grantees may still bring constitutional challenges to their award terminations in federal district court. The D.C. Circuit has expressly held as much,³¹ and the Fourth Circuit implicitly recognized as much, adjudicating the merits of a constitutional claim even while dismissing an APA claim on Tucker Act preclusion grounds.³² And a growing number of district courts have held that jurisdiction exists over constitutional claims and found those

²⁶ *LeBlanc v. United States*, 50 F.3d 1025, 1028 (Fed. Cir. 1995).

²⁷ *Webster v. Doe*, 486 U.S. 592, 603 (1988).

²⁸ *Id.* (quotations omitted).

²⁹ William Baude et al., *Hart & Wechsler’s The Federal Courts and the Federal System* 462 (8th ed. 2025).

³⁰ See *AAUP*, 2025 WL 3187762, at *22 (“Defendants have pointed to no evidence that Congress intended the Tucker Act to deprive parties of recourse for First Amendment claims that cannot be heard in the Court of Federal Claims.”).

³¹ In *Climate United Fund.*, the D.C. Circuit held “the district court had jurisdiction over the grantees’ constitutional claim” against their grant terminations. 154 F.4th at 817. Although the D.C. Circuit has now taken that case en banc and vacated the judgment, the panel opinion remains precedential while en banc review remains pending. See D.C. Cir. R. 40(d).

³² See *Sustainability Institute*, 165 F.4th at 829.

claims to be meritorious, enjoining or vacating grant terminations on constitutional grounds.³³

Litigants therefore might consider whether they have viable constitutional claims against a grant termination. In particular, litigants should assess potential First Amendment claims, including where there are reasons to believe their grants were terminated on the basis of viewpoint (e.g., because the grant involved “DEI”-related speech) or as retaliation for the grantee having engaged in certain speech,³⁴ and equal protection claims, including where an agency terminates grants because they involve particular races or genders, or where the sole reason for termination is that the grantee is located in a “Blue” and not “Red” state.³⁵

B. Program-Level Claims

Litigants might also challenge in district court an agency’s elimination of an entire statutory program via grant terminations. In particular, GFI has written elsewhere about the types of substantive claims litigants might assert in challenging agency efforts to impound congressionally appropriated funding for entire programs.³⁶ Such claims might not seek to restore any specific terminated award – avoiding the Tucker Act—but rather seek to compel the agency to restore the program. Indeed, the existence of a “contract” is a prerequisite to Court of Federal Claims jurisdiction,³⁷ and these program-level claims do not involve a contract. Rather, plaintiffs pressing such claims are seeking only the opportunity to compete for a contract (which

³³ See, e.g., *City of Saint Paul v. Wright*, 2026 WL 88193, at *4, 8-9 (D.D.C. 2026) (vacating terminations on equal protection grounds); *President & Fellows of Harvard Coll.*, 798 F. Supp. 3d at 107, 121-22 (vacating terminations on First Amendment grounds); *Am. Acad. of Pediatrics v. U.S. Dep’t of Health & Hum. Servs.*, 2026 WL 80796, at *14–15, *20 (D.D.C. Jan. 11, 2026) (enjoining HHS terminations for violating First Amendment); *AAUP*, 2025 WL 3187762, at *10–22 (same as to HHS, Department of Energy, and National Science Foundation grant terminations); *Am. Council of Learned Societies v. McDonald*, 792 F. Supp. 3d 448, 483, 487-493 (S.D.N.Y. 2025) (same for National Endowment for the Humanities grant terminations).

³⁴ See, e.g., *Am. Council of Learned Societies*, 792 F. Supp. 3d 448; *President & Fellows of Harvard Coll.*, 798 F. Supp. 3d 77.

³⁵ *City of Saint Paul*, 2026 WL 88193, at *5–7; see GFI, *Challenging Politicized Funding Cuts* (Dec. 2025), <https://governingforimpact.org/wp-content/uploads/2025/12/Politicized-Cuts-Issue-Brief-Final.pdf>.

³⁶ See GFI, *Challenging Unlawful Impoundments, 2026 Update* (Mar. 2026), <https://governingforimpact.org/wp-content/uploads/2026/03/Challenging-Unlawful-Impoundments-2026-Update.pdf>.

³⁷ 28 U.S.C. § 1491(a).

numerous courts have held suffices to provide standing).³⁸ If such a claim is successful, the agency then has discretion as to how to restore the program in question, whether by issuing new awards or by restoring the prior ones.

These program-level claims can succeed not just in compelling an agency to restore an eliminated program, but also in getting a plaintiff's terminated award reinstated, even if that is not the requested relief or resulting court order. For example, in *Child Trends, Inc. v. Department of Education*,³⁹ the Department of Education terminated all or nearly all grants and contracts under two statutorily mandated programs. The plaintiffs, whose awards under those programs were terminated, challenged the elimination of the programs as contrary to law, seeking at least an opportunity to compete for awards if the programs were restored.⁴⁰ The district court ruled for the plaintiffs, ordering the Department to restore the programs and spend the imminently expiring appropriations for those programs. The court "decline[d] to order" the agency to restore the plaintiffs' terminated awards.⁴¹ But because there was otherwise no way for the agency to spend the relevant appropriations before they expired a month later, the agency reinstated all of the terminated awards to comply with the court's order.⁴²

Where an agency has mass terminated all or nearly all awards that had been issued to carry out a specific statutory program, or to spend a specific appropriation, litigants might bring a program-level challenge as in *Child Trends*.

³⁸ See, e.g., *CC Distribs. v. United States*, 883 F.2d 146, 150 (D.C. Cir. 1989) ("[A] plaintiff suffers a constitutionally cognizable injury by the loss of an opportunity to pursue a benefit ... even though the plaintiff may not be able to show that it was certain to receive that benefit had it been accorded the lost opportunity."); *Coal. of MISO Transmission Customers v. FERC*, 45 F.4th 1004, 1015 (D.C. Cir. 2022) ("An organization suffers injury-in-fact where a federal agency deprives the organization of an opportunity to compete for a project for which it was 'ready, willing, and able' to compete.").

³⁹ 795 F. Supp. 3d 700 (D. Md. 2025).

⁴⁰ *Id.* at 720–26.

⁴¹ *Id.* at 732.

⁴² See Status Rep., *Child Trends v. Dep't of Education*, No. 8:25-cv-01154 (D. Md. Sept. 29, 2025), ECF No. 75.

C. Arguing that Cooperative Agreements Are Not Contracts

An additional strategy that has recently proven successful is to argue that terminated awards are not “contracts” for purposes of the Tucker Act. The Tucker Act does not define a covered “contract,” and litigants early in this administration argued that their grants or cooperative agreements were not qualifying “contracts.” They drew from several prior cases holding that a contract requires consideration, and grants and cooperative agreements do not involve such consideration because their “entire purpose ... is to transfer a thing of value to the [recipient] from the executive agency.”⁴³

This argument lost some steam after *California* and *NIH* because those cases involved grants and yet the Court indicated that the Tucker Act applied. Indeed, in *NIH*, one group of plaintiffs specifically argued in their Supreme Court briefing that their grants were legally distinct from “contracts” and did not fall under the Court of Federal Claims’ jurisdiction for that reason.⁴⁴ Neither the majority nor any of the concurrences in *NIH* addressed this issue, but the majority seemed to implicitly reject the grantees’ argument in holding that the grantees had to go to the Court of Federal Claims to challenge the terminations.

Following *California* and *NIH*, most district courts have rejected the argument that plaintiffs’ grants or cooperative agreements are not covered contracts, although a few district courts have held otherwise.⁴⁵ But on March 5, 2026, the Ninth Circuit breathed new life into this argument in *Pacito v. Trump*.⁴⁶ The divided panel held that the plaintiffs’ cooperative agreements were not “contracts” for Tucker Act purposes. The court relied heavily on the Federal Grant and Cooperative Agreement Act of 1977, which separately defines “grants,” “cooperative agreements,” and

⁴³ *St. Bernard Parish Gov’t v. United States*, 134 Fed. Cl. 730, 736 (2017); *accord Am. Near E. Refugee Aid v. U.S. Agency for Int’l Dev.*, 703 F. Supp. 3d 126, 132 (D.D.C. 2023).

⁴⁴ Resp. to App. 25–30, *NIH*, No. 25A103 (U.S. filed Aug. 1, 2025).

⁴⁵ Compare, e.g., *Vera Inst. of Just.*, 805 F. Supp. 3d at 28 (plaintiffs “fail to explain how the grant agreements in this case differ from those in *California*”), with *Washington v. U.S. Dep’t of Com.*, No. C25-1507 MJP, 2025 WL 2978822, at *5 (W.D. Wash. Oct. 22, 2025) (“Washington convincingly explains that cooperative agreements, such as the Awards here, are not enforceable under the Tucker Act because they do not confer a direct and tangible benefit to the Government.”).

⁴⁶ *Pacito v. Trump*, No. 25-1313, 2026 WL 620449 (9th Cir. Mar. 5, 2026).

“procurement contracts.”⁴⁷ From those definitions, the court explained that “the difference between a procurement contract and a grant or cooperative agreement is whether the United States Government receives a direct benefit from the arrangement: If it does, then the arrangement is a procurement contract; if not, it is a cooperative agreement or a grant.”⁴⁸ The court held that the Tucker Act did not apply given that the defendant agency “made a deliberate choice to proceed by cooperative agreement and not by contract.”⁴⁹

Pacito did not squarely reconcile its holding that cooperative agreements are not “contracts” for Tucker Act purposes with *California* and *NIH*. Instead, the majority distinguished *California* and *NIH* on the ground that a portion of the relief in those cases instead sought “backpay of funds or a guarantee of continued funding.”⁵⁰ The latter distinction appears to refer to the fact that the district court did not directly order reinstatement of every terminated award, unlike in *NIH* and *California*, but instead required the government “to reinstate such cooperative agreements necessary to provide” statutorily required resettlement services.⁵¹ The court did not elaborate on that distinction, however, and the bulk of its reasoning was far broader in holding that the cooperative agreements simply were not contracts.

As of the time of this writing, the government’s deadlines to petition for rehearing en banc or certiorari in *Pacito* remain pending. But for as long as *Pacito* remains precedential in the Ninth Circuit, litigants challenging grant and cooperative agreement terminations might strongly consider filing suit there.

D. Plaintiffs Other than the Prime Awardees

Finally, some courts have held that the Tucker Act does not preclude district court challenges to award terminations that are brought by parties other than the prime recipients of the awards, such as beneficiaries of the programs or subrecipients of the prime awardees.

⁴⁷ *Id.* at *18 (citing 31 U.S.C. §§ 6301–08).

⁴⁸ *Id.*

⁴⁹ *Id.* at *19.

⁵⁰ *Id.* at *21.

⁵¹ *Id.* at *30.

In *Community Legal Services in East Palo Alto v. Department of Health & Human Services*, the Ninth Circuit appeared to hold that the Tucker Act does not preclude subcontractors and other nonparties to the relevant agreement with the government from challenging a termination in district court.⁵² The Court explained that generally only parties to a contract with the federal government may sue in the Court of Federal Claims, and therefore subcontractors such as the plaintiffs in that case could not challenge the terminations there. If they also could not sue in district court, that “would mean that no court has jurisdiction to hear plaintiffs’ claims.”⁵³ The court rejected that outcome as “contrary to common sense” and quoted a prior D.C. Circuit opinion that “categorically 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.”⁵⁴

The Ninth Circuit, however, seemed to subsequently depart from this holding. In *Thakur v. Trump*, a district court relied on *Community Legal Services* to hold that researchers who benefited from grants but were not parties to them could bring APA challenges to the grant terminations.⁵⁵ But the Ninth Circuit stayed the district court’s preliminary injunction, holding that *NIH* foreclosed jurisdiction over the researchers’ APA claims.⁵⁶ The court curiously made no mention of *Community Legal Services*, even though the plaintiffs had raised it in stay briefing and the district court had relied upon it. The precedential status of *Community Legal Services* in the Ninth Circuit therefore is unclear.

In other jurisdictions, several district courts have held similarly to *Community Legal Services* that nonparties to an award may bring an APA challenge to its termination. For instance, in *Cabrera v. Department of Labor*,⁵⁷ a judge on the U.S. District Court for the District of Columbia (Judge Friedrich, appointed by President Trump) held that participants in the Job Corps program could challenge the shuttering of Job Corps centers that operated through agreements with the agency. The court held that the Tucker Act did not apply because “the plaintiffs [were] not party to any contract with” the Department of Labor and could not “assert rights arising out of DOL’s operator

⁵² 137 F.4th 932, 939 (9th Cir. 2025).

⁵³ *Id.*

⁵⁴ *Id.* (quoting *Tootle v. Sec’y of Navy*, 446 F.3d 167, 176 (D.C. Cir. 2006)).

⁵⁵ 800 F. Supp. 3d 1044, 1063 (N.D. Cal. 2025), *appeal pending*, No. 25-7342 (9th Cir.).

⁵⁶ *Thakur v. Trump*, 163 F.4th 1198, 1203–04 (9th Cir. 2025).

⁵⁷ 792 F. Supp. 3d 91 (D.D.C. 2025).

contracts.”⁵⁸ The court explained that “[w]hile that may result in DOL’s performance of contractual duties to parties other than the plaintiffs, that indirect result does not render the relief plaintiffs seek contractual.”⁵⁹ A judge on the U.S. District Court for the Southern District of New York recently reached a similar holding when New York and New Jersey sued over the administration’s suspension of funding for the Hudson Tunnel Project.⁶⁰

Although, as with much in this fast-developing area of the law generally, the legal landscape around this pathway to suing in district court remains uncertain, nonparties to awards might find success in challenging award terminations. Program beneficiaries in particular might make strong candidates for this strategy, if the elimination of grants or other awards significantly injures the beneficiaries and they have no other forum in which they could sue.

IV. CONCLUSION

The Supreme Court’s shadow docket orders in *NIH* and *California* have no doubt complicated potential paths to recovery for those challenging the administration’s terminations of federal awards, but several remain open.

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⁵⁸ *Id.* at 100.

⁵⁹ *Id.* at 101.

⁶⁰ *New Jersey v. Dep’t of Transportation*, No. 26-CV-00939 (JAV), 2026 WL 323341, at *1 (S.D.N.Y. Feb. 6, 2026),