UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ATI GOVERNMENT SOLUTIONS, LLC, et al., Plaintiffs, v. UNITED STATES SMALL BUSINESS ADMINISTRATION, at al., Defendants.	Civil Action No. 26-3693 (ACR)

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION AND MEMORANDUM IN SUPPORT THEREOF

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Defendants, the Small Business Administration, and Kelly Loeffler, in her official capacity as Administrator of the Small Business Administration (collectively, the "SBA"), respectfully submit this opposition to Plaintiffs' motion for preliminary relief.[1]

BACKGROUND

I. The Section 8(a) Program

Congress enacted the Small Business Act of 1953 ("the Act"), 15 U.S.C. § 631 *et seq.*, to "aid, counsel, assist and protect . . . the interests of small-business concerns in order to preserve free competitive enterprise" and to ensure a "fair proportion" of government contracts go to eligible small businesses. 15 U.S.C. § 631(a). The Act establishes several programs to aid small businesses, including the program at issue here, the 8(a) Business Development Program ("8(a) program"). *id.* §§ 636(j)(10), 637(a).

Through the 8(a) program, SBA provides contract, financial, technical, and management assistance to promote the business development and competitive viability of eligible small businesses. *See id.* § 631(f)(2). Generally, eligibility for the 8(a) program is limited to small businesses that are unconditionally owned and controlled by one or more socially and economically disadvantaged individuals. The Act further authorizes eligibility for small businesses owned and controlled by economically disadvantaged Indian tribes or a wholly owned business entity of the tribe. *id.* §§ 637(a)(4); 637(a)(13). Indian tribes generally do not participate directly in the 8(a) program. Instead, tribally owned businesses that are at least fifty-one percent owned by a federally recognized tribe may participate in the program.

Just as the Act authorizes SBA to set aside certain contracts for small businesses in general, it also authorizes SBA to enter into contracts with other federal agencies and to provide access to

[1] Pin cites are to the ECF-generated page numbers appearing in the top, right of each page.

these contracts to 8(a) program participants. *See id.* § 637(a)(1); 13 C.F.R. § 124.501(a). Contracts awarded through the 8(a) program may either be awarded competitively with other program participants or may be reserved for a particular firm (*i.e.*, sole source awards). *See* 13 C.F.R. § 124.501(b). Participation in the 8(a) program is limited to a maximum of nine years, *see* 13 C.F.R. § 124.2, but participants will graduate from the program (and thus lose eligibility for preferential contracting) earlier if they meet certain business achievements. *See* 13 C.F.R. § 124.302(a)(1)-(2). Program participants must certify annually that they continue to meet program requirements and must provide financial and other information to allow the SBA to verify the participant's continued eligibility. *See* 15 U.S.C. § 637(a)(4)(C), (6)(B); 13 C.F.R. § 124.112.

II. Regulations Regarding FAR Suspensions From Federal Contracting During Investigations.

Federal Acquisition Regulation ("FAR") Subpart 9.4 governs the procurement suspension and debarment process, which the SBA uses to protect the government by excluding non-responsible contractors from federal procurement. *See* 48 C.F.R. Part 9 Subpart 9.4. Suspension is imposed on the basis of adequate evidence, pending the completion of an investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the government's interest. *Id.* § 9.407-1(b)(1). FAR 9.406-2 and 9.407-2 list the reasons for which a contractor may be debarred or suspended, respectively.

The FAR also establishes the process to protect a contractor's rights while an agency considers debarment or suspension. *See* 48 C.F.R §§ 9.406-3, 9.407-3. The FAR further provides that the period of suspension is a "temporary period pending the completion of an investigation and any ensuing legal proceedings, unless sooner terminated by the suspending and debarring official or as provided in this section." *Id.* § 9.407-4(a). And "[i]f legal proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be

terminated unless an office of a U.S. Assistant Attorney General, U.S. Attorney, or other responsible prosecuting official requests its extension, in which case it may be extended for an additional 6 months. In no event may a suspension extend beyond 18 months, unless legal proceedings have been initiated within that period." *Id.* § 9.407-5(b). "The suspending and debarring official shall notify the Department of Justice or other responsible prosecuting official of the proposed termination of the suspension, at least 30 days before the 12-month period expires, to give that official an opportunity to request an extension on the Government's behalf." *Id.* § 9.407-5(c).

III. Facts of This Case

On October 20, 2025, SBA took notice of video testimony by an upper-level employee of an 8(a) contractor claiming that Plaintiffs were in violation of 8(a) program rules. *See* "Pass-Throughs", "Shell-Companies", & $100 Billion Federal Contracting Scam | O'Keefe Media Group, https://www.youtube.com/watch?v=B_CtRCLaSbY (last visited on Nov. 5, 2026). SBA promptly acted to protect the Government's interest in the 8(a) program's integrity by suspending Plaintiffs from government wide contracting under FAR 9.407 and the 8(a) program under 13 C.F.R. § 124.305. Prelim Inj. Mot. Ex. 1, FAR Suspension Letter (Dkt. 13-3); Prelim Inj. Mot. Ex. 2, 8(a) Suspension Letter (Dkt. 13-4).

Thereafter, SBA conducted an investigation of the grounds for the FAR suspension as permitted by FAR regulations, including requesting and reviewing voluminous documentation, as well as holding in-person meetings with ATI and ATI counsel. [redacted]

[redacted].[2] On that same date, which was also the date the suspension was set to expire, SBA notified ATI that the suspension would be extended for an additional six months from October 21, 2026, pursuant to Federal Acquisition Regulation 9.407-4(b).

LEGAL STANDARDS

"The standard for obtaining either a [temporary restraining order] or a preliminary injunction is identical." *Martinez-Andino v. Dep't of Homeland Sec.*, Civ. A. No. 26-1208 (BAH), 2026 WL 1801137, at *7 (D.D.C. Jun. 23, 2026) (quoting *Dellinger v. Bessent*, No. 25-5028, 2025 WL 559669, at *3 (D.C. Cir. Feb. 15, 2025) (citing *Gordon v. Holder*, 632 F.3d 722, 723–24 (D.C. Cir. 2011))).

A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). To obtain such emergency relief, the movant must show that (1) "he is likely to succeed on the merits"; (2) "he is likely to suffer irreparable harm in the absence of preliminary relief"; (3) "the balance of equities tips in his favor"; and (4) "an injunction is in the public interest." *Id.* at 20. The latter two factors "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). A "court must be persuaded as to all four factors." *Scottsdale Capital Advisors Corp. v. Fin. Indus. Regul. Auth. Inc.,* 678 F. Supp. 3d 88, 100 (D.D.C. 2023). "The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held" and it is "generally inappropriate for

[2] Consistent with the Court's permission, Defendants file certain parts of this opposition *ex parte* and under seal. Contemporaneously with the filing of this *ex parte*, sealed opposition, Defendants also file on the public docket a redacted version, which will be accessible to Plaintiffs and the public. Those parts of the opposition filed on the public docket that have been redacted appear in the sealed, *ex parte* version in yellow color.

a federal court at the preliminary injunction stage to give a final judgment on the merits." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 397 (1981).

It is unclear whether Plaintiffs assert that those factors are not evaluated on a "sliding scale," or some version thereof. Prelim Inj. Mem (Dkt. 13-1) at 24. Before *Winter*, courts weighed those factors on the movant-friendly "sliding scale," allowing "an unusually strong showing on one of the factors" to overcome a weaker showing on another. *Damus v. Nielsen*, 313 F. Supp. 3d 317, 326 (D.D.C. 2018) (quoting *Davis v. Pension Ben. Guar. Corp.*, 571 F.3d 1288, 1291-92 (D.C. Cir. 2009)). Following *Winter*, courts have recognized that the sliding scale approach is no longer viable and that each of the factors is now an "independent, free-standing requirement." *Sherley v. Sebelius*, 644 F.3d 388, 392-93 (D.C. Cir. 2011); *see also Singh v. Carter*, 185 F. Supp. 3d 11, 16-17 (D.D.C. 2016) (sliding scale approach is "highly questionable," and a plaintiff "bears the burden of persuasion on all four preliminary injunction factors"). Therefore, the Court may not use the "sliding scale" analysis to grant Plaintiffs' emergency relief request because "[t]he default rule is that a plaintiff seeking a preliminary injunction must make a clear showing" as to each *Winter* element. *Starbucks Corp. v. McKinney*, 602 U.S. 339, 346 (2024). The D.C. Circuit has not had occasion to conclusively decide whether that sliding scale survives *Winter* and *Nken* but has denied preliminary relief where the movant could not satisfy even the sliding scale approach. *See Make the Road New York v. Mullin*, 179 F.4th. 16, 25 (D.C. Cir. 2026) ("Nor do we need to decide so today because Make the Road has not satisfied the more movant-friendly, sliding-scale standard."); *see also Davis*, 571 F.3d at 1292 (We need not decide whether a stricter standard applies, because the pilots fail even under the "sliding scale" analysis of *Davenport*."). Thus, the Court could deny Plaintiffs' motion if it finds that they do not satisfy the "sliding scale" approach.

If the Court concludes that a claim fails as a matter of law, on a point of jurisdiction or merits, then a preliminary injunction is inappropriate. *See United States Ass'n of Reptile Keepers, Inc. v. Zinke*, 852 F.3d 1131, 1135 (D.C. Cir. 2017). Indeed, if the Court "concludes that it lacks subject-matter jurisdiction, the court must dismiss the complaint in its entirety." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006). Further, because preliminary injunctions are not "awarded as of right," but "[a]s a matter of equitable discretion, a preliminary injunction does not follow as a matter of course from a plaintiff's showing of a likelihood of success on the merits." *Benisek v. Lamone*, 585 U.S. 155, 158 (2018). A showing of a strong likelihood of success on the merits still leads to the denial of preliminary injunctive relief where the party fails to make a sufficient showing of irreparable injury. *CityFed Fin. Corp. v. Off. of Thrift Supervision*, 58 F.3d 738, 747 (D.C. Cir. 1995); *see also Huisha-Huisha v. Mayorkas*, 27 F.4th 718, 733 (D.C. Cir. 2022) ("Because the Plaintiffs are likely to succeed on the merits of their § 1231 claims, we apply the other preliminary injunction factors to decide whether the Plaintiffs are entitled to relief on those claims").

And where, as here, a party "seeks a mandatory injunction—to change the status quo through action rather than merely to preserve the status quo—typically the moving party must meet a higher standard than in the ordinary case: the movant must show 'clearly' that [he] is entitled to relief or that extreme or very serious damage will result." *Farris v. Rice*, 453 F. Supp. 2d 76, 78 (D.D.C. 2006); *Pantoja v. Martinez*, No. 21-7118, 2022 WL 893017, at *1 (D.C. Cir. 2022) (per curiam) (characterizing an injunction that would reinstate the plaintiff in prior leadership roles as a "mandatory preliminary injunction ... requir[ing] a higher standard than an ordinary preliminary injunction"); *but see League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 7 (D.C. Cir. 2016) (rejecting distinction between a mandatory and prohibitory injunction).

ARGUMENT

I. Plaintiffs are Unlikely to Succeed on the Merits.

A. This Court Lacks Subject-Matter Jurisdiction.

1. The Small Business Act Precludes the Injunctive Relief Plaintiffs Seek.

Among the four types of relief Plaintiffs ask in their complaint is an order "preliminarily and permanently lifting the suspensions imposed on Plaintiffs under FAR 9.407 and prohibiting SBA from engaging in any activities that constitute de facto debarment of Plaintiffs." Compl. (Dkt. 1) at 60 (Prayer for Relief). They base their request for preliminary relief solely on that prayer for relief; specifically, Plaintiffs ask this Court for a preliminary injunction pursuant to Federal Rule of Civil Procedure ("Rule") 65 to (1) lift Plaintiffs' suspension from federal contracting, and (2) prohibit the SBA from suspending or debarring Plaintiffs "for any reason." Prelim Inj. Mot. (Dkt. 13) at 2.

The Small Business Act precludes that relief. *See* 15 U.S.C. § 634(b)(1). Section 634(b)(1) provides in relevant part that "no . . . injunction . . . mesne or final, shall be issued against the Administrator[.]" *Id*. By its plain terms, the statute prohibits "mesne or final" "injunctions." The Court need to do much "to conclude that with regard to the particular dispute in this case, the statute's language has a plain and unambiguous meaning." *Rutherfold v. United States*, 608 U.S. 454, 473 (2026). Section 634(b)(1) plainly "prohibits injunctive relief against 'the Administrator or his property.'" *Valley Forge Flag Co., Inc. v. Kleppe*, 506 F.2d 243, 245 (D.C. Cir. 1974); *see also J.C. Driskill, Inc. v. Abdnor*, 901 F.2d 383, 386 (4th Cir. 1990) ("[C]ourts have no jurisdiction to award injunctive relief against the SBA."); *Enplanar, Inc. v. Marsh*, 11 F.3d 1284, 1290 (5th Cir. 1994) (§ 634(b)(1) "precludes injunctive relief against the SBA"); *Expedient Srvs, Inc. v. Weaver*, 614 F.2d 56, 58 (5th Cir. 1980) ("a suit praying solely for injunctive relief against the Administrator is barred by the language of section 634(b)(1)").

Plaintiffs' attempt to sidestep § 634(b)(1) fails. First, some courts have recognized an exception to that general prohibition on injunctive relief where "the SBA exceeds its statutory authority." *Am. Ass'n of Political Consultants v. SBA*, 613 F. Supp. 3d 360, 369 (D.D.C. 2020). Even assuming such exception applies, Plaintiffs here challenge their suspension, not that the SBA lacks the authority to suspend a government contractor. While Plaintiffs allege that their suspension was contrary to law, they do not identify any statutory provision that the SBA violated. Compl. (Dkt. 1) ¶¶ 206-13. Nor do they assert that exception in their motion. *See* Prelim. Inj. Mem. (Dkt. 13-1) at 24-28.

Plaintiffs instead cite to *Oklahoma Aerotronics, Inc. v. United States*, 661 F.2d 976 (D.C. Cir. 1981), as "instructive," Prelim. Inj. Mem. (Dkt. 13-1) at 26, and argue that "§ 634(b)(1) is irrelevant when a plaintiff seeks to overturn arbitrary and capricious agency action under the APA," *id*. at 27. *Oklahoma Aerotronics* is inapposite because it did not involve an injunction; it involved vacatur of a suspension and remand to the SBA "for further consideration." *Oklahoma Aerotronics*, 661 F.2d at 978. While the D.C. Circuit acknowledged that the effect of its decision was "to restore [the plaintiff] to its status as an incumbent in the 8(a) program," the court also noted it "expressed no opinion as to how the SBA should treat [the plaintiff's] application" or the conclusion it should reach. *Id*. at 978. In other words, the court awarded the usual remedy available under the APA: vacatur of the challenged agency action. *See* 5 U.S.C. § 706 (providing that "[t]he reviewing court shall . . . set aside agency action . . . found to be . . . arbitrary [or] capricious"); *Am. Bioscience, Inc. v. Thompson*, 269 F.3d 1077, 1084 (D.C. Cir. 2001) (a successful APA plaintiff "is entitled to relief under that statute, which normally will be a vacatur"). Plaintiffs' extrapolation that a court's authority under the APA also affords that court the power to

issue an injunction contrary to § 634(b)(1) fundamentally misunderstands the differences between injunctions and stays.

The Supreme Court has explained that "an injunction and a stay have typically been understood to serve different purposes." *Nken*, 556 U.S. at 428. When the court issues an injunction, the "court tells someone what to do or not to do." *Id*. The court "does so with the backing of its full coercive powers." *Id*. "By contrast, instead of directing the conduct of a particular actor, a stay operates upon the judicial proceeding itself." *Id*. "It does so either by halting or postponing some portion of the proceeding, or by temporarily divesting an order of enforceability." *Id*. And while both an injunction and a stay "can have the practical effect of preventing some action before the legality of that action has been conclusively determined," "a stay achieves this result by temporarily suspending the source of authority to act—the order or judgment in question—not by directing an actor's conduct." *Id*. at 428-29.

More recently, the D.C. Circuit explained that a provision in the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., similarly prohibiting injunctive relief "does not bar vacatur – the permanent elimination of an agency rule." *Make the Road*, 179 F.4th at 31-32 (citing 8 U.S.C. § 1252(f)(1)). Nobody disputes that the Court may, pursuant to the APA, review and set aside the agency actions here. It follows, then, that the Court may "issue[] a stay under § 705 to suspend the directives' legal force pending review — all without formally coercing any party's behavior." *Id*. at 33. But Plaintiffs here have not asked for a § 705 stay; they explicitly ask this Court for an injunction "[p]ursuant to Federal Rule of Civil Procedure 65 and Local Civil Rule 65.1" requiring the SBA to lift Plaintiffs' suspension and "prohibiting Defendants from suspending or de facto debarring Plaintiffs for any reason[.]" Prelim Inj. Mot. (Dkt. 13) 1-2. "In our adversarial system of adjudication, we follow the principle of party presentation." *United States*

v. Sineneng-Smith, 590 U.S. 371, 375 (2020). That system relies "on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." *Id*. (citation modified). In that system, "litigation strategy and judgment" have "consequence[s]." *Lykins v. Rose*, 608 F. Supp. 693, 696 (D.D.C. 1984). Plaintiffs here have chosen the relief they wish to seek and not to seek—they ask for a preliminary injunction and not a § 705 stay. Section 634(b)(1) bars that relief.

2. Plaintiffs Lack Standing to Challenge the Initial Suspension Notices.

A federal court's jurisdiction is limited only to "Cases" and "Controversies." U.S. Const. art. III, § 2. A case or controversy exists only if a plaintiff meets the "three elements" of "the irreducible constitutional minimum of standing": (1) "the plaintiff must have suffered an injury in fact"; (2) "there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court"; and (3) "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992) (citation modified). Importantly, standing is "not dispensed in gross." *Davis v. FEC*, 554 U.S. 724, 734 (2008) (quotation marks omitted). "Rather, plaintiffs must demonstrate standing for each claim that they press and for each form of relief that they seek (for example, injunctive relief and damages)." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021).

Plaintiffs seek an injunction "lifting the suspensions imposed on Plaintiffs under FAR 9.407." Compl. (Dkt. 1) at 60. By their telling, there are two relevant decisions: (1) the "FAR Suspension Notice," issued by the SBA on October 21, 2025, suspending "ATI and its executives," Compl. (Dkt. 1) ¶ 18 (defining the term "FAR Suspension Notice" for purposes of the Complaint), and (2) the October 21, 2026, extensions by six months, *id*. ¶¶ 38-39. "But for the plaintiffs to

establish standing, they must show that their injuries would likely be redressed by the order *requested*." *Coalition for Humane Rights v. Mullin*, 185 F.4th 1275, 1282-83 (D.C. Cir. 2026). Here, they do not explain how setting aside or enjoying the October 21, 2025, suspension in any way redresses their purported injuries, nor can they. That initial suspension ended on October 21, 2026, twelve months after the initial suspension. 48 C.F.R. § 9.407-4(b). That order has expired and there is nothing for this Court on vacate or enjoin.

More, according to Plaintiffs' allegations in the complaint, the current suspension is on account of an October 21, 2026, request from "an office of a U.S. Assistant Attorney General, U.S. Attorney, or other responsible prosecuting official." Compl. (Dkt. 1) ¶¶ 38-39. As a result, vacating the initial suspensions would do nothing to alleviate Plaintiffs' current alleged injuries; only vacating the October 21, 2026, order would lift SBA's suspension. As a result, Plaintiffs cannot establish redressability with respect to the initial suspensions; they can only do so with respect to the October 21, 2026, extension.

B. Plaintiffs' Claims Are Unlikely to Succeed on the Merits.

1. Plaintiffs' APA Claims Fail.

Plaintiffs bring four APA claims, Compl. (Dkt. 1) ¶¶ 190-219. They argue they will likely succeed on the merits of those APA claims because (1) the suspensions do not rest on adequate evidence, Prelim. Inj. Mem. (Dkt. 13-1) at 31-36, (2) the SBA improperly failed to consider exonerating evidence, *id*. at 36-40, and (3) the SBA has treated Plaintiffs differently than other similarly situated government contractors, *id*. at 40-43.

The APA permits a reviewing court to set aside an agency action only if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). "[T]he scope of review under the arbitrary and capricious standard is narrow and a court is not to substitute its judgment for that of the agency." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto.*

Ins. Co., 463 U.S. 29, 43 (1983). Under the APA standard of review, an agency's decision need not be "a model of analytic precision to survive a challenge." *Dickson v. Sec'y of Def.*, 68 F.3d 1396, 1404 (D.C. Cir. 1995). "A reviewing court will 'uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned.'" *Id*. (citing *Bowman Transp., Inc. v. Arkansas-Best Freight Sys., Inc.*, 419 U.S. 281, 286 (1974)). It is sufficient if an agency's explanation of its decision contains "a rational connection between the facts found and the choices made." *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43. In addition, "if the necessary articulation of basis for administrative action can be discerned by reference to clearly relevant sources other than a formal statement of reasons, [the Court] will make the reference." *See, e.g.*, *Miller v. Lehman*, 801 F.2d 492, 497 (D.C. Cir. 1986) (internal quotation marks omitted). The "arbitrary and capricious" standard of the APA review asks whether the agency's actions meet a basic standard of reasonableness. *See, e.g.*, *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council*, 462 U.S. 87, 105 (1983); *Consolo v. Fed. Maritime Comm*., 383 U.S. 607, 619–620 (1966). The dispositive question therefore is whether the agency's "decision was based on a consideration of relevant factors and whether there has been a clear error of judgment." *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971).

Plaintiffs readily concede that their continued suspension is on account of a request by a prosecuting authority.[3] Compl. (Dkt. 1) ¶¶ 173-74. They state that on October 21, 2026, the "SBA informed Plaintiffs that the FAR Suspension against Plaintiffs would be extended for an additional six months, citing FAR 9.407-4(b)." *Id*. ¶ 173. The regulation plainly contemplates a six-month extension under these circumstances. 48 C.F.R. § 9-407-4(b). As the notification explains, the

[3] In support of their request for an extension of time, and with leave of the Court, Defendants submitted an *ex parte* sealed filing providing the Court with more information related to this allegation. Dkt. 17-1.

SBA extended the suspension "for an additional 6 months from October 21, 2025 pursuant to Federal Acquisition Regulation 9.407-4(b)." Ex. 1, Suspension Extension (attached hereto). Plaintiffs clearly understand the meaning of § 9.407-4(b). Compl. (Dkt. 1) ¶ 174-75. At bottom, that notification sufficiently "articulated a rational connection between the facts found and the choice[s] made." *Kisser v. Cisneros,* 14 F.3d 615, 619 (D.C. Cir. 1994).

Plaintiffs allege that "there is no evidence (and there never was any evidence) to support the SBA's continued suspension, there is no evidence to justify any [Department of Justice] investigation" and "on information and belief, Plaintiffs understand that the [Department of Justice] capitulated to a request from SBA personnel to issue such a request in order to create a pretext to extend the suspension period." Prelim. Inj. Mem. (Dkt. 13-1) at 22. Plaintiffs in effect ask this Court to enjoin any such investigation that may or may not be ongoing. *See* Proposed Order (Dkt. 13-17) at 2 ("It is further ORDERED that the Defendants, together with their officers, agents, servants, employees, and attorneys, and anyone acting in concert with them, are hereby ENJOINED from engaging in any activities which would have the effect of *de facto* debarment or otherwise preventing Plaintiffs from receiving federal contract awards of the Plaintiffs." (emphasis in original)). Put differently, Plaintiffs allege that but for a purported Department of Justice investigation, there is no basis for the SBA to continue Plaintiffs' suspension from government contracting.[4]

4 [redacted]

The Executive "has exclusive authority and absolute discretion to decide whether to prosecute a case." *United States v. Nixon*, 418 U.S. 683, 693 (1974) (citation modified); *see also Heckler v. Chaney*, 470 U.S. 821, 831 (1985) ("This Court has recognized on several occasions over many years that an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion."). "It follows, as an incident of the constitutional separation of powers, that the courts are not to interfere with the free exercise of the discretionary powers of the attorneys of the United States in their control over criminal prosecutions." *United States v. Cox*, 342 F.2d 167, 171 (5th Cir. 1965) (en banc). Accordingly, "[i]t is a sound and well-established principle that a court should not exercise its equitable powers to interfere with or enjoin an ongoing criminal investigation." *Manafort v. Dep't of Just.*, 311 F. Supp. 3d 22, 26 (D.D.C. 2018); *see also Deaver v. Seymour*, 822 F.2d 66, 71 (D.C. Cir. 1987) (a party "cannot, by bringing ancillary equitable proceedings, circumvent federal criminal procedure"). "[A] party seeking to enjoin a [federal] criminal investigation bears an almost insurmountable burden." *LaRouche v. Webster*, 566 F. Supp. 415, 417 (S.D.N.Y. 1983) ("it is not the function of the courts to review the wisdom of the prosecutor's decision to investigate").

Consistent with these settled principles, courts have refrained from enjoining federal prosecutions except in narrow circumstances where the threatened prosecution is shown to unconstitutionally chill the exercise of First Amendment rights, typically because the threatened prosecution is based on a statute that restricts free expression. *See*, *e.g.*, *United States v. Stone*, 394 F. Supp. 3d 1, 15 (D.D.C. 2019) (observing that the Supreme Court has generally upheld injunctions to restrain criminal proceedings "only where the threatened prosecution chilled exercise of First Amendment rights," but noting that "here, defendant is not being prosecuted for

violating a law that specifically restricts free expression" (citation modified)); *accord Dombrowski v. Pfister*, 380 U.S. 479, 486 (1965) ("[a] criminal prosecution under a statute regulating expression usually involves imponderables and contingencies that themselves may inhibit the full exercise of First Amendment freedoms"); *Lindell v. United States*, 639 F. Supp. 3d 853, 875 (D. Minn. 2022) (civil action to enjoin a criminal investigation was improper, in part because "[t]his case does not present the typical exception . . . where Plaintiffs are challenging their prosecution for violating a speech-restricting criminal statute"), *aff'd in relevant part*, 82 F.4th 614 (8th Cir. 2023). Plaintiffs here do not bring a First Amendment challenge; they instead assert four APA claims, Compl. (Dkt. 1) ¶¶ 190-219, and a Fifth Amendment Due Process claim, *id*. ¶¶ 220-49. This case, therefore, does not fit within the narrow exception permitting collateral attack on an Executive's purported ongoing investigation.

The Court should decline Plaintiffs' invitation to do so here.

2. Plaintiffs' Due Process Claim Fails.

Plaintiffs assert a due process claim. Compl. (Dkt. 1) ¶¶ 220-49. They argue they have a liberty interest in being "free from the stigmatizing effects of a suspension, particularly where the suspension is premised on accusations of dishonesty and fraud, without being afforded an opportunity to clear its name. Prelim. Inj. Mem (Dkt. 13-1) at 43. As explained above, Plaintiffs allege that their suspension was extended due a request by "an office of a U.S. Assistant Attorney General, U.S. Attorney, or other responsible prosecuting official." Compl. (Dkt. 1) ¶ 39. That extension is plainly permissible under the regulation. Plaintiffs point to nothing requiring advance notice before the government temporarily suspends a government contractor pursuant to § 9.407.4.

II. Plaintiffs Have Not Established Irreparable Harm.

Plaintiffs fail to demonstrate it will suffer irreparable harm absent injunctive relief. "[T]he degree of proof required for 'irreparable harm' is 'high,' and . . . a failure to surmount it provides

'grounds for refusing to issue a preliminary injunction, even if the other three factors entering the calculus merit such relief.'" *California Valley Miwok Tribe v. Haaland*, Civ. A. No. 24-0947 (TSC), 2024 WL 4345787, at *3 (D.D.C. Sept. 30, 2024) (quoting *Olu-Cole v. E.L. Haynes Pub. Charter Sch.*, 930 F.3d 519, 529 (D.C. Cir. 2019)). To meet the "high standard for irreparable injury," the D.C. Circuit has required a movant to show that the injury is "both certain and great; it must be actual and not theoretical," and that "[t]he injury complained of is of such imminence that there is a 'clear and present' need for equitable relief to prevent irreparable harm." *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297 (D.C. Cir. 2006) (emphasis in original) (quoting *Wisc. Gas Co. v. F.E.R.C.*, 758 F.2d 669, 674 (D.C. Cir. 1985) (per curiam)).

Importantly, the movant must "substantiate the claim that irreparable injury is 'likely' to occur." *Id.* "Bare allegations of what is likely to occur are of no value since the court must decide whether the harm will in fact occur." *Id.* Rather, "[t]he movant must provide proof that the harm has occurred in the past and is likely to occur again, or proof indicating that the harm is certain to occur in the near future." *Id.* Thus, where the movant has premised its motion "upon unsubstantiated and speculative allegations of [redressable] injury," the court must deny the motion. *Id.* Courts in this Circuit "must faithfully and fairly apply that standard in all cases, regardless of how high the stakes or how worthy the cause." *All. for Retired Americans v. Bessent*, 770 F. Supp. 3d 79, 111 (D.D.C. 2025) (quoting *Standing Rock Sioux Tribe v. Army Corps of Eng'rs*, 205 F. Supp. 3d 4, 34 (D.D.C. 2016)).

Plaintiffs frame their alleged irreparable harm in purely economic terms. Prelim. Inj. Mem. (Dkt. 13-1) at 49-51. It is "well settled that economic loss does not, in and of itself, constitute irreparable harm," *Wis. Gas Co.*, 758 F.2d at 674, unless the economic loss "threatens the survival of the movant's business." *Nat'l Min. Ass'n v. Jackson*, 768 F. Supp. 2d 34, 50 (D.D.C. 2011)

(citing *Power Mobility Coal. v. Leavitt,* 404 F. Supp. 2d 190, 204 (D.D.C. 2005)); *see also Air Transp. Ass'n of Am., Inc. v. Exp.-Imp. Bank of the United States*, 840 F. Supp. 2d 327, 335 (D.D.C. 2012) ("The first hurdle Plaintiffs face is that the harms they identify are economic in nature and therefore not generally irreparable."). "Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a" preliminary injunction "are not enough" to show irreparable harm. *Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958).

Plaintiffs here allege that (1) "ATI's contracts were terminated, comprising over 90% of its monthly revenue" and (2) "[n]early all of ATI's 67 employees have been laid off while the companies sit stagnant, unable to compete for the work that they are specifically designed to perform." PI Mem. (Dkt. 13-1) 49. In support, Plaintiffs cite only two paragraphs in their complaint. *Id*. (citing Compl. (Dkt. 1) ¶¶ 89, 229). Indeed, Plaintiffs' entire irreparable harm discussion is based solely on the allegations in the Complaint. *Id*. at 50 (citing Compl. (Dkt. 1) ¶¶ 119, 136-40, 145-46). Plaintiffs have not submitted any affidavit, declaration, or other evidence to substantiate their allegations. That is inadequate to warrant this Court's exercise of the extraordinary power to issue a preliminary injunction.

Establishing "irreparable harm sufficient to justify injunctive relief . . . is a considerable burden, requiring proof . . . [for] a clear and present need for extraordinary equitable relief to prevent harm." *GEO Specialty Chemicals, Inc. v. Husisian*, 923 F. Supp. 2d 143, 147 (D.D.C. 2013) (citing *Power Mobility Coal.,* 404 F. Supp. 2d at 204. "Bare allegations of what is likely to occur are of no value since the court must decide whether the harm will *in fact* occur." *Wisc. Gas Co.*, 758 F.2d at 674 (emphasis in original). "Where," as here, "the injuries alleged are purely financial or economic, the barrier to proving irreparable injury is higher still, for it is well settled

that economic loss does not, in and of itself, constitute irreparable harm." *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d. 544, 555 (D.C. Cir. 2015). Indeed, "[t]he movant must provide proof that the harm has occurred in the past and is likely to occur again, or proof indicating that the harm is certain to occur in the near future." *Wisc. Gas Co*., 758 F.2d at 674. But "a conclusory allegation contained in an unverified complaint is insufficient to support a motion for a preliminary (or permanent) injunction." *Angelo v. Dist. of Columbia*, 648 F. Supp. 3d 116, 132 (D.D.C. 2022) (citing *Food & Water Watch, Inc. v. Vilsak,* 808 F.3d 905, 913 (D.C. Cir. 2015)). The "moving party must provide factual support for its argument to obtain a preliminary injunction." *Clevinger v. Advocacy Holdings, Inc.*, Civ. A. No. 23-1159 (JMC), 2023 WL 4560839, at *5 (D.D.C. Jul. 15, 2023); *see also Standing Rock Sioux Trive v. Army Corps of Eng'rs*, 540 F. Supp. 3d 45, 57 (D.D.C. 2021) ("Bare allegations to that effect are of no value; a court, rather, requires affirmative proof of likelihood and imminence." (citation modified)); *Nat'l Council of Agricultural Employees v. Dep't of Labor*, Civ. A. No. 22-3569 (RC), 2023 WL 2043149, at *7 n.9 (D.D.C. Feb. 16, 2023) (questioning whether "spare factual underpinning" contained in a declaration "substantiated" the "alleged losses" (citation modified)); *Sagarwala v. Cissna*, Civ. A. No. 18-2860 (RC), 2019 WL 1649943, at *3 (D.D.C. Apr. 16 2019) (denying preliminary injunction where the plaintiff "provided virtually no specific factual information to substantiate her claim" of irreparable harm). Plaintiffs here offer no proof to substantiate their conclusory allegations contained in the complaint, meaning they have failed to carry their burden of establishing irreparable harm.

Finally, Plaintiffs' delay in seeking injunctive relief serves to underscore their lack of irreparable harm. *See Fund for Animals v. Frizzell*, 530 F.2d 982, 987 (D.C. Cir. 1975) (per curiam) (finding that a 44-day delay in seeking injunctive relief was inexcusable and bolstered the finding of no irreparable harm); *see also Mylan Pharms., Inc. v. Shalala*, 81 F. Supp. 2d 30, 44

(D.D.C. 2000) (delay in bringing action "militates against a finding of irreparable harm"); *Biovail Corp. v. FDA*, 448 F. Supp. 2d 154, 165 (D.D.C. 2006) ("The delay in filing this suit further undermines any showing of irreparable injury"); *Cruz v. Dep't of Homeland Sec.*, Civ. A. No. 19-2727 (DLF), 2019 WL 8139805, at *6 (D.D.C. Nov. 21, 2019) (same). Delay is not "on its own" a sufficient reason to deny the preliminary injunction motion. *Gordon*, 632 F.3d at 724. Still, Plaintiffs complain that the SBA suspended them in November 2025. Prelim. Inj. Mem. (Dkt. 13-1) at 11 ("On October 21, 2025—only one day after the video was published—the SBA, with a stroke of a pen and an aggressive tweet by its Administrator, suspended ATI and its executives from government contracting."). Yet, Plaintiffs waited over a year to initiate this case and move for preliminary relief. *See generally* Compl. (Dkt. 1); Prelim. Inj. Mot. (Dkt. 13). They do not explain that delay. To the extent Plaintiffs may argue that the date of the extension governs, Plaintiffs ask for a temporary restraining order to preserve the status quo ante; at the time of the October 21, 2026, extension, that status quo was that Plaintiffs were temporarily suspended from federal contracting.

Plaintiffs' failure to provide any evidence to substantiate their claimed irreparable harm, coupled with their year-long delay to seek preliminary relief, shows they have failed to establish irreparable harm warranting this Court's immediate intervention.

III. The Balance of the Equities Weighs Against Preliminary Relief.

"Once an applicant satisfies the first two factors, the traditional stay inquiry calls for assessing the harm to the opposing party and weighing the public interest." *Nken*, 556 U.S. at 435. Where the government is a party, the balance of equities and public interest factors merge. *Id*. Courts "explore the relative harms to applicant and respondent, as well as the interests of the public at large." *Barnes v. E-Sys., Inc. Grp. Hosp Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1305 (1991). Here, the balance of the equities and public interest tips decisively in the SBA's favor.

First, "the protection of the public fisc is a matter that is of interest to every citizen." *Brock v. Pierce County*, 476 U.S. 253, 262 (1986). Granting Plaintiffs the preliminary relief they seek interferes with the government's overwhelming interest to safeguard the public fisc against fraud and abuse. Of course, balancing against that compelling public interest is the interest of a legitimate business to continue contracting with the federal government—the sole interest Plaintiffs identify in their motion. Prelim. Inj. Mem. (Dkt. 13-1) at 51-52. FAR 9.407 already strikes a balance between those competing interests by allowing the SBA to temporarily suspend an entity for no more than twelve months to permit "the completion of an investigation and any ensuing legal proceedings[.]" 48 C.F.R. § 9.407-4(a). Reinstatement at the end of the twelve months is automatic, unless the period is extended at the request of a prosecuting office. *Id.* § 9.407-4(b). Even then, the extension lasts for no more than "an additional 6 months." *Id.* "In no event may a suspension extend beyond 18 months." *Id.* Plaintiffs have not challenged the validity of FAR 9.407. Here, according to Plaintiffs' allegations in the Complaint, the SBA on October 21, 2026, informed Plaintiffs that their suspension would be extended by another six months. Compl. (Dkt. 1) ¶ 38. Plaintiffs' suspension will terminate on April 21, 2027, unless some "legal proceedings have been initiated" before then. 48 C.F.R. § 9.407-4(b).

Second, "[t]here is always a public interest" in preventing "a continuing violation of United States law." *Nken*, 556 U.S. at 436. [redacted]

[redacted]

Third, the government and the public face irreparable harm should the Court grant the requested relief requiring the SBA to restore Plaintiffs to federal contracting before the investigation concludes. More, it is highly likely that any federal funds expended in the interim "cannot be recouped and are thus irrevocably expended." *Nat't Instit. of Health v. Am. Public Health Ass'n*, 145 S. Ct. 2658, 2658 (2025). Plaintiffs have not stated they "will repay" the funds should the government prevail. *Id.* More to the point, their contention "that they lack the resources to continue" operating their businesses "without federal funding is inconsistent with the proposition that they have the resources to make the Government whole for money already spent." *Id.*

Finaly, the public interest weighs against granting preliminary relief because Plaintiffs seek to alter the status quo by obtaining ultimate relief in a preliminary posture. *Singh v. Berger*, 56 F.4th 88, 96-97 (D.C. Cir. 2022) ("Properly understood, the public consequences of employing the extraordinary remedy of injunction, necessarily include the risk that the relief requested will cause unusual disruption if granted in error, for example by disturbing the status quo in a way that cannot readily be undone."). "[I]t is generally inappropriate for a federal court at the preliminary injunction stage to give a final judgment on the merits." *Univ. of Tex.*, 451 U.S. at 397. That is because a preliminary injunction "is a stopgap measure, generally limited as to time, and intended to maintain a status quo or 'to preserve the relative positions of the parties until a trial on the merits can be held.'" *Sherley v. Sebelius*, 689 F.3d 776, 781–82 (D.C. Cir. 2012) (quoting *Univ. of Tex.*,

451 U.S. at 395). The purpose of preliminary injunctive relief "is not to conclusively determine the rights of the parties, but to balance the equities as the litigation moves forward." *Trump v. Int'l Refugee Assistance Proj.*, 582 U.S. 571, 579-80 (2017) (citation omitted). Thus, "[c]ourts in this Circuit have required the party seeking such a mandatory injunction to 'meet a higher standard than in the ordinary case by showing clearly that he or she is entitled to relief or that extreme or very serious damage will result from the denial of the injunction.'" *Dallas Safari Club v. Bernhardt*, 453 F. Supp. 3d 391, 398 (D.D.C. 2020) (quoting *Singh*, 185 F. Supp. 3d at 17).

Plaintiffs here seek "to radically transform the status quo, on an expedited basis." *Disability Rts. Council of Greater Wash. v. WMATA*, 234 F.R.D. 4, 7 (D.D.C. 2006). What they truly seek is to turn this preliminary injunction motion into "the whole ball game." *Winter*, 555 U.S. at 33. But preliminary injunctions are meant to be more predictive than they are decisive. *See Delaware State Sportsmen's Ass'n, Inc. v. Delaware Dep't of Safety and Homeland Sec.*, 108 F.4th 194, 201 (3d Cir. 2024) (citing cases). Plaintiffs seek a preliminary injunction altering the status quo that has existed for over a year and prohibits future agency action vis-à-vis Plaintiffs. That is essentially the same relief they seek in the Complaint. Compl. (Dkt. 1) at 60 (Prayer for Relief). While Plaintiffs do request declaratory relief in their Complaint, the specific relief still remains nearly identical. Put differently, Plaintiffs are effectively seeking to convert this action into a "hasty process" and ask the Court "to jump to conclusions." *Delaware State Sportsmen's Assoc.*, 108 F.4th at 200. That is simply not the purpose of preliminary injunctive relief. *See id.* at 197 (a "preliminary injunction is not a shortcut to the merits"); *see also Appalachian Voices v. FERC*, 139 F.4th 903, 929 (D.C. Cir. 2025) (Henderson, J., concurring) ("The lodestar for interim relief is preserving the status quo—not previewing the merits.").

For these reasons, the public interest and the balance of the equities weighs decisively against granting of preliminary relief.

IV. An Evidentiary Hearing is Unnecessary to Deny Plaintiffs' Request for Emergency Relief.

Plaintiffs, "apparently nervous about whether [their] initial [evidence] suffice[s]" to support their request for emergency relief, *Oceans v. Dep't of the Interior*, Civ. A. No. 24-0141 (RCL), 2024 WL 3104945, at *4 (D.D.C. Jun. 24, 2024), make a perfunctory request that the Court expend valuable judicial and government resources on an evidentiary hearing, Prelim. Inj. Mem. (Dkt. 13-1) at 52. They offer no compelling reason for the Court to do so.

As an initial matter, Plaintiffs were required to submit all their evidence as part of their application for emergency relief. LCvR 65.1(c) (any application for a preliminary injunction "shall be supported by all affidavits on which the plaintiff intends to rely"). There is no dispute that Local Civil Rule 65.1(c) applies to "an application for a preliminary injunction." *All. for Retired Ams. v. Bessent*, Civ. A. No. 25-0313 (CKK), 2025 WL 1744617, at *1 (D.D.C. Feb. 11, 2025). Plaintiffs here moved for a preliminary injunction and were required to comply with Local Rule 65.1(c). *See generally* PI Mot. (Dkt. 2). "The traditional, commonly repeated rule is that shall is mandatory[.]" *Anglers Conservation Network v. Pritzker*, 809 F.3d 664, 671 (D.C. Cir. 2016) (emphasis omitted). That is simply a different articulation of the cardinal rule that a party must present all its arguments in its opening motion and that arguments raised "for the first time in [its] reply are forfeited because it leaves Defendant with no opportunity to respond." *Harrison v. Off. of Architect of Capitol*, 68 F. Supp. 3d 174, 183 (D.D.C. 2014), *aff'd*, 793 F.3d 119 (D.C. Cir. 2015). Put simply, Local Rule 65.1(c) forecloses litigation by ambush and guarantees the parties have an equal opportunity to develop the record and respond to each other's arguments, thus allowing the Court to fully benefit from the adversarial process. Plaintiffs' attempt

to bypass that process by asking the Court to hold an evidentiary hearing after the parties have completed briefing should not be countenanced. In any event, providing evidence is not the reason Plaintiffs seek an evidentiary hearing.

Plaintiffs do not obscure their true stratagem for seeking such a hearing: [redacted] They admit as much in their Opposition to SBA's Sealed Ex Parte Motion to File Under Seal Motion (Dkt. 19), where they ask for a sealed hearing to "explore whether any [Department of Justice] investigation is, in fact, being conducted in good faith, or is instead a mere vehicle for the SBA and [Department of Justice] to persist in their improper activity." Opp'n to Mot. to Seal (Dkt. 19) at 6-7; *see also* Prelim. Inj. Mem. (Dkt. 13-1) at 52.

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[redacted][5]

As indicated above, the U.S. Attorney's Office is prepared to provide the Court in *ex parte* proceedings substantive information about the investigation at issue here. [redacted]

[redacted]

5 [redacted]

V. The Court Should Order that Plaintiffs Post a Bond as a Condition of Preliminary Relief.

Defendants also respectfully request that any injunctive relief be accompanied by a bond. "The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). The D.C. Circuit recently clarified that "injunction bonds are generally required." *NTEU v. Trump*, No. 25-5157, 2025 WL 1441563, at *3 n.4 (D.C. Cir. May 16, 2025), *reh'g en banc denied* (July 16, 2025). A bond is appropriate here given that the requested preliminary relief would potentially require the Executive to spend money and resources that may not be recouped once distributed and employed.

CONCLUSION

For these reasons, Defendants respectfully request that the Court deny Plaintiffs' motion for preliminary relief.

Dated: November 10, 2026

Respectfully submitted,

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United States Attorney

By: */s/ Dimitar P. Georgiev*

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ATI GOVERNMENT SOLUTIONS, LLC, et al., Plaintiffs, v. UNITED STATES SMALL BUSINESS ADMINISTRATION, at al., Defendants.	Civil Action No. 26-3693 (ACR)

[PROPOSED] ORDER

UPON CONSIDERATION of Plaintiffs motion for a temporary restraining order and preliminary injunction, Defendants' opposition, and the entire record herein, it is hereby

ORDERED that Plaintiffs' motion is DENIED.

SO ORDERED:

_____
Date

_____
ANA C. REYES
United States District Judge