IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

REBECCA BROWN, AUGUST TERRENCE ROLIN, STACY JONES-NASR, and MATTHEW BERGER, on behalf of themselves and all others similarly situated, *Plaintiffs*, v. TRANSPORTATION SECURITY ADMINISTRATION; ADAM STAHL, in his official capacity as Senior Official Performing the Duties of the Administrator of the Transportation Security Administration; DRUG ENFORCMENT ADMINISTRATION; ROBERT J. MURPHY,[1] in his official capacity as Acting Administrator of the Drug Enforcement Administration; UNITED STATES OF AMERICA, *Defendants*.	Civil Action No. 2:20-cv-64-MJH-KT

REPLY IN SUPPORT OF
DEFENDANTS' PARTIAL MOTION TO DISMISS

[1] Pursuant to Federal Rule of Civil Procedure 25(d), Acting Administrator of the Drug Enforcement Administration (DEA) Robert J. Murphy is automatically substituted for former Acting Administrator Derek S. Maltz.

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INTRODUCTION

There is no dispute that this Court currently cannot order meaningful relief as to DEA because Plaintiffs challenge an alleged policy that was part of a now-terminated program. For this reason, Plaintiffs concede—as they must—that an indefinite stay of the case as to DEA is appropriate. Pls.' Opp. ("Opp.") at 9-11, ECF 160. This concession gives up the game. Federal courts do not exercise jurisdiction on the off chance that, at some unspecified point in the future, a new policy similar to that which Plaintiffs challenge here may come into existence. And that is all Plaintiffs offer: speculation about a future policy based on little more than a letter from two senators (which makes no reference to bulk currency seizures) and the fact that DEA requested a temporary stay before moving to dismiss (which is standard practice during Presidential transitions). Plaintiffs' conjecture cannot undercut the unequivocal statements of both the Deputy Attorney General (DAG) and DEA Administrator terminating the broader program, part of which is at issue here. Count III is constitutionally moot.

Separately, prudential mootness compels dismissal even if some minimal prospect of future injury exists sufficient to satisfy Article III. While Plaintiffs misconstrue this distinct doctrine and largely rehash their constitutional mootness arguments, the Supreme Court and Third Circuit instruct that prudential mootness exists to foreclose unnecessary relief where plaintiffs challenge government programs that are suspended or under internal review. Here, that process is even further along—the DEA program has been formally terminated. On this basis, too, Count III should be dismissed.

ARGUMENT

I. Count III Is Constitutionally Moot.

Count III seeks injunctive and declaratory relief concerning the lawfulness of policies and practices that Plaintiffs concede have been terminated through legally-binding memoranda from the DAG and DEA Administrator. Defs.' Mot. ("Mot.") at 6-9, ECF 155. Because any relief this Court grants would not remedy any injury that Plaintiffs are suffering, Count III is constitutionally moot.

Plaintiffs respond (Opp.11-12) that their claim is not moot absent intervening legislation or a Supreme Court decision because the government could withdraw the directives suspending and cancelling the broader program. But Plaintiffs cite no authority limiting mootness to those circumstances, and cases are legion in which the change in position of a single branch of federal or

state government creates mootness. *See, e.g.*, *U.S. Navy SEALs 1-26 v. Biden*, 72 F.4th 666, 674 (5th Cir. 2023) (Navy change in position mooted challenge to vaccine status requirements); *Brach v. Newsom*, 38 F.4th 6, 15 (9th Cir. 2022) (California change in position regarding school closures mooted challenge); *Keohane v. Fla. Dep't of Corr. Sec'y*, 952 F.3d 1257, 1267 (11th Cir. 2020) ("Because the [Florida Department of Corrections] has formally rescinded its freeze-frame policy . . . we hold [plaintiff's] challenge to the old policy is moot."); *Hanrahan v. Mohr*, 905 F.3d 947, 960 (6th Cir. 2018) (Ohio Department of Corrections change in policy mooted challenge even where "policy changes were recent, made on the authority of a single official" and "easily rescindable") (cleaned up).

Indeed, revocable Executive Branch directives frequently render actions moot. *See, e.g.*, *Ghailani v. Sessions*, 859 F.3d 1295, 1302 (10th Cir. 2017) (non-renewal of prisoner's special administrative measures mooted challenge because "it is unlikely the government suspended [the measures] on a prisoner whom it thought posed a threat of serious bodily injury to American citizens just to moot a case"); *Am. Cargo Transp., Inc. v. United States*, 625 F.3d 1176, 1178–79 (9th Cir. 2010) (Department of Justice directive mooted case); *Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. Vilsack*, 6 F.4th 983, 991 (9th Cir. 2021) (rescindable memoranda mooted action).[2]

FBI v. Fikre, 601 U.S. 234 (2024), is not to the contrary. The plaintiff there not only challenged his placement on the No Fly List, but also argued that he was "placed on" that list "for constitutionally impermissible reasons." *Id.* at 242. So even though the plaintiff had been removed from the list, the case was not moot because "the government might relist him if he does . . . similar things." *Id.* If the government in that case had terminated the list entirely, mootness could not have been seriously contested. And that is what occurred here: the DAG suspended and the DEA Administrator cancelled the broader program, one alleged aspect of which Plaintiffs challenge.

In short, "[i]t is black-letter law that the government's mere 'ability to reimplement the statute or regulation at issue is insufficient to prove the voluntary-cessation exception.'" *Navy SEALs 1-26*,

[2] Plaintiffs are also wrong (Opp.19) to claim that mootness rests merely on "the government's word." The government has put its money where its mouth is: the legally-binding directive from the DEA Administrator ordered redeployment of DEA resources. *See* Jan. 8, 2025 Memorandum, ECF 155-1.

72 F.4th at 674 (collecting authorities). Plaintiffs must therefore adduce some facts that call into question the validity or permanence of the termination. They fail to do so, particularly in light of the presumption of regularity that attaches to official government conduct.[3]

First, Plaintiffs suggest (Opp.5-9) that the mere change in administration establishes a likelihood of reinstatement. New administrations are, of course, free to adopt a policy that reverses or substantially deviates from an earlier one, but no such change has happened here. Thus, the DAG and DEA Administrator's directives remain binding across administrations, as do many such policies. Similarly, that DEA sought a stay before moving to dismiss does not undermine the effectiveness of the termination directives. Such stays are common practice during Presidential transitions—as Plaintiffs acknowledge (Opp.10-11)—and they are not necessarily indicative of a change in position.

Second, Plaintiffs emphasize (Opp.8) a letter sent by Senators Blackburn and Cruz asking the DAG to reinstate a transportation interdiction program. Neither Senator, of course, is an official in the Executive Branch with authority over DEA policy. In any event, this letter does not mention seizures of bulk currency—it calls for the reinstatement of the program to "rid America of the poison of fentanyl and other deadly narcotics," and references quantities of illicit substances (not cash) that were seized under the former program. *See* Marsha Blackburn & Ted Cruz, Letter to Deputy Attorney General (Mar. 31, 2025), https://perma.cc/XS59-3LLB. Thus, even if a broader transportation-interdiction program were reinstated in some form as a result of this letter, the letter provides no basis to believe that program would encompass the alleged cash seizure policies that Plaintiffs challenge.

Third, Plaintiffs misleadingly excise language (Opp.8-9) from the prudential mootness section of DEA's motion to assert that DEA is considering implementing a currency seizure policy identical to the (alleged) policy that Plaintiffs challenge. DEA said no such thing. Rather, DEA made the modest point that a dismissal for prudential mootness would not prejudice Plaintiffs even in that

[3] Plaintiffs miss the point when insisting (Opp.13 n.1) that the heavy burden to establish mootness applies to the government. True enough, but the government can more readily satisfy that burden than private defendants because, "[w]hen the defendants are public officials," courts "place greater stock in their acts of self-correction." *Speech First, Inc. v. Killeen*, 968 F.3d 628, 645 (7th Cir. 2020). That is because a "presumption of regularity supports the official acts of public officers." *Nat'l Archives & Recs. Admin. v. Favish*, 541 U.S. 157, 174 (2004).

circumstance because they could "renew their complaint." *Chamber of Com. of U.S. of Am. v. Dep't of Energy*, 627 F.2d 289, 292 (D.C. Cir. 1980). That remains true.

Accordingly, DEA has carried its burden to show that "no reasonable expectation remains that it will return to its old ways," *Fikre*, 601 U.S. at 241, and Count III is constitutionally moot.

II. In The Alternative, Count III Is Prudentially Moot.

Even if Plaintiffs could establish their claim against DEA is not constitutionally moot based on speculation that the government will instate a similar program (and they cannot), this Court should still dismiss the claim as prudentially moot. Mot.13-16. Plaintiffs' claim against DEA asks this Court to opine on the constitutionality of an alleged set of practices that were part of a discontinued program, and any opinion issued would not provide Plaintiffs with meaningful relief.

Plaintiffs fail to grapple with the distinct doctrine of prudential mootness, which exists precisely to prevent such advisory opinions. To start, Plaintiffs are wrong (Opp.20) that prudential mootness is "generally cabined" to bankruptcy cases. The doctrine applies wherever equitable or declaratory relief is sought. *Blanciak v. Allegheny Ludlum Corp.,* 77 F.3d 690, 700 (3d Cir. 1996) ("'The discretionary power to withhold injunctive and declaratory relief for prudential reasons, even in a case not constitutionally moot, is well established.'"). And it "has particular applicability in cases, such as this one, where the relief sought is an injunction against the government." *S. Utah Wilderness All. v. Smith*, 110 F.3d 724, 727 (10th Cir. 1997); *see also Marcavage v. Nat'l Park Serv.*, 666 F.3d 856, 862 n.1 (3d Cir. 2012) (affirming dismissal of claims against government on prudential mootness grounds); *Greenbaum v. EPA*, 370 F.3d 527, 534 (6th Cir. 2004) (applying prudential mootness to affirm dismissal of claim challenging EPA approval of state air quality plan). That is doubly true where, as here, Plaintiffs seek relief on sensitive constitutional issues. *Blanciak*, 77 F.3d at 700; *see also GasPlus, L.L.C. v. Dep't of Interior*, 510 F. Supp. 2d 18, 34 (D.D.C. 2007) ("Even if GasPlus had standing, the Court would decline to entertain GasPlus's constitutional claim based on the doctrine of prudential mootness, which counsels against deciding novel or complex constitutional questions.").

Plaintiffs next conflate constitutional mootness with prudential mootness, arguing (Opp.21-22) that the voluntary-cessation exception to the former precludes dismissal under the latter. But

there is no voluntary-cessation exception to prudential mootness, which the Supreme Court instructs should prevent the issuance of advisory opinions in these very circumstances. *See A. L. Mechling Barge Lines, Inc. v. United States*, 368 U.S. 324, 331 (1961) ("[S]ound discretion withholds the remedy where it appears that a challenged 'continuing practice' is, at the moment adjudication is sought, undergoing significant modification so that its ultimate form cannot be confidently predicted."). Indeed, prudential mootness arises precisely "when a defendant has ceased its allegedly illegal conduct and is reconsidering or has reconsidered the policy that created the harm in the first place." *Conservation L. Found. v. Pritzker*, 37 F. Supp. 3d 254, 264 (D.D.C. 2014). That is because, in the prudential mootness context, "the remedial commitments of the coordinate branches of the United States government bear special gravity." *Winzler v. Toyota Motor Sales U.S.A., Inc.*, 681 F.3d 1208, 1211 (10th Cir. 2012). So "even when the risk of recalcitrance is injury enough to keep the case alive as an Article III matter" under the voluntary-cessation doctrine, "it isn't necessarily enough to avoid the application of prudential mootness." *Id.* at 1210-11.[4]

Finally, Plaintiffs assert (Opp.22) that the case is not prudentially moot because continued litigation will save judicial resources. Not so. Keeping DEA in the case wastes government resources defending—and judicial resources evaluating—an alleged policy that no party contends still exists. *See Winzler*, 681 F.3d at 1211 ("[A]ffording a judicial remedy on top of one already promised by a coordinate branch risks . . . the duplicative expenditure of finite public resources."). And the discovery already conducted will have no relevance to any new policy that might be instated by different officials, on a different administrative record, and subject to different training. In any event, whether dismissal preserves government resources is not dispositive. *See, e.g.*, *Penthouse Int'l, Ltd. v. Meese*, 939 F.2d 1011, 1020 (D.C. Cir. 1991) (affirming dismissal of case as prudentially moot without considering judicial resources). Count III should therefore be dismissed as prudentially moot.

[4] *Fikre* (cited at Opp.20) concerned constitutional mootness and is therefore inapposite. Plaintiffs are also mistaken to rely on (Opp.21-22) three cases involving defective cars in which courts declined to apply the prudential mootness doctrine notwithstanding recalls because the plaintiffs in those cases also sought legal relief—*i.e.*, damages. *See, e.g.*, *McMahon v. Volkswagen*, 2023 WL 4045156, at *9 (D.N.J. June 16, 2023). Those cases cannot salvage the exclusively equitable and declaratory claims here.

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Respectfully submitted,

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