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**Appearance Pro Hac Vice*

Counsel for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

16 SAN FRANCISCO AIDS FOUNDATION, et
17 al.;

Plaintiffs,

v.

19 DONALD J. TRUMP, in his official capacity as
20 President of the United States, et al.

Defendants.

Case No. 4:25-cv-01824-JST

**PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION AND
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: Thursday, May 22, 2025
Time: 2:00 pm PDT
Dept.: Oakland

Trial Date: None Set

1 PLEASE TAKE NOTICE that on May 22, 2025, or as soon thereafter as they may be heard
2 by the Court, in the courtroom of the Honorable Judge Jon S. Tigar, located at Oakland Courthouse,
3 Courtroom 6 – 2nd Floor, 1301 Clay Street, Oakland, CA 94612, Plaintiffs will hereby and do move
4 pursuant to Rule 65 of the Federal Rules of Civil Procedure and Civil Local Rules 7-2 and 65-2 for a
5 preliminary injunction prohibiting Defendants from enforcing Executive Order Nos. 14,168, 14,151,
6 14,173, as set forth in detail in the Proposed Order attached hereto.

7 Without an order from the Court, these executive actions will continue to cause Plaintiffs
8 irreparable harm. This motion is based on this Notice; the Memorandum of Points and Authorities;
9 the Declarations of (1) Iya Dammons of Baltimore Safe Haven Corp., (2) Krista Brown-Ly of
10 Bradbury-Sullivan LGBT Community Center, (3) Michael Munson, of FORGE, Inc., (4) Roberto
11 Ordeñana of the Gay Lesbian Bisexual Transgender Historical Society, (5) Joe Hollendoner of Los
12 Angeles LGBT Center, (6) Dr. Katherine Duffy of Los Angeles LGBT Center, (7) Jeffrey Klein
13 of Lesbian and Gay Community Services Center, Inc. d/b/a The LGBT Community Center, (8)
14 Jessyca Leach of Prisma Community Care, (9) Dr. Tyler TerMeer of San Francisco Aids
15 Foundation, (10) Lance Toma of the San Francisco Community Health Center, and (11) Jose
16 Abrigo of Lambda Legal Defense and Education Fund, Inc. (Counsel for Plaintiffs); Proposed
17 Order; this Court’s file; and any matters properly before the Court.

18 Dated this 3rd of March, 2025.

Respectfully,

19 /s/ Jennifer C. Pizer

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TABLE OF CONTENTS

		Page
1	I INTRODUCTION.....	1
2	II STATEMENT OF FACTS.....	3
3	A. Plaintiffs Engage in Speech, Advocacy, and Services Advancing the Rights and Welfare of Transgender People, and Address Systemic Racism, Sexism, and Anti-LGBTQ Bias.	3
4	B. Plaintiffs Have a Shared Purpose and Must Be Able to Continue to Advocate for Those They Serve.....	5
5	C. The Defendants	7
6	D. The Executive Orders.....	8
7	i. The Gender Order Seeks to Erase Transgender People.	8
8	ii. The DEI-1 and DEI-2 Orders Seek to Eliminate Diversity, Equity, Inclusion, and Accessibility Policies and to Penalize Organizations That Embrace Such Policies.....	9
9	iii. The Executive Orders Harm Plaintiffs by Chilling Their Speech, Frustrating Their Core Purposes, and Threatening Penalties.....	10
10	E. The Executive Orders Harm Plaintiffs and Those They Serve.....	11
11	III LEGAL STANDARD	13
12	IV ARGUMENT	13
13	A. Plaintiffs Have Standing.	13
14	i. There is a Reasonable Likelihood the Executive Orders Will Be Enforced, as Evidenced by Defendants’ Actions to Date.	14
15	ii. Plaintiffs Intend to Violate the Executive Orders as Plaintiffs’ Missions Run Directly Counter to the Executive Orders’ Unlawful Mandates.	14
16	iii. The Executive Orders Apply to Plaintiffs.....	15
17	B. Plaintiffs Are Likely to Succeed on the Merits.....	16
18	i. The Executive Orders Violate the Free Speech Clause of the First Amendment.....	16
19	ii. The Executive Orders Violate the Due Process Clause of the Fifth Amendment.....	18
20	iii. The Executive Orders Are Ultra Vires Because They Exceed the President’s Authority, Infringe Upon Congress’s Powers, and Violate Article I’s Framework for Federal Legislation.....	20
21	iv. The Executive Orders Are Ultra Vires Because They Conflict with Statutory Equity-Related and Nondiscrimination Requirements.....	24
22	v. The Gender Order Violates the Equal Protection Clause.....	27
23	a. The Gender Order Fails Any Level of Review.	27
24	b. The Gender Order Triggers Heightened Scrutiny.....	28
25	c. The Gender Order Fails Heightened Scrutiny.....	29
26	C. Plaintiffs Are Suffering Irreparable Harm Necessitating Injunctive Relief.....	30
27	D. The Balance of Equities and the Public Interest Favor Plaintiffs.	31
28	V CONCLUSION	32

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

Federal Cases

Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.,
570 U.S. 205 (2013)..... 17

In re Aiken County,
725 F.3d 255 (D.C. Cir. 2013) (Kavanaugh, J.)..... 23, 24

All. for the Wild Rockies v. Cottrell,
632 F.3d 1127 (9th Cir. 2011)..... 13

Armstrong v. Exceptional Child Ctr., Inc.,
575 U.S. 320 (2015)..... 16

C.P. v. Blue Cross Blue Shield of Ill.,
No. 3:20-CV-06145-RJB, 2022 WL 17788148 (W.D. Wash. Dec. 19, 2022) 26

Cincinnati Soap Co. v. United States,
301 U.S. 308 (1937)..... 21

City & County. of San Francisco v. Azar,
411 F. Supp. 3d 1001 (N.D. Cal. 2019) 16

City & County of San Fransisco v. Trump,
897 F.3d 1225 (9th Cir. 2018)..... 21, 23

City of Cleburne v. Cleburne Living Ctr.,
473 U.S. 432 (1985)..... 27

Clinton v. City of New York,
524 U.S. 417 (1998)..... 21, 23

County of Santa Clara v. Trump,
250 F. Supp. 3d 497 (N.D. Cal. 2017) 21, 23, 24

CTIA—The Wireless Ass’n v. City of Berkeley, Cal.,
928 F.3d 832 (9th Cir. 2019)..... 30

Decatur v. Paulding,
39 U.S. (14 Pet.) 497 (1840) 27

Dekker v. Weida,
679 F. Supp. 3d 1271 (N.D. Fla. 2023)..... 29

1 *Dep’t of Com. v. New York,*
 2 588 U.S. 752 (2019)..... 13

3 *Doe v. Horne,*
 4 115 F.4th 1083 (9th Cir. 2024)..... 29

5 *Doe v. Snyder,*
 6 28 F.4th 103 (9th Cir. 2022)..... 26

7 *E. Bay Sanctuary Covenant v. Trump,*
 8 354 F. Supp. 3d 1094 (N.D. Cal. 2018) 31

9 *Hecox v. Little,*
 10 104 F.4th 1061 (9th Cir. 2024)..... 29

11 *Hunt v. City of Los Angeles,*
 12 638 F.3d 703 (9th Cir. 2011)..... 18, 20

13 *INS v. Chadha,*
 14 462 U.S. 919 (1983)..... 23, 24

15 *Kadel v. Folwell,*
 16 100 F.4th 122 (4th Cir. 2024)..... 26

17 *Karnoski v. Trump,*
 18 926 F.3d 1180 (9th Cir. 2019)..... 29

19 *Knox v. Serv. Emps. Int’l Union, Loc. 1000,*
 20 567 U.S. 298 (2012)..... 17

21 *Koontz v. St. Johns River Water Mgmt. Dist.,*
 22 570 U.S. 595 (2013)..... 21

23 *Loper Bright Enters. v. Raimondo,*
 24 603 U.S. 369 (2024)..... 24, 27

25 *Lopez v. Candaele,*
 26 630 F.3d 775 (9th Cir. 2010)..... 13, 14

27 *Massachusetts v. United States,*
 28 435 U.S. 444 (1978)..... 21

Melendres v. Arpaio,
 695 F.3d 990 (9th Cir. 2012)..... 31

Nat’l Ass’n of Diversity Officers in Higher Educ. v. Trump,
 No. 25-cv-00333-ABA, 2025 WL 573764 (D. Md. Feb. 21, 2025) 1, 18, 19

1 *Nat’l Ass’n of Optometrists & Opticians LensCrafters, Inc. v. Brown,*
 2 567 F.3d 521 (9th Cir. 2009)..... 13

3 *Nat’l Council of Nonprofits v. Off. of Mgmt. & Budget,*
 4 No. 25-239 (LLA), 2025 WL 368852 (D.D.C. Feb. 3, 2025)..... 21, 22, 24

5 *New York v. Trump,*
 6 No. 25 Civ. 39, 2025 WL 357368 (D.R.I. Jan. 31, 2025)..... 22, 24

7 *Norsworthy v. Beard,*
 8 87 F. Supp. 3d 1104 (N.D. Cal. 2015) 29

9 *Pennhurst State Sch. & Hosp. v. Halderman,*
 10 451 U.S. 1 (1981)..... 22

11 *Perry v. Sindermann,*
 12 408 U.S. 593 (1972)..... 17

13 *PFLAG, Inc. v. Trump,*
 14 No. 25-337-BAH, 2025 WL 510050 (D. Md. Feb. 14, 2025) *passim*

15 *PFLAG, Inc. v. Trump,*
 16 No. 25-337-BAH, Dkt. No. 61 (D. Md. Feb. 13, 2025)..... 1

17 *Powers v. Ohio,*
 18 499 U.S. 400 (1991)..... 16

19 *Reed v. Town of Gilbert,*
 20 576 U.S. 155 (2015)..... 16

21 *Regents of the Univ. of Cal. v. U.S. Dep’t of Homeland Sec.,*
 22 908 F.3d 476 (9th Cir. 2018)..... 13

23 *Roman v. Wolf,*
 24 977 F.3d 935 (9th Cir. 2020)..... 31

25 *Romer v. Evans,*
 26 517 U.S. 620 (1996)..... 27, 28

27 *Rosenberger v. Rector & Visitors of Univ. of Va.,*
 28 515 U.S. 819 (1995)..... 16

Santa Cruz Lesbian & Gay Cmty. Ctr. v. Trump,
 508 F. Supp. 3d 521 (N.D. Cal. 2020) 17, 20, 31

Schmitt v. Kaiser Found. Health Plan of Wash.,
 965 F.3d 945 (9th Cir. 2020)..... 26

1 *Sessions v. Dimaya*,
 2 584 U.S. 148 (2018)..... 18, 19

3 *Texas v. Johnson*,
 4 491 U.S. 397 (1989)..... 17

5 *Train v. City of New York*,
 6 420 U.S. 35 (1975)..... 23

7 *Trump v. United States*,
 8 603 U.S. 593 (2024)..... 21

9 *U.S. Dep’t of Agric. v. Moreno*,
 10 413 U.S. 528 (1973)..... 28

11 *U.S. House of Representatives v. Burwell*,
 12 130 F. Supp. 3d 53 (D.D.C. 2015) 21

13 *United States v. Dickson*,
 14 40 U.S. (15 Pet.) 141 (1841) 27

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 16 518 U.S. 515 (1996)..... 29

17 *United States v. Windsor*,
 18 570 U.S. 744 (2013)..... 27

19 *Valle del Sol Inc. v. Whiting*,
 20 732 F.3d 1006 (9th Cir. 2013)..... 31

21 *Washington v. Trump*,
 22 No. 2:25-cv-00244-LK, 2025 WL 509617 (W.D. Wash. Feb. 16, 2025)..... 16, 31

23 *Youngstown Sheet & Tube Co. v. Sawyer*,
 24 343 U.S. 579 (1952)..... 21, 23

25 *Zivotofsky v. Kerry*,
 26 576 U.S. 1 (2015)..... 22

27 **State Cases**

28 *Van Garderen v. Montana*,
 No. DV-23-541, 2023 WL 6392607 (Missoula Cnty. Dist. Ct., Mont. Sept. 27,
 2023) 29

Federal Statutes

2 U.S.C. §§ 683, 684..... 21

1 31 U.S.C. §§ 3729(1), 3730 10

2 42 U.S.C. §§ 254, 300 22, 25, 26

3 **Other Authorities**

4 24 C.F.R. § 574.300 25

5 24 C.F.R. § 574.603 25

6 45 C.F.R. § 92.9 26

7 45 C.F.R. §§ 92.201–92.205 26

8 Exec. Order No. 14,148, *Initial Rescissions of Harmful Executive Orders and*

9 *Actions*, 90 Fed. Reg. 8237 (Jan. 20, 2025) 28

10 Executive Order No. 14,151, *Ending Radical and Wasteful DEI Programs and*

11 *Preferencing*, 90 Fed. Reg. 8,339 (Jan. 20, 2025) *passim*

12 Executive Order No. 14,168, *Defending Women From Gender Ideology Extremism*

13 *and Restoring Biological Truth to the Federal Government*, 90 Fed. Reg. 8,650

14 (Jan. 20, 2025)..... *passim*

15 Executive Order No. 14,170, *Reforming the Federal Hiring Process and Restoring*

16 *Merit to Government Service*, Fed. Reg. 8621 (Jan. 20, 2025)..... 28

17 Executive Order No. 14,173, *Ending Illegal Discrimination and Restoring Merit-*

18 *Based Opportunity*, 90 Fed. Reg. 8,633 (Jan. 21, 2025)..... *passim*

19 Executive Order No. 14,183, *Prioritizing Military Excellence and Readiness*, 90

20 Fed. Reg. 8757 (Jan. 27, 2025) 28

21 Exec. Order No. 14,187, *Protecting Children from Chemical and Surgical*

22 *Mutilation*, 90 Fed. Reg. 8,771 (Jan. 28, 2025) 28

23 Executive Order No. 14,190, *Ending Radical Indoctrination in K-12 Schooling*, 90

24 Fed. Reg. 8853 (Jan. 29, 2025) 28

25 Executive Order No. 14,201, *Keeping Men Out of Women’s Sports*, 90 Fed. Reg.

26 9279 (Feb. 5, 2025) 28

27 U.S. CONST., Amendments I, V, XIV *passim*

28

MEMORANDUM OF POINTS AND AUTHORITIES

I INTRODUCTION

Plaintiffs seek immediate injunctive relief to halt the implementation of three unlawful executive orders that are causing immediate, irreparable harm to Plaintiffs and the communities they serve. Immediately after taking office President Donald J. Trump¹ (“**President Trump**”) issued Executive Order No. 14,168, *Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, 90 Fed. Reg. 8,650 (Jan. 20, 2025) (“**Gender Order**”); Executive Order No. 14,151, *Ending Radical and Wasteful DEI Programs and Preferring*, 90 Fed. Reg. 8,339 (Jan. 20, 2025) (“**DEI-1 Order**”); and Executive Order No. 14,173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, 90 Fed. Reg. 8,633 (Jan. 21, 2025) (“**DEI-2 Order**”) (collectively, the “**Executive Orders**”).²

The Executive Orders violate the fundamental separation of powers upon which the Constitution is based, directly conflict with existing statutes, and violate both the First and Fifth Amendments. The Gender Order is unconstitutional, facially discriminatory, and fundamentally un-American because it decrees that an entire group of people (transgender people) do not exist and makes clear that any organization who states otherwise will be targeted and penalized. Discriminating against transgender people is not just an effect of the Gender Order—it is its sole purpose. Similarly, the DEI-1 and DEI-2 Orders unlawfully bar speech that endorses ideas that President Trump’s administration (“**Trump Administration**”) disfavors—including notions of diversity, equity, inclusion, and accessibility for all. The Executive Orders further provide that

¹ Because in this lawsuit Plaintiffs seek only declaratory relief against President Trump, this Motion does not seek injunctive relief against him.

² As of this filing, the Gender Order has been temporarily enjoined, in part, on a nationwide basis. *See PFLAG, Inc. v. Trump*, No. 25-337-BAH, Dkt. No. 61 (D. Md. Feb. 13, 2025) (temporarily restraining defendants “from conditioning or withholding federal funding based on the fact that a healthcare entity or professional provides gender affirming medical care to a patient under the age of nineteen under Section 3(g) of [the Gender Order]. . .”). The DEI Orders have been preliminarily enjoined, in part, on a nationwide basis. *See Nat’l Ass’n of Diversity Officers in Higher Educ. v. Trump*, No. 25-cv-00333-ABA, 2025 WL 573764, at *31-32 (D. Md. Feb. 21, 2025) (preliminarily enjoining Section 2(b)(i) (the “Termination Provision” of the DEI-1 Order and Sections 3(b)(iv) (the “Certification Provision”) and 4(b)(iii) (the “Enforcement Threat Provision”) of the DEI-2 Order).

1 anyone who engages in speech that does not align with the Trump Administration’s views will have
2 their federal funding terminated and be subjected to civil investigations and heightened penalties.

3 By barring speech that the Trump Administration dislikes, the Executive Orders penalize
4 certain viewpoints—the greatest First Amendment sin. By weaponizing conditions on federal
5 funding as an enforcement mechanism, the President attempts to usurp constitutional powers that
6 are reserved solely for Congress. The Executive Orders also use impermissibly vague phrases that
7 exacerbate the chilling effect on speech in violation of the Fifth Amendment. In short, the Executive
8 Orders amount to an extraordinary abuse of power targeting some of this country’s most vulnerable
9 and marginalized populations.

10 Plaintiffs are mission-driven nonprofits that specialize in the delivery of high-quality
11 healthcare, social, and other critical services to members of the lesbian, gay, bisexual, transgender,
12 and queer (“**LGBTQ**”) community; an organization dedicated to ending the HIV/AIDS epidemic;
13 and a historical society whose mission is to preserve the history of the LGBTQ community. The
14 Executive Orders are designed to silence, defund, dismantle, and otherwise penalize Plaintiffs for
15 acknowledging the existence of transgender people, advocating for the rights of members of
16 LGBTQ and other historically marginalized communities, and providing humanitarian services in
17 an equitable manner.

18 The requested injunction is both legally warranted and necessary. Plaintiffs have a
19 reasonable likelihood of prevailing on their claims. The irreparable harm to Plaintiffs and the
20 communities they serve is severe, intentional, and undeniable. Without an injunction, Plaintiffs will
21 lose their ability to provide essential, lifesaving services and will be targeted by the government
22 with penalties that could cripple their organizations. Rates of HIV, AIDS and other communicable
23 diseases will increase. People served by Plaintiffs will suffer systemic, government-endorsed
24 discrimination, and lose healthcare, housing, employment, and dignity. For many who rely on
25 Plaintiffs’ services, this is a matter of life or death. It is in the public interest to save lives by
26 enjoining these vague, discriminatory, and unconstitutional Executive Orders.

1 **II STATEMENT OF FACTS**

2 **A. Plaintiffs Engage in Speech, Advocacy, and Services Advancing the Rights and**
 3 **Welfare of Transgender People, and Address Systemic Racism, Sexism, and**
 4 **Anti-LGBTQ Bias.**

5 Plaintiffs provide necessary services to members of the LGBTQ communities. Speech,
 6 advocacy, and services advancing the civil rights and welfare of transgender and other LGBTQ
 7 people, and addressing systemic racism, sexism, and anti-LGBTQ bias, are central to each
 8 Plaintiff’s mission. All Plaintiffs receive federal funding to support their work. Declaration of Iya
 9 Dammons of Baltimore Safe Haven Corp. (“**Baltimore Decl.**”) ¶¶ 8-9; Declaration of Krista
 10 Brown-Ly of Bradbury-Sullivan LGBT Community Center (“**Bradbury Decl.**”) ¶ 7; Declaration
 11 of Michael Munson of FORGE, Inc. (“**FORGE Decl.**”) ¶ 7; Declaration of Roberto Ordeñana of
 12 the Plaintiff Gay Lesbian Bisexual Transgender Historical Society (“**GLBT Decl.**”) ¶ 14;
 13 Declaration of Jose Hollendoner of Los Angeles LGBT Center (“**LA LGBT (Hollendoner) Decl.**”)
 14 ¶¶ 7, 11; Declaration of Jeffrey Klein of Lesbian and Gay Community Services Center, Inc. d/b/a
 15 The LGBT Community Center (“**NY LGBT Decl.**”) ¶¶ 13-15; Declaration of Jessyca Leach of
 16 Prisma Community Care (“**Prisma Decl.**”) ¶¶ 9-15; Declaration of Dr. Tyler TerMeer, of San
 17 Francisco Aids Foundation (“**SFAF Decl.**”) ¶¶ 5-9; Declaration of Lance Toma, of the San
 18 Francisco Community Health Center (“**SFCHC Decl.**”) ¶¶ 5-7.

19 **Plaintiff San Francisco AIDS Foundation.** Plaintiff San Francisco AIDS Foundation
 20 (“**SFAF**”) is a nonprofit organization that promotes health, wellness, and social justice for
 21 communities most affected by HIV, through sexual health and substance use services, advocacy,
 22 and community partnerships. SFAF Decl. ¶¶ 1, 3-4. As an essential part of its work, SFAF confronts
 23 and combats HIV-related health disparities among gay and bisexual men, transgender women,
 24 cisgender women, Black people, Latinx people, and, in particular, people residing at the
 25 intersections of these identities. *Id.* ¶¶ 3-4, 7, 10-12, 20-21. SFAF relies on federal funding,
 26 following a national model for HIV prevention, which enables SFAF to provide HIV prevention,
 27 testing, and treatment services to thousands of people living with or at risk of contracting HIV.
 28 SFAF Decl. ¶¶ 5-9. Because of this federal funding, SFAF extends comprehensive sexual health
 services to populations most affected by HIV and sexually transmitted infections and leverages

1 feedback systems such as surveys, listening sessions, and focus groups to assess community needs
2 and create equitable and inclusive clinic-level plans. *Id.* ¶¶ 5-13.

3 **Plaintiff Gay Lesbian Bisexual Transgender Historical Society.** Plaintiff Gay Lesbian
4 Bisexual Transgender Historical Society (“**GLBT Historical Society**”) collects, preserves, and
5 makes accessible materials to support and promote the understanding of LGBTQ+ history, culture,
6 and arts. GLBT Decl. ¶ 4. The GLBT Historical Society’s Archives and Special Collections are
7 among the largest in the world, occupying more than 4,000 linear feet of storage and spanning more
8 than a century’s worth of LGBTQ+ history. *Id.* ¶¶ 5-7. Their work is centered on combating erasure
9 of the LGBTQ+ community, which is critically important considering that the Executive Orders
10 seek to erase the existence of transgender people. *Id.* ¶¶ 10, 16-24. The GLBT Historical Society
11 receives federal grant funding to further this work. *Id.* ¶ 14.

12 **The LGBTQ Health Centers.** Plaintiffs Los Angeles LGBT Center (“**LA LGBT**
13 **Center**”), Prisma Community Care (“**Prisma Community**”), and the Asian and Pacific Islander
14 Wellness Center Inc. d/b/a San Francisco Community Health Center (“**SFCHC**”) (collectively,
15 “**Plaintiff Health Centers**”) are community health centers that provide healthcare—including HIV
16 prevention testing and treatment, STI testing, family planning, gender affirming care, nutrition, and
17 mental health—social services, community, and/or support to low-income patients from a variety
18 of backgrounds who frequently experience discrimination from other healthcare and social service
19 providers on the basis of race, sex, HIV+, and LGBTQ status. LA LGBT (Hollendonner) Decl. ¶¶ 3-
20 6; Prisma Decl. ¶¶ 3-5; SFCHC Decl. ¶¶ 3-4. Federal funding and/or contracts enable Plaintiff
21 Health Centers to provide these lifesaving services to youth, seniors, domestic violence survivors,
22 and patients with life-threatening conditions, among others. LA LGBT (Hollendonner) Decl. ¶¶ 7,
23 11; Prisma Decl. ¶¶ 9-15; SFCHC Decl. ¶¶ 3-7, 12. A core aspect of their missions is to advance
24 the civil rights of LGBTQ people. *See, e.g.*, Prisma Decl. ¶¶ 1, 3-4, 8; SFCHC Decl. ¶¶ 3-4, 12-14,
25 19. Further, to care for their patients, Plaintiffs must acknowledge the discrimination and systemic
26 barriers their patients experience when seeking healthcare. Declaration of Dr. Katherine Duffy of
27 LA LGBT Center (“**LA LGBT (Dr. Duffy) Decl.**”) ¶¶ 3-18.

1 **The LGBTQ Community Centers.** Plaintiff LGBTQ Community Centers, which include
 2 Plaintiffs SFCHC; LA LGBT Center; Lesbian and Gay Community Services Center, Inc. d/b/a The
 3 LGBT Community Center (“**NY LGBT Center**”); Bradbury-Sullivan LGBT Community Center
 4 (“**Bradbury-Sullivan**”); and Baltimore Safe Haven Corp. (“**Baltimore Safe Haven**”), offer
 5 myriad social services to members of the LGBTQ community, including youth and senior
 6 populations and multiple marginalized community members like Black transgender women,
 7 addressing their housing, employment, HIV testing and sexual health, substance use, and mental
 8 health needs, etc. Bradbury Decl. ¶¶ 2, 5-6, 13-16, 19, 23-25; LA LGBT (Hollendonner) Decl. ¶¶ 3-
 9 6; SFCHC Decl. ¶¶ 3-4, 12-14, 19; NY LGBT Decl. ¶¶ 15-19; Baltimore Decl. ¶¶ 3-7, 10-13. Their
 10 missions include advocacy for equality for all LGBTQ people. Bradbury Decl. ¶¶ 2, 5-6, 13-16, 19,
 11 23-25; LA LGBT (Hollendonner) Decl. ¶¶ 3-6; SFCHC Decl. ¶¶ 3-4, 12-14, 19; NY LGBT Decl.
 12 ¶¶ 3-12, 15-19; Baltimore Decl. ¶¶ 3-7, 10-13. Plaintiff LGBTQ Centers receive federal funding to
 13 support these services. Bradbury Decl. ¶ 7; LA LGBT (Hollendonner) Decl. ¶¶ 7, 11; SFCHC Decl.
 14 ¶¶ 5-7; NY LGBT Decl. ¶¶ 13-15; Baltimore Decl. ¶¶ 8-9.

15 **FORGE.** Plaintiff FORGE, Inc.’s (“**FORGE**”) focuses on training service providers who
 16 work with victims of sexual assault, intimate partner violence, stalking, and hate crimes to increase
 17 their knowledge of how to better serve transgender and nonbinary victims of crime. FORGE Decl.
 18 ¶¶ 3-6, 8-10, 15. FORGE also provides direct support, resources, and healing services to
 19 transgender survivors of violence. *Id.* FORGE receives federal funding to support the majority of
 20 services it provides. *Id.* ¶ 7.

21 **B. Plaintiffs Have a Shared Purpose and Must Be Able to Continue to Advocate**
 22 **for Those They Serve.**

23 Plaintiffs save lives and preserve the history of LGBTQ communities—which is critical
 24 given that the Executive Orders seek to erase the existence of a group of people and disrupt their
 25 access to healthcare and social services. Collectively, Plaintiffs provide services to hundreds of
 26 thousands of people annually. *See, e.g.*, LA LGBT (Hollendonner) Decl. ¶ 3 (500,000 people); NY
 27 LGBT Decl. ¶ 4 (300,000 people); Prisma Decl. ¶ 5 (over 30,000 people); SFAF Decl. ¶ 4 (approx.
 28 27,000 people).

1 To continue their work, Plaintiffs must be able to continue to acknowledge not only the
2 existence of, but the equal dignity and humanity of the people they serve, including people who are
3 transgender. *See, e.g.*, Baltimore Decl. ¶ 10 (“BSH’s origin as an organization created by
4 transgender people for transgender people makes it imperative that we not only fight injustices
5 against transgender people but provide our services to our community in a culturally competent
6 way. It is the cornerstone of our identity.”); FORGE Decl. ¶19 (“[E]very aspect of our programming
7 and services revolve[s] around transgender and nonbinary survivors and the providers who serve
8 them.”); LA LGBT (Dr. Duffy) Decl. ¶¶ 6-21; LA LGBT (Hollendonner) Decl. ¶ 5 (“Respecting
9 transgender people and advancing their civil rights is central to the LA LGBT Center’s identity,
10 advocacy, and mission, and a necessary part of every aspect of the services we provide.”); NY
11 LGBT Decl. ¶¶ 31-34 (“One of the NY LGBT Center’s core purposes is recognizing and affirming
12 the existence of transgender and gender-diverse individuals. . . . Compliance with the Executive
13 Order would dismantle the NY LGBT Center’s identity, rendering us incapable of serving the
14 community we were established to support.”); SFCHC Decl. 19 (“Among the health services we
15 provide are primary care, oral health, mental and behavioral health, HIV care, and gender-affirming
16 medical care. For our transgender patients, affirmation and recognition of their identities is
17 important and integral to the provision of all of these services”).

18 In addition, Plaintiffs must continue to be able to direct their services and advocacy to
19 communities most affected by the HIV/AIDS epidemic and to those most impacted by systemic
20 barriers to healthcare, housing, and basic social services due to past and current discrimination—
21 including Black, Latinx, and Asian and Pacific Islander communities, and transgender people. *See,*
22 *e.g.*, FORGE Decl. ¶5 (“[A]ll of our trainings incorporate DEI and DEIA principles because not
23 only are transgender people an underserved, marginalized group, but transgender people of color,
24 transgender people living with disabilities, and transgender youth face even greater levels of
25 victimization and marginalization.”); SFAF ¶¶ 10, 11, 33 (“Targeted services for minority and
26 transgender communities are essential for effective HIV treatment and . . . [the CDC] and other
27 public health authorities have long recognized that interventions designed specifically for
28 populations at higher risk are critical to ending the HIV epidemic.”); Baltimore Decl. ¶ 12 (“Our

1 programming purposely centers around Black transgender women, recognizing that this population
 2 experiences the most significant barriers created by racism, homophobia, transphobia, and
 3 sexism.”).

4 Plaintiffs advocate for an end to racism, sexism, and anti-LGBTQ bias and work to
 5 document and ameliorate structural inequities, including health disparities and housing
 6 discrimination, affecting these communities. *See e.g.*, Baltimore Decl. ¶¶ 10-13; FORGE Decl. ¶¶
 7 5, 14, 19; LA LGBT (Hollendonner) Decl. ¶ 3; NY LGBT Decl. ¶¶ 5-12. To perform their work
 8 effectively, Plaintiffs must be able to continue to advocate for equality for those they serve; embrace
 9 their identities; be cognizant of the structural and societal barriers they experience; and train their
 10 staff in diversity, equity, inclusion, and accessibility practices. *See, e.g.*, Baltimore Decl. ¶¶ 10-13;
 11 Bradbury Decl. ¶¶ 13-17, 20; FORGE Decl. ¶¶ 5, 14, 19; GLBT Decl. ¶¶ 11-13; LA LGBT (Dr.
 12 Duffy) Decl. ¶¶ 3-18; LA LGBT (Hollendonner) Decl. ¶ 5; NY LGBT Decl. ¶¶ 16-34; SFAF Decl.
 13 ¶¶ 13-33, 45-46; SFCHC Decl. ¶¶ 19-20.

14 C. The Defendants

15 Defendants include President Trump and the federal agencies and the highest-ranking
 16 officials within those agencies responsible for implementing the Executive Orders, including the
 17 U.S. Department of Justice (“**DOJ**”), Office of Federal Contract Compliance Programs
 18 (“**OFCCP**”), and Office of Management and Budget (“**OMB**”). *See*, Compl. ¶¶ 26-43. Defendants
 19 also include those federal agencies, and highest-ranking officials of those agencies, through whom
 20 Plaintiffs receive, either directly or indirectly, the federal funding threatened by the Executive
 21 Orders, including DOJ, U.S. Department of Labor (“**DOL**”), HHS, U.S. Department of Housing
 22 and Urban Development (“**HUD**”), National Archives and Records Administration (“**NARA**”), and
 23 National Endowment for the Humanities (“**NEH**”).³ *Id.*

24
 25
 26 ³ Defendants DOJ; Attorney General Pamela Bondi; DOL; Acting Labor Secretary Vince Micone;
 27 OFCCP; Acting OFCCP Director Michael Schloss; OMB; OMB Director Russell Vought; HHS;
 28 HHS Secretary Robert K. Kennedy, Jr.; HUD; HUD Secretary Scott Turner; NARA; Deputy
 Archivist William J. Bosanko; NEH; and NEH Chair Shelly C. Lowe are referred to collectively as
 the “**Agency Defendants**.”

1 **D. The Executive Orders⁴**

2 **i. The Gender Order Seeks to Erase Transgender People.**

3 The Gender Order expresses a disparaging and unscientific view of gender identity,
4 repudiates the existence of transgender people, deems their identities to be “false,” orders their
5 exclusion from government recognition and protection, and seeks to coerce others to do the same
6 by threatening termination of federal funding and other penalties.

7 Specifically, the Gender Order states that a person’s sex is an “immutable biological
8 classification as either male or female” that “does not include the concept of ‘gender identity,’” and
9 that it is the “policy of the United States to recognize two sexes, male and female” which “are not
10 changeable.” “Female” is defined as “a person belonging, at conception, to the sex that produces
11 the large reproductive cell.” “Male” is defined as “a person belonging, at conception, to the sex that
12 produces the small reproductive cell.” Per the Gender Order, “the Executive Branch will enforce
13 all sex-protective laws to promote this reality” and the above definitions shall govern the
14 application of Federal law and administration policy.

15 The Gender Order asserts that “gender ideology” “replaces the biological category of sex
16 with an ever-shifting concept of self-assessed gender identity, permitting the false claim that males
17 can identify as and thus become women and vice versa, and requiring all institutions of society to
18 regard this false claim as true.” Section 3(e) of the Gender Order demands that agencies “take all
19 necessary steps, as permitted by law, to end the Federal funding of gender ideology,” which is
20 described as “an internal and subjective sense of self, disconnected from biological reality. . . .”
21 Section 3(g) of the Gender Order prohibits the use of federal funds “to promote gender ideology”
22 and directs each agency to “assess grant conditions and grantee preferences” to meet this directive.
23 The Gender Order does not explain what it means to “promote” gender “ideology.” Section 7
24 requires Agencies to report their implementation of the Gender Order within 120 days. The Gender
25

26
27 _____
28 ⁴ For the convenience of the Court, the Executive Orders are attached hereto as Exhibits A-C to
the Declaration of Jose Abrigo, counsel for Plaintiffs.

1 Order thus penalizes federal grantees, including Plaintiffs, whose speech, trainings, research, and/or
2 services acknowledge the existence of transgender people and advocate for their equality.

3 **ii. The DEI-1 and DEI-2 Orders Seek to Eliminate Diversity, Equity,**
4 **Inclusion, and Accessibility Policies and to Penalize Organizations That**
5 **Embrace Such Policies.**

6 The DEI-1 Order asserts that “diversity, equity, inclusion, and accessibility,” (“DEIA”) and
7 related programs are “illegal and immoral discrimination programs,” and, among other things,
8 directs agencies to terminate all equity-related grants or contracts. The DEI-1 Order expressly
9 targets private actors, including Plaintiffs. For example, Section 2(b)(ii) directs agencies to provide
10 the Director of OMB with a “list” of contractors “who have provided DEI training or DEI training
11 materials to agency or department employees” and grantees “who received Federal funding to
12 provide or advance DEI, DEIA, or ‘environmental justice’ programs, services, or activities” in the
13 last four years.

14 The DEI-2 Order further asserts the illegality of DEIA and outlines specific mechanisms to
15 punish federal contractors and grantees that embrace or necessarily rely on principles of DEIA. The
16 DEI-2 Order directs all executive departments and agencies “to terminate all discriminatory and
17 illegal preferences, mandates, policies, programs, activities, guidance, regulations, enforcement
18 actions, consent orders, and requirements” to “enforce our longstanding civil-rights laws and to
19 combat illegal private-sector DEI preferences, mandates, policies, programs, and activities.”

20 Similar to the DEI-1 Order, the DEI-2 Order expressly targets private actors, including
21 Plaintiffs. Specifically, Section 3 instructs agencies to cease promoting diversity, requiring
22 contractors to engage in affirmative action, or encouraging workforce balancing based on race,
23 color, sex, sexual preference, religion, or national origin. Section 3 further directs agencies to
24 require grant award recipients to certify that they do not promote DEI and agree that compliance is
25 material for purposes of the False Claims Act. The DEI-2 Order also directs OMB to excise
26 references to DEI and DEIA principles from Federal acquisition, contracting, grants, and financial
27 assistance procedures. Most alarmingly, the DEI-2 Order directs agencies “to advance in the
28 *private sector* the policy of individual initiative, excellence, and hard work,” which the DEI-2 Order
asserts is inconsistent with DEI (emphasis added), and directs the Attorney General to submit a

1 report “*containing recommendations . . . to encourage the private sector to end illegal*
2 *discrimination and preferences, including DEI*” (emphasis added).

3 Taken together, the DEI-1 and DEI-2 Executive Orders direct that DEIA policies and
4 activities are wrong, immoral, fail to comply with federal law, and must cease. Defendants thus
5 penalize federal grant recipients and contractors, including Plaintiffs, whose speech, trainings,
6 research, and/or services support or require the consideration of DEIA efforts or traits—namely,
7 those who seek to assist Black people, women, LGBTQ people, and people living with HIV in
8 overcoming systemic barriers to equality resulting from past and current discrimination.

9 **iii. The Executive Orders Harm Plaintiffs by Chilling Their Speech,**
10 **Frustrating Their Core Purposes, and Threatening Penalties.**

11 The Executive Orders are designed to silence, defund, and otherwise penalize Plaintiffs for
12 acknowledging that transgender people exist and providing them with humanitarian services, which
13 Plaintiffs cannot do without acknowledging people’s diverse backgrounds and experiences,
14 including race, color, sex, sexual orientation, gender identity, religion, national origin, health status,
15 and/or financial status.

16 The Executive Orders’ penalties extend beyond loss of funding. The DEI-2 Order invokes
17 the False Claims Act, 31 U.S.C. §§ 3729–33, and its harsh treatment of “material” false statements
18 to the government, thereby exposing Plaintiffs to private lawsuits, government prosecution, and
19 penalties of up to three times the amount of the government’s damages. 31 U.S.C. §§ 3729(1),
20 3730. This is especially troubling given that for many Plaintiffs, complying with the terms of their
21 federal grants and the Executive Orders is impossible, because the grants require action that the
22 Executive Orders prohibit. *See, e.g., LA LGBT (Hollendonner) Decl.* ¶ 11, 23 (“Many of the LA
23 LGBT Center’s federally funded grants require the LA LGBT Center to acknowledge, address, and
24 combat HIV stigma and discrimination...the LA LGBT Center plainly cannot accomplish its
25 mission—and its mandates under existing grants—should the Executive Orders be allowed to
26 stand...”). Of course, these unprecedented liabilities and the risk of funding loss has a chilling
27 effect on Plaintiffs’ free speech.
28

1 Further, the chilling effect that the Executive Orders have on speech is magnified by their
2 provisions directing officials to create lists of private individuals and organizations suspected of
3 opposing the Trump Administration’s views. If Plaintiffs are placed on these lists, they will be
4 further targeted—either directly by government action or indirectly through reputational harms,
5 and attrition of staff and donors. Moreover, the Executive Orders do not make clear whether such
6 lists will be made public, which would invite harassment, hostility, or worse.

7 **E. The Executive Orders Harm Plaintiffs and Those They Serve.**

8 The Executive Orders harm each of the Plaintiffs in irreparable ways. For example, SFAF
9 will not be able to provide, or will have to substantially reduce preventative care, healthcare, and
10 supportive services to individuals at risk of or living with HIV. SFAF Decl. ¶¶ 10-13, 34-47. GLBT
11 Historical Society will not be able to preserve and provide public access to LGBTQ history, culture,
12 and art, which is essential for education, research, collective identity, memory, and advocating for
13 equal rights. GLBT Decl. ¶¶ 21, 23-24. The LGBTQ Health Centers will be forced to reduce
14 services, cease core programs, and turn away people who rely on these organizations for low- or
15 no-cost essential healthcare, including HIV and STI treatment, testing, and prevention, mental
16 healthcare, and other essential services. *See, e.g.*, Prisma Decl. ¶ 25; SFCHC Decl. ¶¶ 9-12, 15; LA
17 LGBT (Dr. Duffy) Decl. ¶ 21. LGBTQ Community Centers will be forced to reduce or stop
18 providing vital humanitarian services, including food and essential goods, housing, homelessness
19 prevention, HIV and STI testing, mental healthcare, substance use treatment and prevention
20 counseling, social programs, employment and legal assistance, etc. *See, e.g.*, Baltimore Decl. ¶¶
21 10-12, 14; Bradbury Decl. ¶¶ 11-28; LA LGBT (Hollendonner) Decl. ¶¶ 21-23; NY LGBT Decl. ¶¶
22 16-27, 31-34. Similarly, FORGE, NY LBGT, and SFCHC will lose the ability to provide care and
23 prevention services to victims of violent crime, sexual assault, and intimate partner violence.
24 FORGE Decl. ¶¶ 13, 12; NY LGBT Decl. ¶¶ 27-30; SFCHC Decl. ¶¶ 9-12, 15.

25 In short, Plaintiffs cannot advertise, provide services, train staff, train other agencies or
26 providers, or accomplish their core mission and mandates under existing grants while
27 simultaneously complying with the Executive Orders. *See, e.g.*, Baltimore Decl. ¶¶ 10-14;
28 Bradbury Decl. ¶¶ 26-28; FORGE Decl. ¶¶ 21-20; GLBT Decl. ¶¶ 12-13, 24; NY LGBT Decl. ¶¶

1 16-34; LA LGBT (Hollendonner) Decl. ¶ 21; Prisma Decl. ¶ 25; SFAF Decl. ¶¶ 10-13, 34-47;
2 SFCHC Decl. ¶ 23 (“If the Executive Orders are allowed to stand, SFCHC will face the impossible
3 choice of abandoning our mission to provide targeted, culturally competent care to marginalized
4 communities, or forfeit the federal funding supporting many of our lifesaving services.”).

5 These are not hypothetical harms. Many Plaintiffs have already received termination/stop
6 work orders and lost contracts or partnerships as a result of the Executive Orders. *See, e.g.*,
7 Bradbury Decl. ¶ 27; FORGE Decl. ¶¶ 8, 10, 12, Ex. 1; LA LGBT (Hollendonner) Decl. ¶ 16; NY
8 LGBT Decl. ¶¶ 35-36, Ex. A; SFCHC Decl. ¶ 8, Ex. A-D. FORGE has had to suspend grant
9 proposals in response to the Executive Orders. FORGE Decl. ¶¶ 16-17. Other Plaintiffs anticipate
10 that fear stemming from the Executive Orders will result in a loss of staff, donors, patrons, and
11 patients. *See, e.g.*, Bradbury Decl. ¶ 20; Baltimore Decl. ¶ 15; FORGE Decl. ¶¶ 18-19; LA LGBT
12 (Dr. Duffy) Decl. ¶¶ 18-21; LA LGBT (Hollendonner) Decl. ¶¶ 16, 21; SFCHC Decl. ¶¶ 18, 21-22.

13 Moreover, reducing or terminating Plaintiffs’ services and programs will have dire
14 consequences—consequences that will most heavily burden the LGBTQ community, but will
15 negatively impact American society as a whole. Instances of communicable diseases like HIV,
16 Hepatitis, STIs, and MPOX will increase. Baltimore Decl. ¶ 14; LA LGBT (Dr. Duffy) Decl. ¶¶
17 18-21; SFAF Decl. ¶¶ 10-13, 34-47; SFCHC Decl. ¶ 25. Unemployment, homelessness, and
18 substance use will increase. Baltimore Decl. ¶ 14; SFCHC Decl. ¶ 25. More people will experience
19 discrimination and violence. Baltimore Decl. ¶ 14; SFCHC Decl. ¶ 25. Fewer people will have
20 access to necessary mental healthcare and community support, resulting in increased suicidality
21 and even death. Baltimore Decl. ¶ 14; SFCHC Decl. ¶ 25; *see also* LA LGBT (Dr. Duffy) Decl. ¶¶
22 11-12, 18-21. Street medicine teams and mobile outreach programs will no longer be able to
23 operate, ceasing work reversing overdoses and providing HIV-related testing and medication to
24 unhoused people and people engaging in survival sex work, and emergency shelters and transitional
25 housing will close, further exacerbating the nations’ housing crisis. SFCHC Decl. ¶ 12; Baltimore
26 Decl. ¶¶ 2, 5, 16.

1 Stated directly, the Executive Orders are likely to cause some of Plaintiffs’ “clients to die—
 2 —either through self-harm, murder, untreated disease, overdose, or being arrested because they are
 3 unhoused.” Baltimore Decl. ¶ 14.

4 **III LEGAL STANDARD**

5 A plaintiff seeking a preliminary injunction must show “that he is likely to succeed on the
 6 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance
 7 of equities tips in his favor, and that an injunction is in the public interest.” *Regents of the Univ. of Cal.*
 8 *v. U.S. Dep’t of Homeland Sec.*, 908 F.3d 476, 505 n.20 (9th Cir. 2018) (quoting *Winter v. Nat. Res.*
 9 *Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). Under the “sliding scale” approach to preliminary
 10 injunctions observed in this circuit, “the elements of the preliminary injunction test are balanced,
 11 so that a stronger showing of one element may offset a weaker showing of another.” *All. for the*
 12 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

13 **IV ARGUMENT**

14 **A. Plaintiffs Have Standing.**

15 “To have standing, a plaintiff must present an injury that is concrete, particularized, and
 16 actual or imminent; fairly traceable to the defendant’s challenged behavior; and likely to be
 17 redressed by a favorable ruling.” *Dep’t of Com. v. New York*, 588 U.S. 752, 766 (2019) (internal
 18 quotation marks omitted). “As a general rule, in an injunctive case this court need not address
 19 standing of each plaintiff if it concludes that one plaintiff has standing.” *Nat’l Ass’n of Optometrists*
 20 *& Opticians LensCrafters, Inc. v. Brown*, 567 F.3d 521, 523 (9th Cir. 2009).

21 First, Plaintiffs must show an injury in fact that constitutes “an invasion of a legally
 22 protected interest which is (a) concrete and particularized, and (b) actual or imminent, not
 23 conjectural or hypothetical.” *Lopez v. Candaele*, 630 F.3d 775, 785 (9th Cir. 2010). “Because
 24 constitutional challenges based on the First Amendment present unique standing considerations,
 25 plaintiffs may establish an injury in fact without first suffering a direct injury from the challenged
 26 restriction.” *Id.* (internal quotation marks omitted). “In such pre-enforcement cases, the plaintiff
 27 may meet constitutional standing requirements by demonstrating a realistic danger of sustaining a
 28 direct injury as a result of the statute’s operation or enforcement.” *Id.* (internal quotation marks

1 omitted). In pre-enforcement cases, courts consider three related inquiries: (1) whether plaintiffs
 2 have shown a reasonable likelihood that the government will enforce the challenged law against
 3 them; (2) whether the plaintiffs have established that they intend to violate the challenged law; and
 4 (3) whether the challenged law is applicable to the plaintiffs, either by its terms or as interpreted by
 5 the government. *See id.* at 786.

6 **i. There is a Reasonable Likelihood the Executive Orders Will Be**
 7 **Enforced, as Evidenced by Defendants’ Actions to Date.**

8 The government’s preliminary efforts to enforce a speech restriction constitute strong
 9 evidence that pre-enforcement plaintiffs face a credible threat of adverse government action. *Lopez*,
 10 630 F.3d at 786. Plaintiffs have submitted evidence showing that a substantial portion of their
 11 funding comes from federal contracts and grants. Baltimore Decl. ¶¶ 8-9; Bradbury Decl. ¶ 7;
 12 FORGE Decl. ¶ 7; GLBT Decl. ¶ 14; LA LGBT (Hollendonner) Decl. ¶¶ 7, 11; NY LGBT Decl.
 13 ¶¶ 13-15; Prisma Decl. ¶¶ 9-15; SFAF Decl. ¶¶ 5-9; SFCHC Decl. ¶¶ 5-7.

14 In addition, the Government has manifested a clear commitment to enforcing restrictions
 15 on federal contracts and grants, and Plaintiffs are likely to be subject to such enforcement. The
 16 Executive Orders themselves unambiguously express Defendants’ intent to enforce restrictions on
 17 federal contracts and grants. *See* Gender Order § 3(g); DEI-1 Order § 2(b)(ii), (iii); DEI-2 Order §§
 18 3(b)(iv), 4.

19 Plaintiffs have received specific notices indicating the Government’s intent to enforce the
 20 Executive Orders in the form of termination notices, stop work orders, etc. *See* Bradbury Decl.
 21 ¶¶ 20, 27; FORGE Decl. ¶¶ 8, 10, 12, Ex. 1; NY LGBT Decl. ¶¶ 35-36, Ex. A; Prisma Decl. ¶¶ 17-
 22 25, Exs. A-B; SFCHC Decl. ¶ 8, Ex. A-D. Given Plaintiffs’ reliance on federal contracts and grants
 23 to serve their communities, and the Government’s intent to enforce the Executive Orders against
 24 all federal contracts and grants, it is reasonably likely that the Executive Orders will be enforced
 25 against Plaintiffs.

26 **ii. Plaintiffs Intend to Violate the Executive Orders as Plaintiffs’ Missions**
 27 **Run Directly Counter to the Executive Orders’ Unlawful Mandates.**

28 Plaintiffs’ missions are fundamentally implicated by the Executive Orders. *See, e.g.*,
 Bradbury Decl. ¶8 (“Executive Orders that restrict or alter the distribution of these funds place

1 Bradbury-Sullivan’s operational capacity at significant risk, thereby directly impacting our ability
 2 to fulfill our mission and serve the LGBTQ+ community effectively.”); Baltimore Decl. ¶¶ 10-14
 3 (“There is simply no way to do our work and fulfill our mission in a way that does not directly
 4 center the experiences of marginalized TLGBQIA+ people.”); FORGE Decl. ¶¶ 13, 18-20
 5 (“FORGE plainly cannot accomplish our mission—and our mandates under existing grants—
 6 should the Executive Orders be allowed to stand.”); LA LGBT (Hollendonner) Decl. ¶ 22 (“The
 7 Executive Orders make it difficult, if not impossible, for the LA LGBT Center to continue
 8 providing the same level of social, mental, and physical health care and related social services to
 9 its patients, external partners, and the public.”); NY LGBT Decl. ¶¶30, 34 (“The Executive Order
 10 targeting ‘gender ideology’ presents an existential threat to the NY LGBT Center’s mission,
 11 programs, and the well-being of its clients.”); Prisma Decl. ¶¶ 1, 10, 25 (“Most of our federal
 12 funding explicitly requires us to participate in activities and to employ affirming language that
 13 appear to be considered ‘diversity, equity, inclusion, or accessibility’ efforts according to the
 14 Executive Orders.”); SFAF Decl. ¶ 34 (“These executive orders directly threaten SFAF’s mission.
 15 . . . We cannot afford to stand by as policies attempt to dismantle the very foundation of our work.”);
 16 SFCHC Decl. ¶ 23 (“If the Executive Orders are allowed to stand, SFCHC will face the impossible
 17 choice of abandoning our mission to provide targeted, culturally competent care to marginalized
 18 communities, or forfeit the federal funding supporting many of our lifesaving services. . . .”).

19 As detailed in Plaintiffs’ declarations submitted herewith, each of the Plaintiffs intends to
 20 continue the status quo, fulfilling their mission to provide support and services to the LGBT
 21 community and greater population, and necessarily violating the Executive Orders in the process.

22 **iii. The Executive Orders Apply to Plaintiffs.**

23 All Plaintiffs receive federal funding and thus are subject to enforcement of the Executive
 24 Orders. Baltimore Decl. ¶¶ 8-9; Bradbury Decl. ¶ 7; FORGE Decl. ¶ 7; GLBT Decl. ¶ 14; LA
 25 LGBT (Hollendonner) Decl. ¶¶ 7, 11; NY LGBT Decl. ¶¶ 13-15; Prisma Decl. ¶¶ 9-15; SFAF Decl.
 26 ¶¶ 5-9; SFCHC Decl. ¶¶ 5-7.

27 In addition to asserting claims on their own behalf, Plaintiffs assert equal protection claims
 28 on behalf of the people they serve, including the LGBTQ individuals who (a) are targeted by the

1 Gender Order, (b) will suffer direct injuries because of the intended erasure, and (c) face barriers
2 to asserting their own claims. *Powers v. Ohio*, 499 U.S. 400, 410-11 (1991) (acknowledging third-
3 party standing to raise the equal protection rights of another); *see also City & County. of San*
4 *Francisco v. Azar*, 411 F. Supp. 3d 1001, 1011 (N.D. Cal. 2019) (finding that physician plaintiffs
5 had standing to bring claims on behalf of women seeking abortions and LGBTQ patients). Those
6 individuals are not only the intended beneficiaries of the programs Congress has funded, but also
7 at the heart of Plaintiffs’ mission-driven services.

8 Finally, the injury threatened arises from, and thus is fairly traceable to, the Executive
9 Orders and enjoining them would address Plaintiffs’ injuries. Private parties may “sue to enjoin
10 unconstitutional actions by state and federal officers.” *Armstrong v. Exceptional Child Ctr., Inc.*,
11 575 U.S. 320, 327 (2015); *see also Washington v. Trump*, No. 2:25-cv-00244-LK, 2025 WL
12 509617, at *7 (W.D. Wash. Feb. 16, 2025). Enjoining enforcement of the Executive Orders would
13 redress the threat that restrictions on federal contracts and grants would irreparably impair
14 Plaintiffs’ ability to promote and apply concepts required by their missions and work.

15 **B. Plaintiffs Are Likely to Succeed on the Merits.**

16 **i. The Executive Orders Violate the Free Speech Clause of the First**
17 **Amendment.**

18 The First Amendment provides that the government “shall make no law . . . abridging the
19 freedom of speech.” U.S. CONST., amend. I. The First Amendment provides robust protection
20 against government attempts to control the topics discussed—and even more so, the *views*
21 expressed—in public discourse. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Accordingly,
22 laws that restrict speakers from expressing certain viewpoints are a blatant and egregious form of
23 government speech control that is “presumed to be unconstitutional.” *Rosenberger v. Rector &*
24 *Visitors of Univ. of Va.*, 515 U.S. 819, 828-29 (1995).

25 The Executive Orders impermissibly chill the exercise of Plaintiffs’ constitutionally
26 protected speech based on the content and viewpoint of their speech. The Executive Orders also
27 improperly penalize Plaintiffs for engaging in First Amendment activity by weaponizing the federal
28 funding that is necessary for their missions and work, for a public official “may not deny a benefit

1 to a person on a basis that infringes his constitutionally protected interests—especially, his interest
2 in freedom of speech.” *Perry v. Sindermann*, 408 U.S. 593, 597 (1972).

3 The Executive Orders mandate that recipients of federal funds not “promote” “gender
4 ideology” or “DEI” and related concepts that the Government dislikes. “It is, however, a basic First
5 Amendment principle that ‘freedom of speech prohibits the government from telling people what
6 they must say.’” *Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.*, 570 U.S. 205, 213 (2013)
7 [hereinafter “*AID*”] (quoting *Rumsfeld v. F. for Acad. & Inst. Rts., Inc.*, 547 U.S. 47, 61 (2006));
8 *see also Knox v. Serv. Emps. Int’l Union, Loc. 1000*, 567 U.S. 298, 309 (2012) (“The government
9 may not prohibit the dissemination of ideas that it disfavors, nor compel the endorsement of ideas
10 that it approves.” (citations omitted)). “If there is a bedrock principle underlying the First
11 Amendment, it is that the government may not prohibit the expression of an idea simply because
12 society finds the idea itself offensive or disagreeable.” *Texas v. Johnson*, 491 U.S. 397, 414 (1989)
13 (collecting cases). The Government’s attempt to do so by way of the Executive Orders is subject to
14 “the most exacting scrutiny.” *Id.* at 412.

15 Requiring federal grantees to certify that they will not use grant funds to promote concepts
16 the Government considers offensive, even where the grant program is wholly unrelated to such
17 concepts, is a violation of the grantee’s free speech rights. *See AID*, 570 U.S. at 218; *see also Santa*
18 *Cruz Lesbian & Gay Cmty. Ctr. v. Trump*, 508 F. Supp. 3d 521, 528 (N.D. Cal. 2020) [hereinafter
19 “*Santa Cruz*”] (requiring federal grantees to certify they will not use grant funds to promote
20 concepts the Government considers “divisive” violated grantee’s free speech rights). Like the
21 statute struck down in *AID*, the Executive Orders demand, as a condition of federal funding,
22 compliance with a speech restriction that by its nature “cannot be confined within the scope of the
23 Government program.” *See AID*, 570 U.S. at 221.

24 In a strikingly similar case, Judge Freeman found that the plaintiffs were likely to succeed
25 on the merits of a First Amendment challenge to an executive order passed during President
26 Trump’s first administration. *See Santa Cruz*, 508 F. Supp. 3d at 528. There, President Trump
27 issued an executive order requiring plaintiffs to censor or cease diversity trainings that were
28 fundamental to their missions on the pain of losing federal funding in the form of contracts and

1 grants. *See id.* at 542 (quoting Exec. Order, 85 Fed. Reg. at 60, 686–87). The court found that
2 “[c]onditioning federal grants in this manner clearly would constitute a content-based restriction
3 on protected speech.” *Id.* This was particularly so where the executive order barred any promotion
4 of “divisive” concepts using federal funds. *Id.*

5 The same logic applies equally to the Executive Orders, which bar Plaintiffs from promoting
6 “gender ideology,” “DEI,” and/or related concepts on the pain of losing federal grant funding. This
7 content-based restriction on speech is a flagrant First Amendment violation.

8 **ii. The Executive Orders Violate the Due Process Clause of the Fifth**
9 **Amendment.**

10 It is well settled that “‘a basic principle of due process [is] that an enactment is void for
11 vagueness if its prohibitions are not clearly defined.’” *Hunt v. City of Los Angeles*, 638 F.3d 703,
12 712 (9th Cir. 2011) (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)). In this case,
13 a stringent vagueness test applies both because the Executive Orders abridge basic First
14 Amendment freedoms and because they invoke heightened penalties, including pursuant to the
15 False Claims Act. *See Sessions v. Dimaya*, 584 U.S. 148, 183 (2018) (“stringent vagueness test”
16 applies to civil laws that violate the First Amendment or impose penalties similar to those found in
17 criminal statutes (Gorsuch, J., concurring)); *see also Nat’l Ass’n of Diversity Officers in Higher*
18 *Educ. v. Trump*, No. 25-cv-00333-ABA, 2025 WL 573764, at *25 (D. Md. Feb. 21, 2025) (applying
19 stringent vagueness test and preliminarily enjoining, in part, the DEI Orders).

20 Under the terms of the Executive Orders, there is no objective way to determine which
21 speech activities are permitted and which are prohibited. This creates a broad chilling effect and
22 invites unpredictable, uneven, and discriminatory enforcement against recipients of federal
23 funding, including Plaintiffs.

24 For example, the Executive Orders do not explain what it means to “promote” so-called
25 “gender ideology.” Neither do the Executive Orders define the terms “diversity, equity, and
26 inclusion,” “DEI,” “diversity, equity, inclusion, and accessibility,” or “DEIA,” despite such terms
27 being fundamental to the Executive Orders. Similarly, the Executive Orders do not define the term
28 “equity” when used independently from “diversity, equity, inclusion, and accessibility,” even

1 though Section 2(b) of the DEI-1 Order directs the termination of “equity-related” grants and
2 contracts, along with other DEI and DEIA activities. Section 3(c) of the DEI-2 Order also uses
3 impermissibly broad and vague terminology in mandating OMB to “[e]xcise references to DEI and
4 DEIA principles, under whatever name they may appear” from Federal acquisition, contracting,
5 grants, and financial assistance procedures. Plaintiffs, therefore, are left to speculate what speech
6 or activity might be considered DEI or DEIA “principles” even without using the actual terms
7 “DEI” or “DEIA.” *See, e.g.*, SFCHC Decl. ¶ 9; LA LGBT (Hollendonner) Decl. ¶ 19.

8 The Executive Orders create additional ambiguity by distinguishing at times between DEIA
9 that they consider “legal” from that which they consider “illegal.” *See* DEI-2 Order § 2 (expressing
10 a policy of terminating all “discriminatory and illegal preferences” and “combat[ing] illegal
11 private-sector DEI preferences, mandates, policies, program, and activities”); *id.* § 3(b) (requiring
12 federal contractors and grantees to certify they do “not operate any programs promoting DEI that
13 violate any applicable Federal anti-discrimination law”).

14 The language in these provisions regarding illegality begs the question of who determines
15 what diversity, equity, inclusion, and accessibility policies, programs, and activities are legal, as
16 opposed to illegal, and pursuant to what criteria. Given the Trump Administration’s actions already
17 taken to eliminate DEIA from the federal workplace, it is likely that all DEIA policies, programs,
18 and activities would be considered illegal by this Administration even without an investigation.
19 This is especially true because the Executive Orders provide no clear, objective standards for
20 enforcement, while at the same time specifying a range of serious penalties, including cancellation
21 of existing contracts and grants, loss of eligibility for future government contracts and grants, and
22 potential civil investigations, regulatory actions, and/or litigation. In the absence of objective
23 standards, the Executive Orders give the Trump Administration unfettered discretion to enforce the
24 prohibitions against federal contractors and grantees, inviting arbitrary enforcement and
25 discrimination that is subject to the whims of the decisionmaker. *See Nat’l Ass’n of Diversity*
26 *Officers in Higher Educ.*, 2025 WL 573764, at *25 (“Vague laws invite arbitrary power.”)
27 (quoting *Sessions*, 584 U.S. at 175 (Gorsuch, J., concurring)). Thus, the vagueness of the Executive
28

1 Orders' terms exacerbates the preexisting censorship of Plaintiffs' speech activities by producing
2 an even greater chilling effect.

3 The provision of effective and comprehensive housing, healthcare, support, education, and
4 advocacy services for LGBTQ people and people living with HIV necessarily requires education
5 and awareness of the historical and ongoing inequities resulting from, among other things, a
6 person's race, sex, and/or transgender status, as well as corresponding data collection and attention
7 to health disparities. *See*, LA LGBT (Dr. Duffy) Decl. ¶¶ 6-21. Plaintiffs therefore have no way to
8 discern how to differentiate between the acceptable provision of services in furtherance of their
9 mission and the unacceptable "operation and promotion of DEI" programs and activities or
10 unacceptable promotion of "gender ideology."

11 *Santa Cruz* is instructive here as well. There, the court found the plaintiffs were likely to
12 succeed on the merits of their Fifth Amendment due process challenge regarding President Trump's
13 executive order banning the promotion of certain "divisive" concepts. 508 F. Supp. 3d at 543. The
14 court reasoned that the executive order was likely unconstitutional because it did not provide
15 sufficient clarity regarding what conduct was prohibited, and therefore posed a danger of arbitrary
16 and discriminatory application. *Id.* (citing *Hunt*, 638 F.3d at 712).

17 The same logic applies to the Executive Orders. For example, the Executive Orders are
18 unacceptably unclear on whether Plaintiffs would be in violation for conducting ordinary activities
19 like using gender pronouns in their e-mail signature blocks, or celebrating Black or Women's
20 History Months, or utilizing widely understood and accepted phrases such as "disadvantaged
21 communities," "environmental justice," "women's empowerment," or "gender-based violence," in
22 the execution of their work. The Executive Orders are so vague that no ordinary person can
23 understand what kind of conduct they prohibit. They are therefore unconstitutional.

24 **iii. The Executive Orders Are *Ultra Vires* Because They Exceed the**
25 **President's Authority, Infringe Upon Congress's Powers, and Violate**
26 **Article I's Framework for Federal Legislation.**

27 The Executive Orders are *ultra vires* actions that exceed the bounds of Article II, infringe
28 upon Congress's authority to control the public fisc under Article I, and violate Article I's

1 Bicameralism and Presentment Clauses. “No matter the context, the President’s authority to act
2 necessarily ‘stem[s] either from an act of Congress or from the Constitution itself.’” *Trump v.*
3 *United States*, 603 U.S. 593, 607 (2024) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343
4 U.S. 579, 585 (1952)). Congress authorizes and allocates funds for federal grants in the annual
5 appropriations bill or by federal statute. Federal grants are federal law, and conditioning or
6 cancelling federal grants amounts to amending or repealing federal law, which the Executive
7 Branch has no constitutional or statutory authority to do. *See Clinton v. City of New York*, 524 U.S.
8 417, 444 (1998) (holding cancellations “are the functional equivalent of partial repeals of Acts of
9 Congress”); *County of Santa Clara v. Trump*, 250 F. Supp. 3d 497, 531 (N.D. Cal. 2017) (“[T]he
10 President does not have the power to place conditions on federal funds[.]”). That power lies with
11 Congress. *See* U.S. CONST. art. I, § 7; *id.* art. I, § 8, cl. 1; *see also* 2 U.S.C. §§ 683, 684
12 (Impoundment Control Act, prohibiting the President or federal agencies from impounding
13 lawfully appropriated funds).

14 “The Appropriations Clause of the Constitution gives Congress the exclusive power over
15 federal spending.” *Nat’l Council of Nonprofits v. Off. of Mgmt. & Budget*, No. 25-239 (LLA), 2025
16 WL 368852, at *12 (D.D.C. Feb. 3, 2025) (internal quotation marks omitted); *see* U.S. CONST. art.
17 I, § 9, cl. 7. The Appropriations Clause “was intended as a restriction upon the disbursing authority
18 of the Executive [Branch].” *Cincinnati Soap Co. v. United States*, 301 U.S. 308, 321 (1937); *see*
19 *also U.S. House of Representatives v. Burwell*, 130 F. Supp. 3d 53, 76 (D.D.C. 2015) (“Congress’s
20 power of the purse is the ultimate check on the otherwise unbound power of the Executive.”).

21 Consistent with these principles, Congress “may impose appropriate conditions on the use
22 of federal property or privileges.” *Massachusetts v. United States*, 435 U.S. 444, 461 (1978); *see*
23 *generally Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013). “Aside from the power
24 of veto, the President is without authority to thwart congressional will by cancelling appropriations
25 passed by Congress.” *City & County of San Francisco v. Trump*, 897 F.3d 1225, 1232 (9th Cir.
26 2018).

27 The Executive Orders seek to usurp Congress’s authority by conditioning federal grants on
28 grantees not promoting “gender ideology” or “DEI.” Gender Order § 3(g); DEI-1 Order § 2(b)(ii)-

1 (iii); DEI-2 Order § 3(b)(iv). Such commands attempt to give the President and executive agencies
2 powers they do not have in blatant disregard for the Constitution and its carefully designed
3 separation of powers.⁵ See *PFLAG, Inc. v. Trump*, No. 25-337-BAH, 2025 WL 510050, at *1 (D.
4 Md. Feb. 14, 2025) (granting TRO against, *inter alia*, Section 3(g) of the Gender Order in relation
5 to gender affirming care, finding that the “case presents a straightforward question of separation of
6 powers”); *New York v. Trump*, No. 25 Civ. 39, 2025 WL 357368, at *2-3 (D.R.I. Jan. 31, 2025)
7 (issuing TRO against OMB directive to withhold federal funds); *Nat’l Council of Nonprofits v. Off.*
8 *of Mgmt. & Budget*, No. 25 Civ. 239, 2025 WL 368852, at *14 (D.D.C. Feb. 3, 2025).

9 The Constitution vests Congress, not the Executive, with authority over the public fisc, and
10 Congress has imposed no conditions on federal grants related to promoting “gender ideology” or
11 “DEI.” When Congress intends to place conditions on federal funds, “it has proved capable of
12 saying so explicitly.” *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17-18 (1981); *see*,
13 *e.g.*, Further Consolidated Appropriations Act, Pub. L. No. 118-47, § 526 (2024) (grant condition
14 regarding the provision of sterile needles); *id.* § 202 (grant condition regarding salary caps).

15 The Ryan White HIV/AIDS Program, which provides grants to family-centered care for
16 youth in communities disproportionately affected by HIV, exemplifies this incongruity. *See* 42
17 U.S.C. § 300ff; 42 U.S.C. § 300ff-71. Congress placed one condition on these grants: the funds
18 may not be used to provide “individuals with hypodermic needles or syringes so that such
19 individuals may use illegal drugs.” 42 U.S.C. § 300ff-1. Congress did not condition such grants on
20 whether the recipient promotes “gender ideology” or “DEI.” Accordingly, the Executive Orders
21 force a Presidential policy that is “incompatible with the expressed or implied will of Congress,”
22 *Zivotofsky v. Kerry*, 576 U.S. 1, 10 (2015), and unconstitutionally intrudes upon the Congressional
23 prerogative to control the public fisc.

24 The Executive Orders not only usurp Congressional powers but also bypass the Legislative
25 branch altogether to sidestep Article I’s framework for passing laws. “Explicit and unambiguous

26 ⁵ The Trump Administration’s actions since the Executive Orders were issued underscore the
27 President’s intent to disregard the separation of powers upon which our Constitution is based. On
28 February 19, 2025, the White House published, on the platform X, a photo of President Trump
dressed as a king, with a caption that reads, in part, “LONG LIVE THE KING!” *See* @WhiteHouse,
X (Feb. 19, 2025, 2:31 PM), <https://perma.cc/4JFY-9LB4>.

1 provisions of the Constitution prescribe and define the respective functions of the Congress and of
2 the Executive in the legislative process.” *INS v. Chadha*, 462 U.S. 919, 945 (1983). Article I
3 requires that every bill pass in both the House of Representatives and the Senate before it is
4 presented to the President. U.S. CONST. art. I, § 7, cl. 2. If the President vetoes the bill, Congress
5 may override his veto by a vote of two thirds of the Senate and the House. *Id.* art. I, § 7, cl. 3. These
6 procedural “steps” are non-negotiable: they were designed “to erect enduring checks on each
7 Branch and to protect the people from the improvident exercise of power by mandating certain
8 prescribed steps.” *Chadha*, 462 U.S. at 951, 957.

9 “In the framework of our Constitution, the President’s power to see that the laws are
10 faithfully executed refutes the idea that he is to be a lawmaker.” *Youngstown*, 343 U.S. at 587; *see*
11 U.S. CONST. art. II, § 3 (the President has an obligation to “take Care that the Laws be faithfully
12 executed”). Rather, as the Supreme Court has unequivocally stated: “[t]he Constitution limits [the
13 President’s] functions in the lawmaking process to the recommending of laws he thinks wise and
14 the vetoing of laws he thinks bad.” *Id.* If the President does not wish to disburse funds in the manner
15 appropriated by Congress, “the President must propose the rescission of funds, and Congress then
16 may decide whether to approve a rescission bill.” *In re Aiken County*, 725 F.3d 255, 261 n.1 (D.C.
17 Cir. 2013) (Kavanaugh, J.); *see also* U.S. CONST. art. I, § 7, cl. 2, 3.

18 Article I does not allow the President to circumvent Bicameralism and Presentment by
19 unilaterally amending or canceling federal appropriations via executive order. *See Clinton*, 524
20 U.S. at 448; *Train v. City of New York*, 420 U.S. 35, 38 (1975). “Where Congress has failed to give
21 the President discretion in allocating funds, the President has no constitutional authority to withhold
22 such funds and violates his obligation to faithfully execute the laws duly enacted by Congress if he
23 does so.” *County of Santa Clara*, 250 F. Supp. at 531 (citing *Clinton*, 524 U.S. at 439); *see also*
24 *City & County of San Francisco*, 897 F.3d at 1234 (“[T]he President’s duty to enforce the laws
25 necessarily extends to appropriations.”). As then-Judge Kavanaugh explained, “a President
26 sometimes has policy reasons . . . for wanting to spend less than the full amount appropriated by
27 Congress for a particular project or program . . . [b]ut in those circumstances, even the President
28

1 does not have the unilateral authority to refuse to spend the funds.” *In re Aiken County*, 725 F.3d
2 at 261 n.1.

3 The Executive Orders are a clear violation of the Constitution because “attempt[s] [by the
4 Executive Branch] to place new conditions on federal funds [are] an improper attempt to wield
5 Congress’s executive spending power and is a violation of the Constitution’s separation of powers
6 principles.” *County of Santa Clara*, 250 F. Supp. 3d at 531. Congress has not imposed conditions
7 on federal grants regarding gender ideology or DEI. “The Executive Branch has a duty to align
8 federal spending and action with the will of the people as expressed through congressional
9 appropriations, not through ‘Presidential priorities.’” *New York*, 2025 WL 357368, at *2. Because
10 the Executive Orders did not abide by the “single, finely wrought and exhaustively considered,
11 procedure” for amending or repealing federal legislation, they are unlawful. *Chadha*, 462 U.S. at
12 951; *see also Nat’l Council of Nonprofits*, 2025 WL 368852, at *1 (granting preliminary injunction
13 regarding OMB direction to federal agencies to pause federal financial assistance, reasoning that
14 “appropriations of the government’s resources is reserved for Congress, not the Executive Branch,”
15 and “a wealth of legal authority supports this fundamental separation of powers.”); *PFLAG*, 2025
16 WL 510050, at *17 (“[T]he Executive Orders unconstitutionally intrude upon the Congressional
17 prerogative to control the public fisc.”) (citation omitted).

18 **iv. The Executive Orders Are *Ultra Vires* Because They Conflict with**
19 **Statutory Equity-Related and Nondiscrimination Requirements.**

20 “The Court has the authority to determine whether the Executive Orders are incompatible
21 with the will of Congress.” *PFLAG*, 2025 WL 510050, at *18 (citing *Loper Bright Enters. v.*
22 *Raimondo*, 603 U.S. 369, 385 (2024)). The Executive Orders are *ultra vires* because they
23 impermissibly direct agencies to act in contravention of numerous laws and regulations and are
24 therefore inconsistent with the Constitution’s separation of powers clause. Federal statutes and
25 regulations specifically authorize Plaintiffs’ equity-related services and advocacy, and their efforts
26 to eradicate discrimination against transgender and other LGBTQ people. The President does not
27 have the power to override those statutes and prohibit grant recipients from doing precisely what
28 Congress has directed, and what duly promulgated regulations prescribe.

1 The DEI-1 and DEI-2 Orders conflict with the funding statutes applicable to Plaintiffs who
2 receive funding through the Ryan White Program and the Housing Opportunities for People with
3 AIDS (“HOPWA”) program, 24 C.F.R. § 574.300. *See, e.g.*, LA LGBT (Dr. Duffy) Decl. ¶ 5;
4 Prisma Decl. ¶¶ 9, 13; SFCHC Decl. ¶¶ 7, 23. The Ryan White Program’s statutory framework
5 explicitly directs resources to disproportionately affected and historically underserved groups and
6 subpopulations, reflecting Congress’s intent to address healthcare disparities for people living with
7 HIV/AIDS. 42 U.S.C. § 300ff-12(b)(1); *see also* 42 U.S.C. § 300ff-52 (mandating grant recipients
8 to target minority populations); 42 U.S.C. § 300ff-121 (establishing Minority AIDS Initiative to
9 evaluate and address racial and ethnic disparities in access to HIV care). Likewise, HOPWA
10 regulations reinforce the prioritization of marginalized populations. *See* 24 C.F.R. § 574.603
11 (affirmative outreach obligations for those at risk of discrimination based on race, national origin,
12 sex, or disability); 24 C.F.R. § 574.3 (defining “family” in a manner inclusive of LGBTQ+ people).

13 The statutory framework for Federally Qualified Health Centers (“FQHCs”), which applies
14 to Plaintiffs SFCHC and LA LGBT Center, also mandates them to provide medical care to
15 “medically underserved populations” and specific minority groups facing systemic barriers to
16 healthcare access. *See* 42 U.S.C. § 254b(a)(1); *see also* 42 U.S.C. § 254b-1 (authorizing states to
17 determine medically underserved populations eligible for funding). In addition, Congress has
18 directly appropriated funds for specific minority populations, including grants for Pacific Islander
19 health services and medical workforce development (42 U.S.C. § 254c-1), as well as funding for
20 diabetes prevention programs targeted at Native American communities (42 U.S.C. § 254c-3).

21 The HOPWA, Ryan White, and FQHC programs are structured to remediate systemic
22 inequities in healthcare and housing and to allocate healthcare resources toward minority
23 communities affected by health disparities. The DEI-1 and DEI-2 Orders disregard these statutory
24 obligations and contradict the express will of Congress by restricting organizations’ ability to
25 provide services in a manner that complies with the requirements of these programs.

26 Moreover, the Gender Order facially discriminates based on sex. It directs agencies to
27 withhold grants from entities that “promote gender ideology,” defined as “acknowledging that a
28

1 person’s gender identity may differ from their sex assigned at birth.” This violates federal law
2 prohibiting grant recipients from discriminating on the basis of sex.

3 Discrimination based on transgender status, including the failure to acknowledge a patient’s
4 gender identity, constitutes discrimination on the basis of sex under Section 1557 of the Affordable
5 Care Act (“ACA”), 42 U.S.C. § 18116, and Section 1908 of the Public Health Service Act
6 (“PHSA”), 42 U.S.C. § 300w-7. Section 1557 of the ACA provides that an individual shall not, on
7 the basis of race, national origin, sex, age, or disability “be excluded from participation in, be denied
8 the benefits of, or be subjected to discrimination under, any health program or activity, any part of
9 which is receiving Federal financial assistance.”⁶ It thus imposes on health entities an “affirmative
10 obligation not to discriminate in the provision of health care.” *Schmitt v. Kaiser Found. Health*
11 *Plan of Wash.*, 965 F.3d 945, 955 (9th Cir. 2020). Section 1908 of the PHSA similarly prohibits
12 discrimination on the basis of sex in programs, services, and activities “receiving Federal financial
13 assistance” through Preventive Health and Health Services Block Grants, which Defendant
14 Kennedy allots as the Secretary of Defendant HHS. *See* 42 U.S.C. § 300w-1.

15 In *Bostock v. Clayton County*, a Title VII case, the Supreme Court held that “it is impossible
16 to discriminate against a person for being . . . transgender without discriminating against that
17 individual based on sex.” 590 U.S. 644, 660 (2020). And because “[w]e construe Title IX’s
18 protections consistently with those of Title VII,” *Doe v. Snyder*, 28 F.4th 103, 114 (9th Cir. 2022),
19 there can be no doubt that “Section 1557 forbids sex discrimination based on transgender status.”
20 *C.P. v. Blue Cross Blue Shield of Ill.*, No. 3:20-CV-06145-RJB, 2022 WL 17788148, at *6 (W.D.
21 Wash. Dec. 19, 2022); *see also Kadel v. Folwell*, 100 F.4th 122, 164 (4th Cir. 2024). The same
22 reasoning extends to Section 1908 of the PHSA, which is nearly identical in wording to Section
23 1557 of the ACA. *See PFLAG*, 2025 WL 510050, at *18.

24 The Gender Order attempts to override federal statutes with President Trump’s unilateral
25 declaration that federally funded institutions must repudiate the existence of transgender people.

26 _____
27 ⁶ Section 1557 further requires that covered entities take reasonable steps to provide meaningful
28 access to their health programs or activities to individuals with limited English proficiency or with
disabilities. *See, e.g.*, 45 C.F.R. §§ 92.201–92.205. Likewise, Section 1557 requires covered entities
to train their employees as necessary and appropriate to carry out their functions consistent with
the requirements of Section 1557 and its implementing regulations. *See* 45 C.F.R. § 92.9.

1 See Gender Order §§ 1, 2. The DEI-1 and DEI-2 Orders attempt to override federal statutes with
2 President Trump’s unilateral declaration that federally funded institutions must not engage in
3 efforts that promote “diversity, equity, inclusion, or accessibility.”

4 President Trump does not have the power to override Section 1557 of the ACA or Section
5 1908 of the PHSA by requiring federal grantees to engage in precisely the discrimination that those
6 laws prohibit. Under these statutes, there is no scenario in which the new discriminatory condition
7 imposed by the President does not conflict with the non-discrimination mandate set by Congress,
8 because for entities like Plaintiff Health Centers, it does not matter what specific grants are at issue
9 or what funding stream is used. When the President usurps congressional authority and infringes
10 on the constitutional rights of individuals, the essential role of the judiciary is to “say what the law
11 is.” *Loper Bright Enters.*, 603 U.S. at 385 (summarizing the function of the Judiciary to interpret
12 statutes dating back to the earliest decisions of the Supreme Court and citing *Marbury v. Madison*,
13 5 U.S. (1 Cranch) 137, 177 (1803); *United States v. Dickson*, 40 U.S. (15 Pet.) 141, 162
14 (1841); *Decatur v. Paulding*, 39 U.S. (14 Pet.) 497, 515 (1840)). The Executive Orders should be
15 declared unlawful, and the Agency Defendants should be enjoined from enforcing or implementing
16 these unlawful orders.

17 **v. The Gender Order Violates the Equal Protection Clause.**

18 The Gender Order flagrantly violates Plaintiffs’ right to equal protection. *See* U.S. CONST.
19 amends. V, XIV; *United States v. Windsor*, 570 U.S. 744, 774 (2013) (“The liberty protected by
20 the Fifth Amendment’s Due Process Clause contains within it the prohibition against denying to
21 any person the equal protection of the laws.”). It purposefully discriminates based on transgender
22 status and it facially classifies based on transgender status and sex, failing any level of review.

23 **a. The Gender Order Fails Any Level of Review.**

24 The Gender Order fails any level of scrutiny because it is transparently motivated by a “bare
25 desire to harm” transgender people. *Romer v. Evans*, 517 U.S. 620, 635 (1996) (citation omitted).
26 Our Constitution forbids policies based on such “negative attitudes” and “irrational prejudice.” *City*
27 *of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448, 450 (1985). The Gender Order facially
28 discriminates against transgender people by declaring they do not exist and deeming their identities

1 to be “false.” Gender Order § 2(f). The Gender Order was issued for the openly discriminatory
 2 purpose of expressing governmental disapproval of transgender people and rendering them unequal
 3 to others. As one court recently put it, “[t]he Court cannot fathom discrimination more direct than
 4 the plain pronouncement of a policy resting on the premise that the group to which the policy is
 5 directed does not exist.” *PFLAG*, 2025 WL 510050, at *19.

6 The context surrounding the Gender Order, including other executive actions, betrays its
 7 underlying animus. For example, another executive order issued on January 27, 2025, deems
 8 “adoption of a gender identity inconsistent with an individual’s sex” to be in conflict with a
 9 “commitment to an honorable, truthful, and disciplined lifestyle, even in one’s personal life.”⁷ The
 10 Gender Order challenged here is thus part of a far-reaching attack on transgender people who are
 11 expressly targeted in a litany of President Trump’s executive orders.⁸ The degree of prejudice is
 12 remarkable in its breadth and scope, and reinforces the Gender Order’s unconstitutional purpose.
 13 Disapproving of transgender people and enforcing state-mandated gender conformity is not an
 14 incidental effect of the Gender Order; it is its purpose. It is a status-based classification of persons
 15 undertaken for its own sake, which is forbidden by the Constitution’s Equal Protection guarantee.
 16 *Romer*, 517 U.S. at 634; *see also U.S. Dep’t of Agric. v. Moreno*, 413 U.S. 528, 534 (1973). There
 17 can be no legitimate government interest in facially discriminatory executive action.

18 **b. The Gender Order Triggers Heightened Scrutiny.**

19 The Gender Order is subject to heightened scrutiny because it facially discriminates against
 20 transgender people and classifies based on sex. The Gender Order defines sex as an “immutable
 21 biological classification” that “does not include the concept of gender identity,” and asserts that
 22 transgender identities are invalid and “false” identities that “[do] not provide a meaningful basis
 23

24 ⁷ Exec. Order No. 14,183, *Prioritizing Military Excellence and Readiness*, 90 Fed. Reg. 8757
 (Jan. 27, 2025).

25 ⁸ Exec. Order No. 14,187, *Protecting Children from Chemical and Surgical Mutilation*, 90 Fed.
 26 Reg. 8,771 (Jan. 28, 2025); Exec. Order No. 14,148, *Initial Rescissions of Harmful Executive*
 27 *Orders and Actions*, 90 Fed. Reg. 8237 (Jan. 20, 2025); Exec. Order No. 14,170, *Reforming the*
 28 *Federal Hiring Process and Restoring Merit to Government Service*, Fed. Reg. 8621 (Jan. 20,
 2025); Exec. Order No. 14,190, *Ending Radical Indoctrination in K-12 Schooling*, 90 Fed. Reg.
 8853 (Jan. 29, 2025); Exec. Order No. 14,201, *Keeping Men Out of Women’s Sports*, 90 Fed. Reg.
 9279 (Feb. 5, 2025).

1 for identification and cannot be recognized as a replacement for sex.” Gender Order §§ 2(a), (f)-
 2 (g). If a law “discriminates based on transgender status, either purposefully or on its face,
 3 heightened scrutiny applies.” *Doe v. Horne*, 115 F.4th 1083, 1102 (9th Cir. 2024); *see also*
 4 *Karnoski v. Trump*, 926 F.3d 1180, 1200-01 (9th Cir. 2019). What is more, the Ninth Circuit has
 5 held that “discrimination on the basis of transgender status is a form of sex-based discrimination”
 6 for equal protection purposes. *Hecox v. Little*, 104 F.4th 1061, 1079 (9th Cir. 2024). “It is well-
 7 established that sex-based classifications are subject to heightened scrutiny.” *Id.* (citing *United*
 8 *States v. Virginia*, 518 U.S. 515, 533-34 (1996)); *Virginia*, 518 U.S. at 555 (“[A]ll gender-based
 9 classifications . . . warrant heightened scrutiny.”).⁹

10 **c. The Gender Order Fails Heightened Scrutiny.**

11 “The application of intermediate scrutiny requires the government to show that its gender
 12 classification is substantially related to an important governmental interest, ‘requiring an
 13 exceedingly persuasive justification.’” *Norsworthy v. Beard*, 87 F. Supp. 3d 1104, 1120 (N.D. Cal.
 14 2015) (quoting *Coal. for Econ. Equity v. Wilson*, 122 F.3d 692, 702 (9th Cir. 1997)). The Gender
 15 Order cannot survive any level of scrutiny, much less heightened scrutiny that must be applied here.

16 Disapproving of transgender people, discouraging people from expressing their gender
 17 identities, and directing agencies and federal grantees to do the same are plainly illegitimate
 18 purposes that demonstrate the Gender Order was issued for the purpose of discriminating against
 19 transgender people. Such an objective is not a legitimate state interest. *See Horne*, 115 F.4th at
 20 1104 (upholding finding of discriminatory purpose where a law’s “burdens [] fall *exclusively* on
 21 transgender women and girls” and the law was adopted “for the purpose of excluding transgender
 22 girls from playing on sports teams”); *Hecox*, 104 F.4th at 1077 (same); *Dekker*, 679 F. Supp. 3d at
 23 1292-93; *Van Garderen v. Montana*, No. DV-23-541, 2023 WL 6392607, at *14 (Missoula Cnty.
 24 Dist. Ct., Mont. Sept. 27, 2023), *aff’d sub nom.*, *Cross v. Montana*, 2024 MT 303, 560 P.3d 637

25 _____
 26 ⁹ Here, the Gender Order constitutes a sex classification in myriad ways. First, as noted above, it is
 27 a sex-based classification because it discriminates based on transgender status. Second, it is a sex-
 28 based classification on its face. *See Bostock*, 590 U.S. at 660; *see also Dekker v. Weida*, 679 F.
 Supp. 3d 1271, 1289-90 (N.D. Fla. 2023) (“If one must know the sex of a person to know whether
 or how a provision applies to the person, the provision draws a line based on sex.”). Third, it
 discriminates based on sex stereotypes. *See Hecox*, 104 F.4th at 1080.

1 (Mont. 2024).

2 **C. Plaintiffs Are Suffering Irreparable Harm Necessitating Injunctive Relief.**

3 “Irreparable harm is relatively easy to establish in a First Amendment case.” *CTIA—The*
4 *Wireless Ass’n v. City of Berkeley, Cal.*, 928 F.3d 832, 851 (9th Cir. 2019). “[A] party seeking
5 preliminary injunctive relief in a First Amendment context can establish irreparable injury . . . by
6 demonstrating the existence of a colorable First Amendment claim.” *Id.* (cleaned up).

7 In addition, Plaintiffs’ declarations provide substantial evidence that the restrictions on
8 speech imposed by the Executive Orders, in conjunction with the vagueness of those restrictions,
9 has chilled Plaintiffs’ exercise of their free speech rights. *See, e.g.*, Baltimore Decl. ¶¶ 14-15 (“The
10 Executive Orders attempt to erase even the word that describes who our people are and interrupt
11 critical initiatives and services”); Bradbury Decl. ¶ 10 (“This forced adherence to the government’s
12 prescribed narrative is not only in direct tension with our mission . . . it also makes it impossible
13 for the Center to conduct its training effectively, as the Center cannot openly and accurately discuss
14 the systemic issues at the core of LGBTQ+ health disparities.”); FORGE Decl. ¶¶ 8, 10-12, 18-20
15 (FORGE had grant-funded content removed from an agency’s website and work paused on updates
16 to that content; has been told that grant-funded work cannot include certain terms like “equal
17 opportunity,” “pronoun,” and “accessibility,” and is no longer able to advertise or provide
18 trainings); LA LGBT (Hollendonner) Decl. ¶¶ 16-18 (“Domestic violence and sexual assault
19 providers across the country have already begun removing information about the LGBTQ
20 inclusivity of their programs. These censorship actions are directly motivated by President Trump
21 and his administration’s assertions that their federal funding will be pulled. . . .”); SFCHC Decl. ¶¶
22 15-18 (“Staff members have expressed confusion and fear about whether their clinical practices,
23 which have been grounded in decades of medical and public health research, may now violate
24 federal mandates.”).

25 As aptly put by SFAF, “HIV advocates are once again being told to stay silent, forced into
26 an impossible choice: speak the truth about systemic inequities and risk losing federal funding or
27 comply with harmful restrictions that undermine life-saving services. But as the movement learned
28 decades ago, **silence equals death.**” SFAF Decl. ¶ 46.

1 The frustration of Plaintiffs’ ability to carry out their core missions is itself irreparable harm.
 2 *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (finding that ongoing harms
 3 to the plaintiffs’ organizational missions as a result of challenged statute established likelihood of
 4 irreparable harm); *Santa Cruz*, 508 F. Supp. 3d at 546 (finding that organizations showed a
 5 likelihood of irreparable harm based on the significant and serious ongoing harms to their
 6 missions); *E. Bay Sanctuary Covenant v. Trump*, 354 F. Supp. 3d 1094, 1116 (N.D. Cal. 2018).

7 **D. The Balance of Equities and the Public Interest Favor Plaintiffs.**

8 “Where the government is a party to a case in which a preliminary injunction is sought, the
 9 balance of the equities and public interest factors merge.” *Roman v. Wolf*, 977 F.3d 935, 940-41
 10 (9th Cir. 2020). As discussed above, Plaintiffs have demonstrated a likelihood of success in proving
 11 violations of their constitutional rights. “[I]t is always in the public interest to prevent the violation
 12 of a party’s constitutional rights.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (cleaned
 13 up).

14 Moreover, the work Plaintiffs perform is extremely important, even essential, to historically
 15 underserved communities. *See* Baltimore Decl. ¶¶ 3-7; Bradbury Decl. ¶¶ 2, 4-6; FORGE Decl.
 16 ¶¶ 3-6; GLBT Decl. ¶¶ 3-19; LA LGBT (Dr. Duffy) Decl. ¶¶ 3-16; LA LGBT (Hollendonner) Decl.
 17 ¶ 3-6; Prisma Decl. ¶¶ 1, 11-15; SFAF Decl. ¶¶ 11, 41-42; SFCHC Decl. ¶¶ 3-4. Plaintiffs’ ability
 18 to carry out their missions is impaired by the Executive Orders. Plaintiffs will suffer “a significant
 19 adverse impact on their organizations and clients, and . . . the public interest is served by reducing
 20 barriers to health care and other critical services for all communities.” *Santa Cruz*, 508 F. Supp. 3d
 21 at 547; *see also PFLAG*, 2025 WL 510050, at *23. Furthermore, “[t]he rule of law is secured by a
 22 strong public interest that the laws ‘enacted by their representatives are not imperiled by executive
 23 fiat.’” *Washington v. Trump*, 2025 WL 509617, at *14 (quoting *E. Bay Sanctuary Covenant v.*
 24 *Trump*, 932 F.3d 742, 779 (9th Cir. 2018)); *see also PFLAG*, 2025 WL 510050, at *23 (“Seeking
 25 to effectively enact legislation by executive order clearly exceeds the bounds of Article II and thus
 26 does not serve the public interest.”).

27 On the other side of the scale, the Government’s interest in mandating this administration’s
 28 viewpoint through expenditures of federal dollars is not in the public interest. To the extent that the

1 Government argues that it is in the public interest to curtail speech that promotes discrimination,
2 that is a gross mischaracterization of the speech Plaintiffs want to express and an insult to their
3 work of addressing discrimination and injustice towards historically underserved communities.
4 That this Government dislikes Plaintiffs' speech is irrelevant to the analysis.

5 **V CONCLUSION**

6 Plaintiffs respectfully request the Court to enter the Preliminary Injunction in the form of
7 the Proposed Order submitted herewith, to enjoin the implementation of Executive Orders Nos.
8 14,168, 14,151, and 14,173.

9
10 Dated this 3rd of March, 2025.

Respectfully,

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