

No. 25-4988

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

SAN FRANCISCO AIDS FOUNDATION, *et al.*,

Plaintiffs-Appellees,

v.

DONALD J. TRUMP, *et al.*,

Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of California

BRIEF FOR APPELLANTS

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INTRODUCTION

The preliminary injunction at issue here inserts the district court between the President and the agencies he is constitutionally charged with supervising. It enjoins provisions in two Executive Orders that merely direct federal officials to take lawful actions consistent with the President's priorities. The district court erred in entering that injunction and this Court should now vacate it.

The district court allowed plaintiffs to facially challenge presidential directives instructing federal agencies to lawfully terminate grants that are inconsistent with presidential policy priorities. It did so based entirely on plaintiffs' allegations that they have had grant awards terminated, or fear awards being terminated in the future. And its injunction directed defendants to reinstate plaintiffs' terminated awards, an order that cannot be reconciled with the Supreme Court's recent decisions in *Department of Education v. California*, 145 S. Ct. 966 (2025), and *NIH v. American Public Health Ass'n*, No. 25A103, 2025 WL 2415669 (U.S. Aug. 21, 2025).

The district court's decision was riddled with numerous additional errors. The district court ignored the text of the challenged provisions, which merely direct federal agencies to carry out their lawful authorities

consistent with the President's policy priorities, and instead presumed that agencies would take unlawful actions in violation of both governing law and the Executive Orders themselves. These errors caused the district court to conclude that plaintiffs had standing to facially challenge the presidential directives themselves, rather than any particular application of them, and that plaintiffs were likely to succeed on the merits. The same errors infected the court's assessment of the relative harms, causing the court to downplay the importance of vindicating the President's lawful directives and to foresee harms that no plausible understanding of the Executive Orders would create.

STATEMENT OF JURISDICTION

Plaintiffs invoked the district court's jurisdiction under 28 U.S.C. § 1331, although plaintiffs' standing is contested. *See infra* Part I.A. This Court has jurisdiction to review the district court's order granting plaintiffs' motion for preliminary injunction under 28 U.S.C. § 1292(a)(1). The district court issued that order on June 9, 2025, ER-9-60, and defendants filed their notice of appeal on August 7, 2025, ER-61-62, within the 60-day period for seeking review pursuant to Federal Rule of Appellate Procedure 4(a)(1)(B).

STATEMENT OF THE ISSUES

1. Whether the district court erred in concluding that plaintiffs are likely to succeed on the merits of their claims.
2. Whether the district court erred in concluding that plaintiffs satisfied the remaining preliminary-injunction factors.
3. Whether the district court's injunction is otherwise overbroad.

PERTINENT STATUTES AND REGULATIONS

Pertinent statutes and regulations are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

A. The Challenged Executive Orders

On January 20, 2025, the President issued Executive Order 14,151, 90 Fed. Reg. 8339, entitled *Ending Radical and Wasteful Government DEI Programs and Preferencing* (DEI Order), to eliminate “illegal and immoral discrimination programs, going by the name ‘diversity, equity, and inclusion’ (DEI),” in the government. DEI Order § 1. As relevant here, EO 14,151 includes a provision that has been referred to as the Equity Termination Provision, which directs “[e]ach agency, department, or

commission head” to “terminate, to the maximum extent allowed by law, ... ‘equity-related’ grants or contracts.” *Id.* § 2(b)(i).

That same day, the President signed Executive Order No. 14,168, 90 Fed. Reg. 8615, *Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government* (Gender Ideology Order). As relevant here, that Order broadly disapproves of so-called “gender ideology,” which the Order describes as the replacement of a biological, binary understanding of sex with “an ever-shifting concept of self-assessed gender identity.” The Order contains provisions requiring agencies to “take all necessary steps, as permitted by law, to end the Federal funding of gender ideology,” *id.* § 3(e), 90 Fed. Reg. at 8616 (the Gender Termination Provision), and to “assess grant conditions and grantee preferences [to] ensure grant funds do not promote gender ideology,” *id.* § 3(g), Fed. Reg. at 8616 (the Gender Promotion Provision).¹

¹ Plaintiffs also challenged various provisions in a third Executive Order – Executive Order 14,173, 90 Fed. Reg. 8633 (Jan. 21, 2025), entitled *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, which directed agencies to “enforc[e] our civil-rights law” by “ending illegal preferences and discrimination.” *Id.* § 1, 90 Fed. Reg. at 8633. But the district court concluded plaintiffs are not likely to succeed in their challenges to that Order and refused to enjoin any part of it. Plaintiffs have not appealed that denial.

B. Prior Proceedings

1. Plaintiffs are nonprofit organizations that receive federal funding to support their work in providing services to members of the LGBTQ community. Plaintiffs filed this lawsuit challenging, as relevant here, numerous provisions of the DEI Order and Gender Ideology Order. Shortly after filing this action, plaintiffs filed a motion seeking a preliminary injunction against those provisions.

2. The district court issued an order granting in part and denying in part plaintiffs' motion.

a. The district court began by addressing various threshold jurisdictional issues. As relevant here, the district court held that plaintiffs had established standing to challenge three provisions of the challenged Executive Orders – the Equity Termination Provision, the Gender Termination Provision, and the Gender Promotion Provision (collectively, the termination provisions).² It held that plaintiffs have standing to

² The district court held that plaintiffs likely do not have standing to challenge provisions directing agencies and the Attorney General to take steps to enforce existing federal antidiscrimination, ER-20-21, and provisions directing OMB and DOJ to review, revise, or terminate internal government processes and programs that promote DEI, ER-21-22. It also

Continued on next page.

challenge those provisions because the provisions direct agencies to terminate funding for certain categories of grants or contracts, and because plaintiffs alleged that they have lost or will lose funding pursuant to those provisions. ER-23-25. And the court rejected the government's argument that it lacked jurisdiction under the Tucker Act because, in the district court's judgment, plaintiffs' challenges to the termination provisions were constitutional in nature, and therefore "not contractually based." ER-27.

Finally, the district court held that plaintiffs had third-party standing to raise equal protection claims on behalf of the transgender clients and patients that they serve. The court concluded that plaintiffs suffer their own injury in the form of lost funds, have a close relationship with their transgender clients because they provide community and healthcare services, and the transgender patients themselves face barriers to vindicating their rights in the form of stigma and discrimination. ER-28-30.

held that plaintiffs have standing to challenge a provision that requires agencies to include a certification of compliance with federal anti-discrimination laws, ER-25-26, but held that plaintiffs were not likely to succeed in any of their challenges to that provision and therefore refused to enjoin it. ER-39-42, 49-50.

b. Turning to the merits of plaintiffs' facial challenges to the Orders, the district court held that plaintiffs were likely to succeed on several of their facial challenges to the three challenged termination provisions.

The district court concluded that all three of the challenged provisions likely violate plaintiffs' First Amendment rights. Those provisions, the district court recognized, apply only to activities paid for by the federal government. But even though the government generally has broad latitude to determine which activities to fund, the court nevertheless held that the provisions violate the First Amendment because they further no legitimate objectives related to the programs that they burden, and instead simply single out a disfavored group on the basis of the content of their speech. ER-36-37. The district court also held the provisions likely to be unlawful because they aim to withhold subsidies for a "censorious purpose," amounting to the kind of "invidious viewpoint discrimination" that, according to the district court, raises First Amendment concerns even in the context of federal subsidies. ER-38.

Next, the district court held that plaintiffs are likely to succeed on their Fifth Amendment void-for-vagueness challenge, but only as to the Equity Termination Provision. The court first concluded that it could apply

void-for-vagueness principles to presidential directives that merely provide direction within the Executive Branch rather than regulate any private conduct. It was enough, the court held, that the Orders “command action” and that “various agencies have already taken” action against plaintiffs “pursuant to” the Orders. ER-43. The court held that it was not sufficiently clear what would qualify as an “equity-related” grant or contract, thereby inviting arbitrary enforcement and giving recipients insufficient notice as to what kinds of speech might trigger termination. ER-44-47. But the district court held that plaintiffs were not likely to succeed on their Fifth Amendment challenge to the Gender Termination and Gender Promotion Provisions because the terms in those provisions were defined with enough specificity to satisfy constitutional review.

Finally, the district court held that plaintiffs are likely to succeed in showing that the Gender Termination and Gender Promotion Provisions violate the equal-protection component of the Due Process Clause. As with its standing analysis, the district court accepted that those provisions themselves terminate federal grants on the relevant gender-identity topics. The district court therefore rejected the government’s argument that the provisions merely espoused a policy view and did not themselves amount

to a discriminatory action that could be subject to equal-protection review. The court also rejected the argument that the provisions are permissible content-based funding determinations targeting topics, not any suspect classification. The court concluded that the provisions are facially discriminatory because they “singl[e] out grants that serve transgender people” and therefore necessarily “singl[e] out transgender people” themselves and “exclud[e] them” from the benefit of federal funds. ER-32. In the alternative, the district court held the provisions had an impermissible discriminatory purpose. ER-33. The district court therefore concluded that heightened scrutiny applied and that the provisions failed to satisfy heightened scrutiny. ER-33-34.

c. The district court also ruled in plaintiffs’ favor on some of their as-applied separation-of-powers and ultra vires claims.³ The district court rejected the government’s argument that, because each provision only requires termination to the extent consistent with law, the provisions do not conflict with any statute. The court concluded that those limitations

³ The district court rejected plaintiffs’ facial separation-of-powers claim against the challenged provisions because they failed to establish there were “no set of circumstances” under which the challenged provisions would be lawful. ER-50-51.

were not controlling because the provisions “unambiguously command action” and the “savings clause” cannot “override” the provisions’ plain meaning. ER-55-56. Turning to the merits of plaintiffs’ as-applied claims, plaintiffs identified three programs under which they receive funding—the Ryan White Program, the Housing Opportunities for People with AIDS (HOPWA) program, and the Federally Qualified Health Centers (FQHC) program. Plaintiffs did not, however, demonstrate that the government had interpreted the statutes to permit the termination of those grants or point to any agency determination regarding the potential applicability of the Executive Order to those programs. The district court nonetheless reviewed the underlying statutory funding authorization for the Ryan White and FQHC programs in the first instance and concluded that mandatory language in those statutes forecloses the federal government from terminating equity- or gender-related awards under those programs. ER-52-54. For the HOPWA program, the court concluded that the government failed to respond to plaintiffs’ argument that the provisions conflict with implementing regulations and therefore forfeited any defense of that as-applied challenge. ER-53.

Finally, the district court held that the Gender Termination and Gender Promotion Provisions conflicted with the statutory prohibitions against sex discrimination contained in the Affordable Care Act and the Public Health Service Act. For the same reasons that the court found that plaintiffs were likely to succeed on their equal-protection claims, the court concluded that the Gender Termination and Gender Promotion Provisions amounted to unlawful sex discrimination in contravention of those statutory prohibitions. ER-54.

d. Turning to the remaining preliminary-injunction factors, the district court held that plaintiffs suffered irreparable harm in the form of deprivation of their constitutional rights, and that the government suffered no cognizable harm from being prevented from engaging in unconstitutional activity. ER-57. The court therefore entered a preliminary injunction preventing the defendant agencies from “enforcing the Gender Termination Provision, Gender Promotion Provision, and Equity Termination Provision” against plaintiffs. ER-58. But the court deferred issuing a preliminary-injunction order, instead directing plaintiffs to file a proposed order.

Plaintiffs filed a proposed order and the district court signed it the same day. In addition to preventing defendant agencies from enforcing the challenged provisions, the order also directed the agencies to reinstate within five business days any grant or contract that had been terminated pursuant to the enjoined provisions, including but not limited to a list of specific grant awards. ER-3-8.

SUMMARY OF ARGUMENT

I. The district court's preliminary injunction was premised on a misunderstanding of the three Executive Order provisions at issue that caused multiple errors relating both to jurisdiction and the merits.

A. 1. Plaintiffs are not likely to succeed on the merits of any of their claims because the district court did not have jurisdiction to consider them. As a panel of the Fourth Circuit recognized when considering a nearly identical challenge, plaintiffs' case raises standing and ripeness concerns because they bring facial challenges to general policy directives contained in Executive Orders rather than any particular agency action implementing those directives. Any prospective injury would thus depend on an intervening agency action, which is both speculative and would raise issues of the legality of actions that have not yet occurred. If plaintiffs think

any future agency action is unlawful, they must wait until that unlawful action comes to pass and then challenge it in an appropriate forum.

2. The Supreme Court has now twice made clear that the district court also lacked jurisdiction to consider plaintiffs' claims to the extent that they sought relief from terminations of existing grant contracts. As the Court explained, such claims must be brought in the Court of Federal Claims, not in district court.

B. Even if the district court had jurisdiction to consider plaintiffs' claims, none is likely to succeed.

1. The district court erred in holding that plaintiffs are likely to succeed on the merits of their First Amendment claims. The Supreme Court has made clear that the government is not required to subsidize particular projects or to subsidize on a content- or viewpoint-neutral basis. Rather, when acting as a *patron* rather than a *regulator*, the government can generally choose what to fund. Regardless, the district court's implicit conclusion that it is constitutional to *award grants* because of their DEI content but unconstitutional to *terminate them* for the same reason is a one-way constitutional ratchet that finds no purchase in First Amendment doctrine.

2. The district court also erred in holding that plaintiffs are likely to succeed in showing that a provision that directs federal agencies, to the extent consistent with law, to terminate equity-related grants or contracts is likely void for vagueness. The district court's analysis was driven by its erroneous view that private parties were required to assess what was meant by "equity-related." The provision at issue is a directive within the Executive Branch and relates only to contracting decisions over which federal agencies have discretion. Plaintiffs thus have no reason to curtail their activities to attempt to conform to the definition, and the provision gives rise to no vagueness concerns of the sort that would apply if the government were regulating primary conduct of private parties.

3. Plaintiffs lack standing to raise an equal-protection challenge to the gender-ideology provisions on behalf of their clients and patients. Individuals have brought numerous challenges to the provisions at issue here, belying any suggestion that third-party standing is necessary here to vindicate the interests of individuals who believe the Gender Ideology Executive Order is discriminatory. Even if they had standing, plaintiffs have not identified any government action, let alone government action that discriminates on any suspect basis. The Supreme Court's recent

decision in *United States v. Skrmetti*, 145 S. Ct. 1816 (2025), confirms that the district court's contrary conclusion cannot stand.

4. Finally, the district court was not at liberty to disregard the plain text of the challenged provisions in assessing plaintiffs' separation-of-powers claims. The challenged provisions direct agencies to terminate grants only to the extent consistent with law. That is no mere fig leaf or savings clause—it is central to the President's directive.

II. The district court separately erred by concluding that the remaining factors supported granting a preliminary injunction. The extraordinary injunction in this case interferes with core executive functions and prevents the President from directing and controlling executive officers in their exercise of lawful authority. The enjoined provisions simply guide agencies' exercise of pre-existing authority to terminate grants or contracts. By enjoining those directives, the district court inhibits agencies from exercising their authority in a way that furthers the President's priorities. The injunction thus inflicts irreparable constitutional harm by eroding the President's control over subordinates and frustrates the public's interest in having the elected President

effectuate policy priorities through lawful direction of the executive branch.

And as the Supreme Court has twice explained in staying injunctions that similarly ordered the reinstatement of grants, the government separately suffers irreparable harm when it is ordered to pay grant funds because it is “unlikely to recover the grant funds once they are disbursed.” *California*, 145 S. Ct. at 969. In contrast, the gravamen of plaintiffs’ claim is monetary, and plaintiffs will receive any funds they are owed if they ultimately prevail in an appropriate forum.

III. At the very least, the injunction is overbroad to the extent it orders agencies to reinstate grants and contracts without regard to whether they were terminated pursuant to the challenged Executive Orders or for some other reason. Neither plaintiffs nor the district court provided any basis why awards that were terminated independent of the challenged provisions should be reinstated pending resolution of this litigation. This Court should at the very least vacate that aspect of the district court’s injunction and remand for the district court to determine in the first instance which grants and contracts were, in fact, terminated pursuant to the challenged provisions.

STANDARD OF REVIEW

“A preliminary injunction is an extraordinary and drastic remedy” that should “never be awarded as of right.” *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008) (citation omitted). A plaintiff may obtain this “extraordinary remedy” only “upon a clear showing” that it is “entitled to such relief.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (quotation marks omitted). A district court’s decision to grant or deny a preliminary injunction is reviewed for abuse of discretion, but a district court necessarily abuses its discretion when it makes an error of law. *National Wildlife Fed’n v. National Marine Fisheries Serv.*, 422 F.3d 782, 793 (9th Cir. 2005) (per curiam) (quoting *United States v. Peninsula Commc’ns, Inc.*, 287 F.3d 832, 839 (9th Cir. 2002)).

ARGUMENT

I. Plaintiffs Have No Likelihood of Success on the Merits.

A. Plaintiffs’ challenges fail at the threshold.

1. Standing

To demonstrate standing, a plaintiff must allege an injury that is “concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling.” *Clapper v.*

Amnesty Int'l USA, 568 U.S. 398, 409 (2013) (quotation marks omitted). To satisfy that standard, the injury in question cannot be “conjectural or hypothetical”; it must be “concrete in both a qualitative and temporal sense.” *Beck v. McDonald*, 848 F.3d 262, 270-71 (4th Cir. 2017) (quotation marks omitted). A supposed future injury that is “too speculative” and might never occur does not satisfy that standard. *Id.* at 274.

The related doctrine of ripeness “prevent[s] the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.” *National Park Hosp. Ass’n v. Department of the Interior*, 538 U.S. 803, 807 (2003) (quotation marks omitted). A claim is unripe for judicial review if it depends on “contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Trump v. New York*, 592 U.S. 125, 131 (2020) (quoting *Texas v. United States*, 523 U.S. 296, 300 (1998)). The Supreme Court has repeatedly held that challenges to intra-governmental directives are not ripe because such a directive, by itself, “does not affect [anyone’s] primary conduct.” *National Park*, 538 U.S. at 810; see also *Ohio Forestry Ass’n v. Sierra Club*, 523 U.S. 726 (1998); *Reno v. Catholic Soc. Servs., Inc.*, 509 U.S. 43, 58-61 (1993). It is, moreover, “too

speculative whether the problem [plaintiffs] presen[t] will ever need solving.” *Texas*, 523 U.S. at 302.

a. The district court held that plaintiffs had standing to challenge the termination provisions based on allegations that they have lost or fear losing federal funds pursuant to those provisions. The district court placed significant weight on plaintiffs’ allegations that some individual grant awards had already been terminated pursuant to those provisions. ER-23-25. But it is unclear why an injunction against the future operation of the challenged termination provisions — as opposed to relief related to the already-terminated grant contracts themselves — would redress any injury. *See City of Los Angeles v. Lyons*, 461 U.S. 95 (1983). That raises both redressability problems and ripeness concerns. And it underscores that there is no basis to consider plaintiffs’ abstract challenges to the text of the Executive Orders instead of waiting for a concrete claim raised in the context of a particular contract termination. Indeed, the district court’s preliminary injunction tacitly acknowledges this disconnect: It enjoins defendants from enforcing the challenged provisions against plaintiffs, and then separately directs defendants to reinstate various terminated grants. “If one simply flowed from the other, the [d]istrict [c]ourt would have

needed only” to enjoin the challenged provisions. *NIH v. American Pub. Health Ass’n*, No. 25A103, 2025 WL 2415669, at *2 (U.S. Aug. 21, 2025) (Barrett, J., concurring). Moreover, as discussed below, plaintiffs’ challenge to those terminations is precluded by the Tucker Act. *See infra* pp. 22-26.

Nor can plaintiffs base their standing on the possibility of future terminations. As a Fourth Circuit panel recognized in staying a similar injunction against grant-termination provisions, such a request for prospective relief presents standing and ripeness problems because plaintiffs raise facial challenges against general directives in an Executive Order, rather than any particular funding termination itself. *See* Order at 9, *National Ass’n of Diversity Officers in Higher Educ. v. Trump (Diversity Officers)*, No. 25-1189 (4th Cir. Mar. 14, 2025), ECF No. 29 (“[T]his case does not challenge any particular agency action implementing the Executive Orders. Yet, ... the district court relied on evidence of how various agencies are implementing, or may implement, the Executive Orders. That highlights serious questions about the ripeness of this lawsuit and plaintiffs’ standing to bring it.”); *id.* at 8 (Harris, J., concurring) (“This case, however, does not directly challenge any [agency enforcement] action, and I therefore concur.”); *id.* at 5 n.2 (Diaz, C.J., concurring) (joining Judge

Harris' concurrence and further noting that "the Orders only purport to direct executive policy and actors").

It is speculative that plaintiffs will experience additional contract terminations, and even more speculative what legal issues might be presented by any such termination. If plaintiffs contend that the termination of a particular contract in the future is unlawful, they could challenge it in a concrete factual scenario in the appropriate forum. But plaintiffs cannot demonstrate Article III standing "simply by claiming that they experienced a 'chilling effect' that resulted from a governmental policy that does not regulate, constrain, or compel any action on their part." *Clapper*, 568 U.S. at 419; see *Laird v. Tatum*, 408 U.S. 1, 11 (1972) (plaintiff alleging chilling effect lacks standing where government policy is not "regulatory, proscriptive, or compulsory in nature"). That is all plaintiffs have challenged here: The provisions merely direct Executive Branch officials to terminate certain contracts to the maximum extent allowed by law; they do not regulate plaintiffs or their members at all, much less subject them to threat of enforcement if they engage in particular protected activity. The possibility that a government contract will be terminated because the government no longer wishes to fund the kinds of

activities described in the provisions does not give rise to any cognizable chilling effect, unlike the threat of criminal enforcement or other punishment for private conduct.

2. The Tucker Act

The Supreme Court also recently made clear, in remarkably similar circumstances, that even if plaintiffs could establish standing to challenge the directives, the district court lacked jurisdiction to consider any claims “‘based on’ [their] research-related grants or to order relief designed to enforce any ‘obligation to pay money’ pursuant to those grants.” *NIH v. American Pub. Health Ass’n*, No. 25A103, 2025 WL 2415669, at *1 (U.S. Aug. 21, 2025). Rather, any such claims must be pursued under the Tucker Act.

The federal government is “immune from suit in federal court absent a clear and unequivocal waiver of sovereign immunity.” *Crowley Gov’t Servs., Inc. v. GSA*, 38 F.4th 1099, 1105 (D.C. Cir. 2022). And although the APA provides “a limited waiver of sovereign immunity for claims against the United States” seeking relief other than money damages, *id.*, that waiver does not apply “if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought,” *Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians v. Patchak*, 567 U.S. 209, 215 (2012).

(quotation omitted). That carve-out “prevents plaintiffs from exploiting the APA’s waiver to evade limitations on suit contained in other statutes.” *Id.*

In particular, when a party seeks to force the government to comply with the terms of a contract or grant, the proper remedy is typically suit under the Tucker Act, not the APA. The Tucker Act provides that the “United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded” on “any express or implied contract with the United States.” 28 U.S.C. § 1491(a)(1). As the D.C. Circuit has explained, “the Tucker Act impliedly forbids” the bringing of “contract actions” against “the government in a federal district court.” *Albrecht v. Committee on Emp. Benefits of the Fed. Reserve Emp. Benefits Sys.*, 357 F.3d 62, 67-68 (D.C. Cir. 2004) (quotation omitted). This prohibition extends to claims founded on grants, like those at issue here, that are implemented through “contracts to set the terms of and receive commitments from recipients.” *Boaz Hous. Auth. v. United States*, 994 F.3d 1359, 1368 (Fed. Cir. 2021). The proper recourse for asserted violations of those grant agreements is a “suit in the Claims Court for damages relating to [the] alleged breach.” *Id.*

In determining whether “a particular action” is “at its essence a contract action” subject to the Tucker Act or instead a challenge properly brought under the APA, courts have looked at both “the source of the rights upon which the plaintiff bases its claims” and “the type of relief sought (or appropriate).” *Megapulse, Inc. v. Lewis*, 672 F.2d 959, 968 (D.C. Cir. 1982) (quotation omitted); *see also United Aeronautical Corp. v. U.S. Air Force*, 80 F.4th 1017, 1025 (9th Cir. 2023) (noting that this Court applies *Megapulse*).

In the past few months, the Supreme Court has twice stayed other district-court orders that sought to undo the termination of grant agreements, concluding in both cases that the government was likely to succeed in showing that the Tucker Act provides the Court of Federal Claims exclusive jurisdiction over suits to order the payment of money. First, in *Department of Education v. California*, 145 S. Ct. 966 (2025) (per curiam), the Supreme Court confronted a challenge brought by a number of states to the Department of Education’s termination of various education-related grants. The district court temporarily enjoined the terminations, and the First Circuit denied a motion to stay that injunction. *See California v. U.S. Dep’t of Educ.*, 132 F.4th 92 (1st Cir. 2025). The Supreme

Court granted the government's request for emergency relief, reaffirming that "the APA's limited waiver of immunity does not extend to orders to enforce a contractual obligation to pay money along the lines of what the District Court ordered here." *California*, 145 S. Ct. at 968 (quotation omitted).

The Supreme Court reaffirmed that holding in *NIH v. American Public Health Ass'n*, No. 25A103, 2025 WL 2415669 (U.S. Aug. 21, 2025). There, the Court confronted a decision that vacated agency decisions to terminate various research-related grants. In granting the government's motion for a stay of that decision, the Supreme Court again held that the APA does not provide district courts with jurisdiction to consider "claims 'based on'" the research-related grants or to order relief designed to enforce any 'obligation to pay money' pursuant to those grants." *NIH*, 2025 WL 2415669, at *1. And the controlling opinion specifically rejected the argument that authority to review a directive on which the termination was ostensibly based provided jurisdiction to review the termination itself. *See id.* at *2 (Barrett, J., concurring).

The district court lacked jurisdiction to invalidate plaintiffs' grant terminations here for the same reasons. As in *California* and *NIH*, plaintiffs

in this case allege that the government has violated “a contractual obligation to pay money” assertedly embodied in plaintiffs’ grant agreements. 145 S. Ct. at 968 (quotation omitted). And as in *California* and *NIH*, the grants here were awarded by federal executive agencies to specific grantees like plaintiffs from a generalized fund. As a result – and again like in *California* and *NIH* – the source of plaintiffs’ purported rights to payment from the agencies are not the underlying statutes but rather are plaintiffs’ grant agreements, which bear the hallmarks of a contract. *Id.*

The harm that plaintiffs alleged and the relief they sought (and received) from the district court underscores that this dispute is, at base, contractual. Plaintiffs’ concern is the loss of federal funds. To remedy that asserted harm, plaintiffs sought, and the district court issued, an order compelling the reinstatement and continued payment of funds under particular grants and contracts.

B. Plaintiffs’ challenges fail on the merits.

Even if the district court had jurisdiction to consider plaintiffs’ various challenges to the termination provisions, none is likely to succeed.

1. First Amendment

The district court erred in holding that plaintiffs are likely to succeed on the merits of their First Amendment claims. Each of the challenged provisions merely directs agencies, to the maximum extent possible, to deploy preexisting authority to ensure that government funds are not spent to support programs and activities that the government no longer believes to be in the public interest. The provisions look only to the nature of the funded programs and do not penalize or scrutinize recipients' speech outside of the funded initiative. That kind of decision-making about what the government will and will not fund is subject only to deferential review, and the district court erred by analogizing to cases where the government seeks to use funding conditions to coerce or control a recipients' speech more broadly.

a. The Supreme Court has long been clear that the First Amendment provides the government significant flexibility when it acts as patron to subsidize speech, as opposed to when it acts as sovereign to regulate it. The “decision not to subsidize the exercise of a fundamental right does not infringe the right,” *Regan v. Taxation With Representation of Washington*, 461 U.S. 540, 549 (1983), and “[t]he Government can, without violating the

Constitution, selectively fund a program to encourage certain activities it believes to be in the public interest,” *Rust v. Sullivan*, 500 U.S. 173, 193 (1991). The government may permissibly “cho[ose] to fund one activity to the exclusion of the other,” *id.*, and “may allocate competitive funding according to criteria that would be impermissible were direct regulation of speech or a criminal penalty at stake,” *National Endowment for the Arts v. Finley*, 524 U.S. 569, 587-88 (1998).

The government can thus, for example, permissibly refrain from funding abortions, *Harris v. McRae*, 448 U.S. 297, 315 (1980), from subsidizing government lobbying, *Regan*, 461 U.S. at 550, and from subsidizing striking employees, *Lyng v. International Union, United Auto., Aerospace & Agr. Implement Workers of Am.*, 485 U.S. 360, 371 (1988), and can withhold funding from political candidates who do not enter party primaries, *Buckley v. Valeo*, 424 U.S. 1, 105 (1976) (per curiam).

The government is no less entitled to cease funding programs that the government no longer believes are in the public interest based on the subject matter of those programs. The First Amendment does not require funding grants to research programs that the government believes no longer serve the public interest, any more than funding anti-drug programs

requires the government to also fund speech advocating for the use of dangerous drugs.

The district court was thus manifestly mistaken to equate the government's refusal to subsidize speech with an effort to censor or to suppress speech. ER-37-39. The district court did not dispute that the challenged provisions look only to the content of the grant-funded activities themselves and do not seek to regulate recipients' speech generally. ER-35-36. Whenever the government chooses to stop subsidizing an activity, there may be less of that activity, but that reduction alone is a far cry from suppression of protected activity. *Cf. Lyng*, 485 U.S. at 371 (acknowledging that a constitutionally permissible spending statute "works at least some discrimination" against the otherwise protected activity).

b. Even though the government "may allocate competitive funding according to criteria that would be impermissible were direct regulation of speech or a criminal penalty at stake," *Finley*, 524 U.S. at 587-88, funding decisions are subject to a constitutional constraint insofar as the government cannot leverage its funding power to impose an unconstitutional condition—such as conditioning grants on refraining from

expressive conduct “that [is] separate and independent from the project that receives ... funds.” *Rust*, 500 U.S. at 196. The Supreme Court explained this distinction in *Finley*, and later Supreme Court cases have clarified it.

Thus, the First Amendment precludes the government from using its regulatory power to “drive ‘certain ideas or viewpoints from the marketplace,’” and any regulation that “ai[ms] at the suppression of dangerous ideas” is subject to the most stringent First Amendment scrutiny. *Finley*, 524 U.S. at 587 (citations omitted). These concerns are not generally implicated, however, by selective government funding that leaves private entities free to express themselves as they wish using their own resources. As the Supreme Court explained in *Finley*, “cho[osing] to fund one activity to the exclusion of the other” is permissible. *Id.* at 588 (citation omitted). Constitutional concerns arise only when Congress is using the funding to affect speech outside of the program. For example, while limitations on the use of federal funds for a specific purpose — such as “promot[ing] or advocat[ing] [for] the legalization or practice of prostitution or sex trafficking” — are constitutionally permissible, *Agency for Int’l Dev. v. Alliance for Open Soc’y Int’l, Inc.*, 570 U.S. 205, 217-18 (2013) (quotation omitted), conditioning federal funds on a pledge to adopt a

policy “explicitly opposing prostitution and sex trafficking” is not, *id.* at 210 (quotation omitted).

Here, that means the government can choose to stop funding DEI- and gender-ideology-related grants. If the government had refused to provide any funding to entities that engaged in those activities using their own funds — assuming those activities constituted protected expression — this case would implicate the constitutional rules that apply when the government “seek[s] to leverage funding” to limit or penalize “speech outside the contours of the program itself.” *Agency for Int’l Dev.*, 570 U.S. at 214-15. That is a form of coercion that actively suppresses a protected private activity rather than just refraining from publicly funding it.

But nothing remotely like that is present here. “The Supreme Court has repeatedly reaffirmed ... that the government may constitutionally preclude recipients of federal funds from addressing specified subjects so long as the limitation does not interfere with a recipient’s conduct outside the scope of the federally funded program.” *California ex rel. Becerra v. Azar*, 950 F.3d 1067, 1093 n.24 (9th Cir. 2020). The government getting out of the business of funding DEI- and gender-ideology-related projects does not plausibly “aim at the suppression of dangerous ideas” in the sense of

driving the idea from the marketplace. *Finley*, 524 U.S. at 587. The government “does not ‘penalize’” institutions that choose to do DEI or gender-ideology research, “or deny them the right to” do that research; it has merely made a constitutionally permissible “decision not to subsidize their doing so.” *United States v. American Libr. Ass’n*, 539 U.S. 194, 212 (2003) (plurality opinion).

c. The district court rested its contrary conclusion almost entirely on its reading of the Supreme Court’s decision in *Legal Services Corp. v. Velazquez*, 531 U.S. 533, 536 (2001), reading that decision to stand for the proposition that, even in the context of funding conditions, the government cannot make content- or viewpoint-based distinctions unless doing so furthers specific “legitimate objectives” enumerated by Congress. ER-37-38. But as this Court has since explained, *Velazquez* turned on the Supreme Court’s conclusion that the grant program at issue there effectively created a limited public forum. *Legal Aid Servs. of Or. v. Legal Servs. Corp.*, 608 F.3d 1084, (9th Cir. 2010) (“The [*Velazquez*] Court analyzed the grantee plaintiffs’ unconstitutional conditions claim through the lens of the Court’s limited public forum cases.”); see also *Mezibov v. Allen*, 411 F.3d 712, 720 (6th Cir. 2005) (stating that “*Velazquez* involved ... a government funding program

that the Court deemed a limited public forum for First Amendment purposes”); *Marijuana Policy Project v. United States*, 304 F.3d 82, 87 (D.C. Cir. 2002) (stating that *Velazquez* “rests on limited public forum doctrine”).

The “limited public forum” doctrine has no application here. Limited public forum cases recognize that certain funding programs open to all comers must comply with “[t]he standard of viewpoint neutrality found in the public forum cases.” *Board of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 230 (2000). Those cases draw on the principle that when the government creates a “limited public forum,” open to discussion of a particular “subject matter” — such as an in-person space for discussion or a bulletin board — the government must be “viewpoint neutral.” *Lamb’s Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384, 389, 393 (1993). But when the government decides to “selectively fund a program,” as here, it may choose grants that advance its policy goals and reject grants that do not. *Finley*, 524 U.S. at 588 (quoting *Rust*, 500 U.S. at 193); *accord id.* at 590 (Scalia, J., concurring in the judgment) (evaluating “grant applications” on “content- and viewpoint-based criteria” is “perfectly constitutional”).

The Supreme Court extended this doctrine to certain government “funding decisions” in *Rosenberger v. Rector & Visitors of the University of*

Virginia, 515 U.S. 819, 833 (1995), even though funding programs are “a forum more in a metaphysical than in a spatial or geographic sense,” *id.* at 830. That case involved a public university’s funding of a variety of student groups in order to provide “a wide range of opportunities” for students. *Id.* at 824 (quotation omitted). The Court emphasized that it addressed a situation in which “the University ... expends funds to encourage a diversity of views from private speakers.” *Id.* at 834.

The Supreme Court’s subsequent decision in *Finley* was a direct response to an opinion by a divided panel of this Court that applied *Rosenberger*’s viewpoint-neutrality requirement to the National Endowment of the Arts’ selective grant program. *Finley v. National Endowment for the Arts*, 100 F.3d 671, 683 (9th Cir. 1996) (“Although NEA awarded only 88 grants from an applicant pool of 5,168, it cannot provide those scarce grants to favor a particular viewpoint.”), *rev’d*, 524 U.S. 569 (1998). The dissenting judge in this Court would have held that “[w]hether government can consider content and viewpoint depends on whether the money it gives out is generally available to all who meet some basic standard, or whether it is a prize given to a select few.” *Id.* at 684 (Kleinfeld, J., dissenting). The Supreme Court held that the Ninth Circuit majority’s

“reliance on *Rosenberger* ... [was] misplaced” for the reason stated in the Ninth Circuit dissent, notably that the NEA’s grant program was “distinguish[ed] ... from *Rosenberger*” because of “the competitive process according to which the grants are allocated.” *Finley*, 524 U.S. at 586. Where, as in *Finley*, “the Government does not indiscriminately ‘encourage a diversity of views from private speakers’” and is not making similarly “objective decisions on allocating public benefits,” *Rosenberger* is inapplicable. *Id.* (quoting *Rosenberger*, 515 U.S. at 834). Thus, unless the provision at issue in *Finley* was “applied in a manner that raises concern about the suppression of disfavored viewpoints,” it was constitutional. *Id.* at 587. Such suppression could not be attributed merely to selective funding decisions, whose validity the Court reaffirmed. *Id.* at 588.

Through this series of cases, the Supreme Court has thus clarified that as a general matter, when engaged in selective funding, the government need not be agnostic about whether it supports the activity being funded. Indeed, that principle gave rise to the grants at issue here in the first place: The government explicitly favored means of promoting equity in its grantmaking. *See, e.g.*, Exec. Order No. 13,985, § 1, 86 Fed. Reg. 7009, 7009 (Jan. 25, 2021) (“It is therefore the policy of [the Biden]

Administration that the Federal Government should pursue a comprehensive approach to advancing equity”). Plaintiffs presumably do not believe that this selectivity was unconstitutional when it was deployed to their benefit. The only thing that has changed is that the government no longer wishes to fund this particular type of grant, and nothing about that change alters the relevant legal principles. Rather, if the government was entitled to award grants because it wished to subsidize the grants’ viewpoints, there is no constitutional basis to prevent the government from terminating them if it no longer wishes to do so (even assuming that terminating grants on particular topics is properly treated as viewpoint rather than content discrimination).

2. Fifth Amendment Void-for-Vagueness

The district court also erred in concluding that plaintiffs were likely to succeed in challenging the Equity Termination Provision under the Fifth Amendment. Treating the President’s policy directive as it would a criminal statute, the district court concluded that plaintiffs were likely to succeed in showing the provision is void for vagueness. That holding rested on multiple fundamental errors.

a. At a basic level, a presidential policy directive to federal officers is not subject to constitutional vagueness standards. Those standards derive from the Fifth Amendment’s Due Process Clause, which requires that restrictions on private conduct be sufficiently clear to give a person of “ordinary intelligence a reasonable opportunity to know what is prohibited.” *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). The doctrine thus serves to ensure notice and prohibit arbitrary enforcement of the requirements with which the public must comply. *Id.* But none of these concerns arise if the President gives his subordinates an unclear directive, and that is true whether the directive is made in a phone call, a speech, or an Executive Order. The Equity Termination Provision is not a law, and it does not prohibit private conduct—it is instead an instruction that articulates the President’s policy priorities to subordinate officers in the Executive Branch.

The district court cited no case invalidating a directive in an Executive Order under the void-for-vagueness doctrine. ER-43. Instead, the district court concluded that because the challenged Executive Order provisions “expressly command action” from agencies, they “implicate[] the traditional concerns under the vagueness doctrine” and “encourage

arbitrary and discriminatory enforcement” of the President’s directive. ER-43. Not so. The provision commands action only of executive branch employees; it does not direct any action from plaintiffs or otherwise regulate any private conduct. Nor does the provision “encourage arbitrary and discriminatory enforcement.” ER-43. That the President’s directive leaves room for individual agencies to decide how to implement it does not transform the directive into something akin to a vague criminal prohibition. The President is manifestly allowed to direct federal employees to achieve policy goals—even in general or imprecise terms—without triggering void-for-vagueness concerns.

This Court’s decision in *Humanitarian Law Project v. U.S. Treasury Dep’t*, 578 F.3d 1133, 1140, 1145-47 (9th Cir. 2012), is not to the contrary. While this Court assumed that it could review the Order under the void-for-vagueness doctrine, no party appears to have contested that proposition and this Court ultimately concluded that the Executive Order was not unconstitutional in any event. Furthermore, the executive action at issue in *Humanitarian Law Project* is distinguishable from the policy directives at issue here. There, this Court confronted an Executive Order freezing assets of certain terrorist organizations and authorizing the

Secretary of Treasury to designate other groups that provided material support to those organizations as terrorists themselves. *See id.* at 1137-38. The Executive Order therefore had direct, substantial consequences both for the designated organizations and for private parties — like the plaintiff — that provided support to lawful activities of designated organizations. Those facts are a far cry from those presented here, and the decision provides no support for applying vagueness doctrine to policy directives within the Executive Branch.

b. Even apart from the intragovernmental nature of the provision, the Supreme Court has squarely held that there is no constitutional guarantee of clarity in grant or contract criteria, even if these criteria are set by statute. In *National Endowment for the Arts v. Finley*, 524 U.S. 569 (1998), the Court rejected a vagueness challenge to the National Foundation on the Arts and Humanities Act, which provides that grants shall be awarded according to “artistic excellence and artistic merit ... , taking into consideration general standards of decency and respect for the diverse beliefs and values of the American public,” 20 U.S.C. § 954(d)(1). The Court recognized that these standards were “undeniably opaque,” such that they

would raise “substantial vagueness concerns” in the context of a “criminal statute or regulatory scheme.” 524 U.S. at 588.

In the context of competitive grants, however, the Court explained that this imprecision raised no such concerns. That is because “when the Government is acting as patron rather than as sovereign, the consequences of imprecision are not constitutionally severe.” *Finley*, 524 U.S. at 589. The challenged statute “merely add[ed] some imprecise considerations to an already subjective selection process,” and neither these considerations nor the underlying selection process “impermissibly infringe[d] on First or Fifth Amendment rights.” *Id.* at 590. A contrary conclusion would render unconstitutional “all Government programs awarding scholarships and grants on the basis of subjective criteria such as ‘excellence,’” which the Supreme Court declined to do. *Id.* at 589 (citation omitted).

The district court’s conclusion that the term “equity-related” was unconstitutionally vague replicates the analysis that the Supreme Court rejected in *Finley*. A directive to terminate “equity-related” grants creates no greater constitutional problem than a directive to terminate grants that are not “excellent” — and that is so even if, “as a practical matter,” putative

grantees “may conform ... to what they believe to be the decisionmaking criteria in order to acquire funding.” *Finley*, 524 U.S. at 589.

c. The district court’s errors in these respects are particularly pronounced given the facial nature of plaintiffs’ challenge. “Facial challenges are disfavored for several reasons,” including that they “often rest on speculation” and “consequen[tly] ... raise the risk of ‘premature interpretation of statutes on the basis of factually barebones records.’” *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 450 (2008) (quoting *Sabri v. United States*, 541 U.S. 600, 609 (2004)). And given its scope, “[f]acial invalidation ‘is, manifestly, strong medicine’ that ‘has been employed by the Court sparingly and only as a last resort.’” *Finley*, 524 U.S. at 580 (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 613 (1973)).

As a general rule, a vagueness claim under the Fifth Amendment “must be examined in light of the facts of the case at hand,” not on an abstract, facial basis. *United States v. Moriello*, 980 F.3d 924 (4th Cir. 2020). That is because “[o]bjections to vagueness under the Due Process Clause rest on the lack of notice, and hence may be overcome in any specific case where reasonable persons would know that their conduct is at risk.”

Maynard v. Cartwright, 486 U.S. 356, 361 (1988). Here, plaintiffs' claims cannot be examined in light of any relevant facts because they are not challenging any particular grant decision.

d. Finally, the district court's analysis fundamentally misunderstands the Equity Termination Provision's role in agency decisionmaking.

Without the Executive Order, federal agencies still have discretion to determine how to exercise their lawful authority to terminate grants or contracts. That authority is often broad and may be exercised based on policy preferences rather than any concrete standard. *See, e.g.*, 2 C.F.R. § 200.340(a)(4) (authority to terminate award "to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities"); *Northrop Grumman v. United States*, 46 Fed. Cl. 622, 626 (2000) ("The Government's right to terminate a contract for convenience is broad."). That breadth has never been thought to create a vagueness problem, as private parties have no obligation to ascertain, or comply with, any standard that might affect the agency's own contracting decisions.

It makes no sense that guidance to agencies on how to exercise that broad discretion somehow *creates* a vagueness problem. As exemplified by the district court's decision here, that approach would allow for searching

judicial review of all presidential policy directives and effectively prohibit the President from directing executive officials unless he can do so with the same degree of specificity required of a criminal statute.

Of course, to the extent a counterparty believes that a particular termination is unlawful, it could raise that concern in an appropriate forum. But no such claim has been brought in this action, which sought instead to pretermitt entirely the review of certain grants. Nor could such a claim be directed at the Equity Termination Provision, which directs termination only as “allowed by law.” As the D.C. Circuit has recognized in analyzing an analogous Executive Order, a directive to agencies cannot be unlawful when “the Executive Order itself instructs the agency to follow the law.” *Building & Constr. Trades Dep’t v. Allbaugh*, 295 F.3d 28, 33 (D.C. Cir. 2002).

3. Fifth Amendment Equal Protection

For multiple independent reasons, the district court erred in concluding that plaintiffs are likely to succeed on the merits of their facial equal-protection challenge to the gender-ideology provisions.

a. First, the district court erred in even considering plaintiffs' Equal Protection claim because plaintiffs do not have standing to raise equal-protection challenges on behalf of their clients and patients.

The district court concluded that plaintiffs had third-party standing to raise equal protection claims on behalf of their transgender clients. But as already discussed, *supra* pp. 17-22, plaintiffs have not established that they have standing to challenge the gender-ideology provisions at all. That alone is fatal to any theory of standing based on supposed injuries to their clients and patients because "even when [the Supreme Court] ha[s] allowed litigants to assert the interests of others, the litigants themselves still must have suffered an injury in fact." *FDA v. Alliance for Hippocratic Med.*, 144 S. Ct. 1540, 1563 n.5 (2024) (citation omitted). As the Supreme Court recently reiterated, "[t]he third-party standing doctrine does not allow doctors to shoehorn themselves into Article III standing simply by showing that their patients have suffered injuries or may suffer future injuries." *Id.*; see also *Hollingsworth v. Perry*, 570 U.S. 693, 708-09 (2013).

Even if plaintiffs could establish that the challenged provisions cause them some injury in fact, they fail to sufficiently assert third-party standing on behalf of their individual clients. As a general rule, third-party standing

is “disfavored.” *Fleck & Assocs., Inc. v. City of Phoenix*, 471 F.3d 1100, 1105 n.3 (9th Cir. 2006); *see also Mills v. United States*, 742 F.3d 400, 407 (9th Cir. 2014) (“Courts ‘typically decline to hear cases asserting rights properly belonging to third parties rather than the plaintiff.’” (citation omitted)). An exception to this rule applies only when the party seeking third-party standing shows that: (1) it has “a ‘close’ relationship with the person who possesses the right” and (2) there is “a ‘hindrance’ to the possessor’s ability to protect his own interests.” *Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004) (citation omitted).

Contrary to the district court’s conclusion, plaintiffs failed to carry their burden to establish third-party standing. Specifically, plaintiffs do not, and cannot, show that their individual clients’ ability to protect their own interest has been sufficiently hindered to warrant third-party standing. *See Tingley v. Ferguson*, 47 F.4th 1055, 1069-70 (9th Cir. 2022). To the contrary, individual plaintiffs have already challenged the Gender Ideology Executive Order on various grounds, including Equal Protection grounds. *See, e.g., Orr v. Trump*, 25-cv-10313 (D. Mass. Feb. 7, 2025) (a group of individuals filed a putative class action with respect to Executive Order 14,168 asserting Equal Protection claims); *Kingdom v. Trump*, 25-cv-691

(D.D.C. Mar. 10, 2025) (another putative class action with respect to Executive Order 14,168 pursuant to the Equal Protection Clause); *see also* *Moe v. Trump*, 25-cv-10195 (D. Mass. Jan. 26, 2025); *Doe v. McHenry, III*, 25-cv-286 (D.D.C. Jan. 30, 2025); *PFLAG, Inc. v. Trump*, 25-cv-337 (D. Md. Feb. 4, 2025); *Jones v. Trump*, 25-cv-401 (D.D.C. Feb. 10, 2025); *Tirrell v. Edelblut*, 24-cv-00251 (D.N.H. Feb. 12, 2025); *Ireland v. Hegseth*, 25-cv-1918 (D.N.J. Mar. 17, 2025). These pending cases involving similarly situated plaintiffs asserting their own claims against the same defendants challenging the same government action undercut the district court’s conclusion that plaintiffs had demonstrated the kind of “hindrance” required to establish third-party standing. *See Tingley*, 47 F.4th 1069-70 (hinderance not established where individuals in the same position as clients brought their own lawsuits in other states, and where risk of stigma could be redressed using pseudonyms filing).

Simply put, this is not a case where potential individual litigants face “daunting” barriers or have “little incentive” to litigate their own claims. *Powers v. Ohio*, 499 U.S. 400, 414-15 (1991). As such, plaintiff organizations need not—and therefore cannot—litigate individuals’ claims for them.

Because plaintiffs have failed to identify any discriminatory government conduct against themselves and cannot assert third-party standing on behalf of their individual clients, the district court lacked jurisdiction to consider their Equal Protection claim.

b. Even if plaintiffs had standing to raise an equal-protection challenge to the gender-ideology provisions, any equal-protection challenge is not likely to succeed.

To succeed, plaintiffs would have to establish that the Executive Order instructs agencies to take actions that discriminate on the basis of some protected status. But the challenged provisions do not direct agencies to do so. On their face, the challenged gender-ideology provisions do not draw any distinctions based on sex or any other protected characteristic. Instead, the Order expresses a view that sex and gender identity are distinct concepts, and that for a number of reasons it is not workable or appropriate to replace sex with gender identity for purposes of identifying or sorting people. *See* Gender Ideology Order § 2(f) (defining “gender ideology”). And the challenged provisions direct agencies to ensure that, to the extent permitted by law, federal money is not being used to fund programs or projects that treat sex and gender identity as interchangeable.

See id. § 3(e), (g) (directing agencies to ensure government monies are not used to fund or promote “gender ideology”).

Plaintiffs evidently disagree with that view and would prefer to continue receiving federal funding for projects that “replace[] the biological category of sex with ... self-assessed gender identity.” Gender Ideology Order § 2(f). But that does not transform a facially neutral Order into discriminatory government action that singles out transgender status. Indeed, the Order does not even draw a distinction between transgender identity and any other gender identity – it defines “gender ideology” to mean replacing sex with gender identity generally, and the Order notes that the *diversity* of gender identities is one of the principal reasons why sex remains a useful, independent concept.

The district court concluded otherwise only by departing entirely from what the Gender Identity Order says and embarking on a series of speculations about what the “intended consequences” of the Order must be. ER-32-33. The district court asserted that the Order facially “withholds funding based on the transgender status of the individuals that grantees serve,” “preclude[s] providing health and social services that acknowledge the existence of transgender people,” and requires grantees to “remove

references” to the existence of transgender people. ER-32. But as noted, the Order says no such thing. By its terms, the Order only requires agencies to terminate funding that promotes “gender ideology,” which is defined to mean replacing sex with self-assessed gender identity, requiring others to accept this replacement as true, and thereby diminishing or eliminating “sex as an identifiable or useful category.” Gender Ideology Order § 3(f). None of that requires grantees to disavow the existence of transgender people or otherwise categorizes people based on their gender identity in any way.

The Supreme Court’s recent decision in *United States v. Skrametti*, 145 S. Ct. 1816 (2025), confirms the district court’s error. The Supreme Court there confronted a law that prohibited medical interventions for “gender dysphoria, gender identity disorder, or gender incongruence” in minors. *Id.* at 1829. Like plaintiffs here, the *Skrametti* plaintiffs argued that the law “discriminates on the basis of sex and transgender status” and cannot withstand intermediate scrutiny. *Id.* at 1834. The Supreme Court rejected these arguments and upheld Tennessee’s law on rational-basis review. It first held that Tennessee’s law does not classify based on sex because it “does not prohibit conduct for one sex that it permits for the other.” *Id.* at

1831. Rather, the prohibition turns on “the underlying medical concern the treatment is intended to address” — *e.g.*, gender dysphoria — and applies regardless of a minor’s sex.” *Id.* at 1830. The same is true here: The challenged provisions direct agencies to terminate funds based not on any individual’s sex, but based on whether the program receiving funds promotes a view that treats sex and gender identity as interchangeable or diminishes the importance of sex, and that directive applies to all programs and does not turn on the sex of any individual or group.

The Supreme Court further held in *Skrmetti* that the law does not classify based on transgender status. 145 S. Ct. at 1834. The Court explained that it “divides minors into two groups: those who might seek puberty blockers or hormones to treat the excluded diagnoses, and those who might seek puberty blockers or hormones to treat other conditions.” *Id.* at 1833. Because “transgender individuals” fall into both groups, the Court concluded that “there is a ‘lack of identity’ between transgender status and the excluded medical diagnoses.” *Id.* The same is true here. Even accepting the district court’s assertion that the challenged provision would require agencies to strip funding for programs that provide services to people exclusively based on their gender identity, transgender people would still

be able to receive services from programs that impose no such gender-identity based restrictions. In other words, there is a “lack of identity between transgender status” and any line-drawing contained in the challenged provisions because transgender people receive services from both “groups” – programs that continue to receive funds and those that do not – created by the Order. The district court’s conclusion that the challenged provisions nevertheless discriminate based on transgender status cannot be reconciled with the Supreme Court’s decision.⁴

The absence of any discrimination based on sex defeats plaintiffs’ claim, and they cannot revive it based on a generalized critique of the substance and motivations for the Executive Order. It is black-letter law that only government *action* can violate the Equal Protection Clause. *See Ballou v. McElvain*, 29 F.4th 413, 422 (9th Cir. 2022) (“The central inquiry in

⁴ The Supreme Court recently granted certiorari to review this Court’s decision in *Hecox v. Little*, 79 F.4th 1009 (9th Cir. 2023), which subjected a law discriminating against transgender students to heightened scrutiny under the Equal Protection clause. If the Supreme Court were to hold in that case that transgender status is not a suspect class under equal-protection principles, that would provide yet another basis to vacate the district court’s decision here. The government respectfully preserves this argument for further review while acknowledging that it is foreclosed by circuit precedent for now.

an Equal Protection Clause claim is whether a government action was motivated by a discriminatory purpose.”). As discussed above, plaintiffs fail to identify any action by the government that plausibly violates their equal-protection rights; to the contrary, the only actions contemplated are termination of grants that are inconsistent with the Executive Branch’s funding priorities that do not discriminate on the basis of sex.

That the Executive Order espouses a view of gender identity with which plaintiffs or the district court disagree does not transform the Order into discriminatory government action. Plaintiffs, for example, complained in district court that the Order “facially discriminates against transgender people by declaring they do not exist and deeming their identities to be ‘false.’” And the district court similarly concluded that the evident purpose of the Order is to “deny the existence of transgender persons entirely.” ER-32-33. Even accepting that interpretation of the Order, *but see supra* pp. 47-51, such allegations about government rhetoric are inadequate to make out an equal-protection claim. The relevant question is whether the operative provisions of the Executive Order caused some action to be taken on an impermissible ground, and as discussed above, they did not. Absent any allegation that any of the Executive Order’s provisions direct agencies to

engage in discriminatory actions, the district court had no basis to enjoin or police an Executive Order's language.

4. As-Applied Separation of Powers

Finally, the district court erred in considering plaintiffs' claims that the funding termination provisions are inconsistent with several specific funding statutes. The district court held that, if an agency were to terminate grants issued under five statutes, doing so would violate particular requirements of those grant schemes. That holding was error.

a. First, the district court's decision runs headlong into the text of the very provisions that plaintiffs challenge. Each of the challenged provisions direct agencies to terminate funding only to the extent authorized by law. *See* DEI Order § 2(b)(i), 90 Fed. Reg. 8339 (directing agencies to "terminate, to the maximum extent allowed by law, . . . 'equity-related' grants or contracts"), Gender Ideology Order § 3(e), 90 Fed. Reg. 8615 (directing agencies to "take all necessary steps, as permitted by law, to end the Federal funding of gender ideology").⁵ The provisions thus contemplate

⁵ Although § 3(g) of the Gender Ideology Order does not expressly restate the qualifier that is explicit in § 3(e) — "as permitted by law" — the two provisions must be read together because they appear in the same

Continued on next page.

that, in some instances, agencies will not be able to lawfully terminate covered grants. The President’s judgment that certain categories of contracts should be terminated to the maximum extent permissible is a general policy directive that does not conflict with any statute. And that is all that plaintiffs challenge. Once again, the decision to target only directives contained in two Executive Orders, as opposed to any particular action taken to implement those Orders, is fatal to their claim.

Contrary to the district court’s conclusion, this Court’s decision in *City and County of San Francisco v. Trump*, 897 F.3d 1225 (9th Cir. 2018), does not suggest otherwise. There, this Court confronted an Executive Order that directed that certain agencies “shall ensure” that certain jurisdictions “are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes” by the relevant agency heads. This Court concluded that that directive – for the agencies to “ensure” certain jurisdictions are “not eligible” to receive grants except in limited

section and address the same subject matter. *See United States v. Stewart*, 311 U.S. 60, 64 (1940) (“[A]ll acts *in pari materia* are to be taken together, as if they were one law.”). Moreover, Section 8(b) of the Order specifically provides that that the Executive Order in full must be “implemented consistent with applicable law.”

circumstances – was sufficiently “clear and specific” that it could not be “overridden” by language indicating that the agencies should carry it out “in their discretion and to the extent consistent with law.” *Id.* at 1239.

By contrast, here, the challenged provisions do not unequivocally compel agencies to improperly withhold congressionally appropriated funds. Instead, the Executive Orders direct agencies to align government funding with policy priorities while explicitly directing them to yield to any and all applicable laws before terminating any funding. In that way, this case is analogous to the Executive Order the D.C. Circuit considered in *Allbaugh*, 295 F.3d 28. There, the Executive Order “provide[d] that, to the extent permitted by law, no federal agency, and no entity that receives federal assistance for a construction project, may either require bidders or contractors to enter, or prohibit them from entering, into a project labor agreement (PLA).” *Id.* at 29. As the *Allbaugh* court recognized, the permitted-by-law qualifier “instructs the agency to follow the law.” *Id.* at 33. Thus, “if an executive agency, such as the FEMA, may lawfully implement the Executive Order, then it must do so; if the agency is prohibited, by statute or other law, from implementing the Executive Order,” then it may not. *Id.* The court went on to conclude that “[t]he mere

possibility that some agency might make a legally suspect decision to award a contract or to deny funding for a project does not justify an injunction against enforcement of a policy that, so far as the present record reveals, is above suspicion in the ordinary course of administration.” *Id.*

The same is true here, and a contrary decision would expand this Court’s decision in *San Francisco* in a way that not only is inconsistent with precedent from other circuits but also would sweep so broadly as to be plainly incorrect. It is commonplace for Executive Branch officials to announce broad policy priorities and direct their subordinates to implement them, to the extent consistent with law. There is no basis for allowing such directives to be invalidated merely because—as the directives themselves contemplate—implementation of those priorities may in some circumstances be constrained by the law. Doing so would eliminate an important tool that allows high-level officials to give direction to their subordinates without working out every detail of implementation or addressing every potential legal hurdle. This Court concluded in *San Francisco* that the general presumption that a directive to act only as consistent with law means what it says was overcome based on the

particular circumstances of that case, but the case cannot properly be read to treat such directives as a nullity across the board.

b. Relatedly, three of plaintiffs' as-applied challenges — those for grants under the Ryan White Program, the HOPWA program, and as FQHCs — suffer from threshold problems because plaintiffs identify no grant that has been terminated under those statutes (though, even if they did, their claims would properly be pursued only under the Tucker Act as discussed above). Any claim that terminations for those grants would be unlawful is therefore unripe for review. It is entirely speculative whether agencies will disagree with the arguments made by plaintiffs and the district court and conclude that grants awarded under those statutes can be terminated notwithstanding the Executive Orders' direction that grants must be terminated only to the extent consistent with law. And as discussed above, if any such grant is terminated by an agency, the appropriate course is for plaintiffs to challenge that particular termination in an appropriate venue, not to seek a blunderbuss pre-enforcement injunction. Any such case would allow evaluation of the agency's actual interpretation of the statutory provisions at issue, rather than getting courts

ahead of agencies and resolving hypothetical disputes with no administrative record.

c. Finally, the district court’s decision as to the remaining two statutes — the Affordable Care Act and Public Health Service Act — collapses entirely with its analysis of plaintiffs’ equal-protection claim. The court concluded that, for the same reasons plaintiffs were likely to succeed on their equal protection claim, they were likely to show that the Gender Ideology Order violates specific antidiscrimination provisions contained in those two statutes. ER-54-55. For the reasons given above, *supra* pp. 47-53, that is wrong because the district court’s conclusion that the Gender Ideology Order discriminates based on sex or transgender status was error.

II. The Remaining Equitable Factors Favor the Government.

The balance of equities and the public interest counsel against a preliminary injunction. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) (noting that these factors merge in cases involving the government). In particular, the district court’s order will cause significant and irreparable harm to the government. The court’s injunction restrains the government from carrying out lawful and important policies with respect to federal funding priorities. “Under our Constitution, the ‘executive power’ — all of it — is vested in a

President,” who must “take Care that the laws be faithfully executed.” *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 203 (2020) (quoting U.S. Const. art. II, § 1, cl. 1; *id.* § 3). “Because no single person could fulfill that responsibility alone, the Framers expected that the President would rely on subordinate officers for assistance.” *Id.* at 203-04. The President also has authority, “as head of the Executive Branch, to ‘supervise and guide’ executive officers in ‘their construction of the statutes under which they act.’” Office of Legal Counsel, *Proposed Executive Order Entitled “Federal Regulation,”* 5 Op. O.L.C. 59, 60 (1981) (quoting *Myers v. United States*, 272 U.S. 52, 135 (1926)).

The extraordinary injunction in this case interferes with these core executive functions and prevents the President from directing and controlling executive officers in their exercise of lawful authority. The challenged provisions simply guide agencies’ exercise of pre-existing authority to terminate grants or contracts, and enjoining those directives inhibits agencies from exercising their authority in a way that furthers the President’s priorities. The injunction thus inflicts irreparable constitutional harm by eroding the President’s control over subordinates and frustrates the public’s interest in having the elected President effectuate policy

priorities through lawful direction of the executive branch. As the Supreme Court has emphasized, under the “constitutional strategy” chosen by the Framers, individual executive officials’ authority “remains subject to the ongoing supervision and control of the elected President.” *Seila*, 591 U.S. at 224. The district court’s assertion of authority to parse and analyze the way the President provides that supervision and direction unlawfully usurps the President’s Article II authority.

Beyond the harms to the President’s ability to execute core Executive Branch policies, the order irreparably harms the public fisc. The order requires the agencies to reinstate grantees’ access to funds. ER-5-7. As in *Department of Education v. California* and *NIH v. American Public Health Ass’n*, the government “is unlikely to recover the grant funds once they are disbursed.” 145 S. Ct. at 969. Thus, the challenged order will result in the immediate outflow of significant amounts of money from the public fisc and limited prospects for recovery if it is ultimately determined that the grant terminations were lawful. Conversely, even absent preliminary relief, nothing would prevent plaintiffs from seeking an order to restore “any wrongfully withheld funds through suit in an appropriate forum.” *California*, 145 S. Ct. at 969.

In contrast, the gravamen of plaintiffs’ claim is monetary – they ask to continue receiving funds under their grant agreements during the pendency of this litigation. The “possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, [weighs] heavily against a claim of irreparable harm.” *Dennis Melancon, Inc. v. City of New Orleans*, 703 F.3d 262, 279 (5th Cir. 2012) (alteration in original) (quotation omitted).

Finally, the Supreme Court recently assessed the equitable factors in two cases involving materially similar injunctive relief – *California* and *NIH* – and its weighing of the equities in a stay posture in those cases demonstrates that the balance weighs against an injunction. As the Court explained, the government suffers irreparable harm because it is “unlikely to recover the grant funds once they are disbursed.” 145 S. Ct. at 969. The Supreme Court has since reiterated that its stay decisions “inform how a court should exercise its equitable discretion in like cases”; accordingly, the Supreme Court’s balancing of the equities “squarely control[s]” here. *Trump v. Boyle*, No. 25A11, 2025 WL 2056889 (U.S. July 23, 2025).

III. At the Very Least, the Injunction is Overbroad.

Even if the district court did not err in granting plaintiffs' motion for a preliminary injunction, the injunction order it issued should still be vacated and remanded in part because it is overbroad. The district court concluded that the challenged termination provisions are likely unlawful and enjoined defendants from enforcing those provisions against plaintiffs or taking other action to implement those provisions. But the district court's injunction went further and ordered defendants to reinstate a list of specific grant and contract awards (and any other grant award that had been terminated since plaintiffs' complaint was filed) *regardless* of whether those awards were terminated pursuant to the challenged provisions. ER-5-7.

In addition to being beyond the district court's jurisdiction due to the preclusive effect of the Tucker Act, that aspect of the injunction is plainly divorced from plaintiffs' claims and the district court's legal conclusions. Plaintiffs have not established any likelihood of success or harm arising from any grants or contracts that were terminated for some reason independent of the challenged Executive Order provisions. This Court should therefore, at the very least, vacate the injunction to the extent it

requires defendants to reinstate grants or contracts that were not terminated pursuant to the challenged termination provisions and (assuming the Court rejects the government's Tucker Act argument) remand to the district court to determine in the first instance whether any of the grants and contracts listed in paragraph 2 of its order (or any other grants) were in fact terminated pursuant to the challenged provisions.

CONCLUSION

For the foregoing reasons, the district court's preliminary injunction should be vacated or, at the very least, vacated in part.

Respectfully submitted,

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SEPTEMBER 2025

STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rule 28-2.6, appellants state that they are aware of the following related case pending in this Court: *Thakur v. Trump*, No. 25-4249 (9th Cir.) raises some similar or related issues as this appeal.

In particular, *Thakur* involves similar First Amendment challenges to one of the Executive Orders at issue in this appeal. In addition, *Thakur* raises similar questions about district court jurisdiction to consider grant-related claims under the Tucker Act.

s/ Jack Starcher
Jack Starcher

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 12,363 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Word for Microsoft 365 in Book Antiqua 14-point font, a proportionally spaced typeface.

s/ Jack Starcher
Jack Starcher

CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Service will be accomplished by the appellate CM/ECF system.

s/ Jack Starcher

Jack Starcher

ADDENDUM

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28 U.S.C. § 1491

§ 1491. Claims against United States generally; actions involving Tennessee Valley Authority

(a)

(1) The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

(2) To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States. In any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just. The Court of Federal Claims shall have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under section 7104(b)(1) of title 41, including a dispute concerning termination of a contract, rights in tangible or intangible property, compliance with cost accounting standards, and other nonmonetary disputes on which a decision of the contracting officer has been issued under section 6 of that Act.

Executive Order 14,151, Ending Radical and Wasteful Government DEI Programs and Preferencing, 90 Fed. Reg 8339

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1. Purpose and Policy. The Biden Administration forced illegal and immoral discrimination programs, going by the name "diversity, equity, and inclusion" (DEI), into virtually all aspects of the Federal Government, in areas ranging from airline safety to the military. This was a concerted effort stemming from President Biden's first day in office, when he issued Executive Order 13985, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government."

Pursuant to Executive Order 13985 and follow-on orders, nearly every Federal agency and entity submitted "Equity Action Plans" to detail the ways that they have furthered DEI's infiltration of the Federal Government. The public release of these plans demonstrated immense public waste and shameful discrimination. That ends today. Americans deserve a government committed to serving every person with equal dignity and respect, and to expending precious taxpayer resources only on making America great.

Sec. 2. Implementation.

(a) The Director of the Office of Management and Budget (OMB), assisted by the Attorney General and the Director of the Office of Personnel Management (OPM), shall coordinate the termination of all discriminatory programs, including illegal DEI and "diversity, equity, inclusion, and accessibility" (DEIA) mandates, policies, programs, preferences and activities in the Federal Government, under whatever name they appear. To carry out this directive, the Director of OPM, with the assistance of the Attorney General as requested, shall review and revise, as appropriate, all existing Federal employment practices, union contracts, and training policies or programs to comply with this order. Federal employment practices, including Federal employee performance reviews, shall reward individual initiative, skills, performance, and hard work and shall not under any circumstances consider DEI or DEIA factors, goals, policies, mandates, or requirements.

(b) Each agency, department, or commission head, in consultation with the Attorney General, the Director of OMB, and the Director of OPM, as appropriate, shall take the following actions within sixty days of this order:

(i) terminate, to the maximum extent allowed by law, all DEI, DEIA, and "environmental justice" offices and positions (including but not limited to "Chief Diversity Officer" positions); all "equity action plans," "equity" actions, initiatives, or programs, "equity-related" grants or contracts; and all DEI or DEIA performance requirements for employees, contractors, or grantees.

(ii) provide the Director of the OMB with a list of all:

- (A) agency or department DEI, DEIA, or "environmental justice" positions, committees, programs, services, activities, budgets, and expenditures in existence on November 4, 2024, and an assessment of whether these positions, committees, programs, services, activities, budgets, and expenditures have been misleadingly relabeled in an attempt to preserve their pre-November 4, 2024 function;
- (B) Federal contractors who have provided DEI training or DEI training materials to agency or department employees; and
- (C) Federal grantees who received Federal funding to provide or advance DEI, DEIA, or "environmental justice" programs, services, or activities since January 20, 2021.

(iii) direct the deputy agency or department head to:

- (A) assess the operational impact (e.g., the number of new DEI hires) and cost of the prior administration's DEI, DEIA, and "environmental justice" programs and policies; and
- (B) recommend actions, such as Congressional notifications under 28 U.S.C. 530D, to align agency or department programs, activities, policies, regulations, guidance, employment practices, enforcement activities, contracts (including set-asides), grants, consent orders, and litigating positions with the policy of equal dignity and respect identified in section 1 of this order. The agency or department head and the Director of OMB shall

jointly ensure that the deputy agency or department head has the authority and resources needed to carry out this directive.

(c) To inform and advise the President, so that he may formulate appropriate and effective civil-rights policies for the Executive Branch, the Assistant to the President for Domestic Policy shall convene a monthly meeting attended by the Director of OMB, the Director of OPM, and each deputy agency or department head to:

- (i) hear reports on the prevalence and the economic and social costs of DEI, DEIA, and "environmental justice" in agency or department programs, activities, policies, regulations, guidance, employment practices, enforcement activities, contracts (including setasides), grants, consent orders, and litigating positions;
- (ii) discuss any barriers to measures to comply with this order; and
- (iii) monitor and track agency and department progress and identify potential areas for additional Presidential or legislative action to advance the policy of equal dignity and respect.

Sec. 3. Severability. If any provision of this order, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of its provisions to any other persons or circumstances shall not be affected.

Sec. 4. General Provisions.

(a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,

January 20, 2025.

**Executive Order 14,168, Defending Women from Gender Ideology
Extremism and Restoring Biological Truth to the Federal Government, 90
Fed. Reg 8615**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7301 of title 5, United States Code, it is hereby ordered:

Section 1. Purpose. Across the country, ideologues who deny the biological reality of sex have increasingly used legal and other socially coercive means to permit men to self-identify as women and gain access to intimate single-sex spaces and activities designed for women, from women's domestic abuse shelters to women's workplace showers. This is wrong. Efforts to eradicate the biological reality of sex fundamentally attack women by depriving them of their dignity, safety, and well-being. The erasure of sex in language and policy has a corrosive impact not just on women but on the validity of the entire American system. Basing Federal policy on truth is critical to scientific inquiry, public safety, morale, and trust in government itself.

This unhealthy road is paved by an ongoing and purposeful attack against the ordinary and longstanding use and understanding of biological and scientific terms, replacing the immutable biological reality of sex with an internal, fluid, and subjective sense of self unmoored from biological facts. Invalidating the true and biological category of “woman” improperly transforms laws and policies designed to protect sex-based opportunities into laws and policies that undermine them, replacing longstanding,

cherished legal rights and values with an identity-based, inchoate social concept.

Accordingly, my Administration will defend women's rights and protect freedom of conscience by using clear and accurate language and policies that recognize women are biologically female, and men are biologically male.

Sec. 2. Policy and Definitions. It is the policy of the United States to recognize two sexes, male and female. These sexes are not changeable and are grounded in fundamental and incontrovertible reality. Under my direction, the Executive Branch will enforce all sex-protective laws to promote this reality, and the following definitions shall govern all Executive interpretation of and application of Federal law and administration policy:

- (a) "Sex" shall refer to an individual's immutable biological classification as either male or female. "Sex" is not a synonym for and does not include the concept of "gender identity."
- (b) "Women" or "woman" and "girls" or "girl" shall mean adult and juvenile human females, respectively.
- (c) "Men" or "man" and "boys" or "boy" shall mean adult and juvenile human males, respectively.
- (d) "Female" means a person belonging, at conception, to the sex that produces the large reproductive cell.
- (e) "Male" means a person belonging, at conception, to the sex that produces the small reproductive cell.
- (f) "Gender ideology" replaces the biological category of sex with an ever-shifting concept of self-assessed gender identity, permitting the false claim that males can identify as and thus become women and vice versa, and requiring all institutions of society to regard this false claim as true. Gender ideology includes the idea that there is a vast spectrum of genders that are disconnected from one's sex. Gender ideology is internally inconsistent, in that it diminishes sex as an identifiable or useful category but nevertheless maintains that it is possible for a person to be born in the wrong sexed body.

(g) “Gender identity” reflects a fully internal and subjective sense of self, disconnected from biological reality and sex and existing on an infinite continuum, that does not provide a meaningful basis for identification and cannot be recognized as a replacement for sex.

Sec. 3. Recognizing Women Are Biologically Distinct From Men.

(a) Within 30 days of the date of this order, the Secretary of Health and Human Services shall provide to the U.S. Government, external partners, and the public clear guidance expanding on the sex-based definitions set forth in this order.

(b) Each agency and all Federal employees shall enforce laws governing sex-based rights, protections, opportunities, and accommodations to protect men and women as biologically distinct sexes. Each agency should therefore give the terms “sex”, “male”, “female”, “men”, “women”, “boys” and “girls” the meanings set forth in section 2 of this order when interpreting or applying statutes, regulations, or guidance and in all other official agency business, documents, and communications.

(c) When administering or enforcing sex-based distinctions, every agency and all Federal employees acting in an official capacity on behalf of their agency shall use the term “sex” and not “gender” in all applicable Federal policies and documents.

(d) The Secretaries of State and Homeland Security, and the Director of the Office of Personnel Management, shall implement changes to require that government-issued identification documents, including passports, visas, and Global Entry cards, accurately reflect the holder's sex, as defined under section 2 of this order; and the Director of the Office of Personnel Management shall ensure that applicable personnel records accurately report Federal employees' sex, as defined by section 2 of this order.

(e) Agencies shall remove all statements, policies, regulations, forms, communications, or other internal and external messages that promote or otherwise inculcate gender ideology, and shall cease issuing such statements, policies, regulations, forms, communications or other messages. Agency forms that require an individual's sex shall list male

or female, and shall not request gender identity. Agencies shall take all necessary steps, as permitted by law, to end the Federal funding of gender ideology.

(f) The prior Administration argued that the Supreme Court's decision in *Bostock v. Clayton County* (2020), which addressed Title VII of the Civil Rights Act of 1964, requires gender identity-based access to single-sex spaces under, for example, Title IX of the Educational Amendments Act. This position is legally untenable and has harmed women. The Attorney General shall therefore immediately issue guidance to agencies to correct the misapplication of the Supreme Court's decision in *Bostock v. Clayton County* (2020) to sex-based distinctions in agency activities. In addition, the Attorney General shall issue guidance and assist agencies in protecting sex-based distinctions, which are explicitly permitted under Constitutional and statutory precedent.

(g) Federal funds shall not be used to promote gender ideology. Each agency shall assess grant conditions and grantee preferences and ensure grant funds do not promote gender ideology.

Sec. 4. Privacy in Intimate Spaces.

(a) The Attorney General and Secretary of Homeland Security shall ensure that males are not detained in women's prisons or housed in women's detention centers, including through amendment, as necessary, of Part 115.41 of title 28, Code of Federal Regulations and interpretation guidance regarding the Americans with Disabilities Act.

(b) The Secretary of Housing and Urban Development shall prepare and submit for notice and comment rulemaking a policy to rescind the final rule entitled "Equal Access in Accordance with an Individual's Gender Identity in Community Planning and Development Programs" of September 21, 2016, 81 FR 64763, and shall submit for public comment a policy protecting women seeking single-sex rape shelters.

(c) The Attorney General shall ensure that the Bureau of Prisons revises its policies concerning medical care to be consistent with this order, and shall ensure that no Federal funds are expended for any medical procedure, treatment, or drug for the purpose of conforming an inmate's appearance to that of the opposite sex.

(d) Agencies shall effectuate this policy by taking appropriate action to ensure that intimate spaces designated for women, girls, or females (or for men, boys, or males) are designated by sex and not identity.

Sec. 5. Protecting Rights. The Attorney General shall issue guidance to ensure the freedom to express the binary nature of sex and the right to single-sex spaces in workplaces and federally funded entities covered by the Civil Rights Act of 1964. In accordance with that guidance, the Attorney General, the Secretary of Labor, the General Counsel and Chair of the Equal Employment Opportunity Commission, and each other agency head with enforcement responsibilities under the Civil Rights Act shall prioritize investigations and litigation to enforce the rights and freedoms identified.

* * *

Sec. 8. General Provisions.

(a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) If any provision of this order, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of its provisions to any other persons or circumstances shall not be affected thereby.

THE WHITE HOUSE,

January 20, 2025.

No. 25-4988

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

SAN FRANCISCO AIDS FOUNDATION, *et al.*,

Plaintiffs-Appellees,

v.

DONALD J. TRUMP, *et al.*,

Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of California

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

SAN FRANCISCO AIDS FOUNDATION, et
 al.;

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

Plaintiffs,

**~~[PROPOSED]~~ PRELIMINARY
 INJUNCTION ORDER**

v.

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

Defendants.

1 The Court has considered Plaintiffs’¹ Motion for Preliminary Injunction, and all briefing
 2 papers filed in connection therewith, as well as oral argument. The Court may issue a preliminary
 3 injunction when a plaintiff establishes that “[it] is likely to succeed on the merits, that [it] is likely
 4 to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in
 5 his favor, and that an injunction is in the public interest.” *Winter v Nat. Res. Def. Council,*
 6 *Inc.*, 555 U.S. 7, 20 (2008); *see also All. for the Wild Rockies v. Cottrell*, 632 F. 3d 1127, 1131–35
 7 (9th Cir 2011). For the reasons stated in the Court’s Order dated June 9, 2025, Granting in Part
 8 and Denying In Part Motion for Preliminary Injunction [ECF No. 81] (the “June 9, 2025
 9 Opinion”), the Court finds that Plaintiffs have carried their burden of satisfying each of those
 10 factors as to three challenged provisions within two Executive Orders. Immediate relief is
 11 appropriate in order to alter the status quo and address the irreparable harm that Plaintiffs face
 12 absent an injunction.

13 Specifically, the Court enjoins the following provisions of two Executive Orders: (1)
 14 Executive Order No. 14168,² section 3(e) which provides that agencies “shall take all necessary
 15 steps, as permitted by law, to end the Federal funding of gender ideology” (“Gender Termination
 16 Provision”); (2) Executive Order No. 14168, section 3(g) which provides that “[f]ederal funds
 17 shall not be used to promote gender ideology. Each agency shall assess grant conditions and
 18 grantee preferences and ensure grant funds do not promote gender ideology” (“Gender Promotion
 19 Provision”); and (3) Executive Order No. 14151³, section 2(b)(i) that directs each agency,
 20 department or commission head to “terminate, to the maximum extent allowed by law, all . . .
 21 ‘equity-related’ grants or contracts.” (“Equity Termination Provision”).

22 The Court **ORDERS** the following, consistent with the June 9, 2025 Opinion, which is
 23 fully incorporated herein:

24 ¹ Plaintiffs are Baltimore Safe Haven Corp.; Bradbury-Sullivan LGBT Community Center;
 25 FORGE, Inc.; Gay Lesbian Bisexual Transgender Historical Society; Los Angeles LGBT Center;
 26 Lesbian and Gay Community Services Center, Inc. d/b/a The LGBT Community Center; Prisma
 Community Care; San Francisco Aids Foundation; Asian and Pacific Islander Wellness Center,
 Inc. d/b/a San Francisco Community Health Center.

27 ² Executive Order No. 14168 is sometimes referred to as “the Gender Order.”

28 ³ Executive Order No. 14151 is sometimes referred to as “DEI-1 Order.”

1. Agency Defendants⁴ are hereby **ENJOINED** from enforcing Executive Order No. 14168 sections 3(e), and 3(g), and Executive Order No. 14151 section 2(b)(i) (referred to collectively as the “Funding Provisions”) against Plaintiffs. Specifically, Agency Defendants shall not:

- a. Condition or withhold any federal funding or contract eligibility based on Plaintiffs’ compliance with the Funding Provisions;
- b. Investigate Plaintiffs with regard to compliance with the Funding Provisions;
- c. Terminate or modify existing governmental contracts with or grants to Plaintiffs for purported non-compliance with:
 - i. The Funding Provisions,
 - ii. Any agency action taken to implement the Funding Provisions, or
 - iii. Any term of a contract or grant imposed to implement the Funding Provisions.
- d. Take any action against Plaintiffs, whether or not listed above, intended to implement, effectuate, or enforce, explicitly or under a different name:
 - i. Any agency action taken to implement the Funding Provisions, or
 - ii. Any term of a contract or grant imposed to implement the Funding Provisions.

2. Agency Defendants are hereby **ORDERED**, within five (5) business days of entry of this order, to **REINSTATE** any terminated contract or grant awards of Plaintiffs’ (whether Plaintiff is a grantee or sub grantee) in accordance with the grant terms and conditions in

⁴ “Agency Defendants” are the U.S. Department of Justice; Attorney General Pamela Bondi; U.S. Department of Labor; Acting Labor Secretary Vince Micone; the Office of Federal Contract Compliance Programs (“OFCCP”); Acting OFCCP Director Michael Schloss; the Office of Management and Budget (“OMB”); OMB Director Russell Vought; U.S. Department of Health and Human Services (“HHS”); HHS Secretary Robert K. Kennedy, Jr.; U.S. Department of Housing and Urban Development (“HUD”); HUD Secretary Scott Turner; National Archives and Records Administration (“NARA”); Deputy Archivist William J. Bosanko; National Endowment for the Humanities (“NEH”); and NEH Chair Shelly C. Lowe.

place at the time the Complaint was filed. This includes, but is not limited to, the following specific grant awards:

- a. Gay Lesbian Bisexual Transgender Historical Society – Federal Award ID Number PG-300781-24 (\$10,000);
- b. San Francisco AIDS Foundation – Federal Award ID Number 1R01AI181732-01A1 (\$52,822);
- c. San Francisco Aids Foundation – Federal Award ID Numbers B09SM085337 & B08TI083929 (\$125,000);
- d. San Francisco AIDS Foundation – Federal Award ID Number CDC-RFA-PS-23-0011 (\$800,000);
- e. LA LGBT Center – Federal Award ID Number 1R01DA061345-01 (\$2,068,560);
- f. LA LGBT Center – Federal Award ID Number 4R00DA055508-03 (\$12,536);
- g. LA LGBT Center – Federal Award ID Number 75D30123D15973;
- h. 75D30124F00002, subaward No. UWSC16407 (\$1,127,455);
- i. LA LGBT Center – Federal Award ID Number 15JOVW23GK05467MUMU (\$750,000);
- j. LA LGBT Center – Office of Violence Against Women’s grants for the “the Expanding Legal Services TTA Project,” “LGBTQ+ Training for Coalitions Project” and the “LGBTQ+ Legal Access Project” to ABA and LA LGBT Center Inc.;
- k. LA LGBT Center – Office of Violence Against Women Transitional Housing Grant that LA LGBT Center would have applied for except for its prohibition on the promotion of gender and DEI;
- l. LA LGBT Center – Federal Award ID Number H76HA00158-34-00 (\$2,366,502);
- m. LA LGBT Center – Federal Award ID Number 90EV0535-04-01 (\$2,300,00);

- n. NY LGBT Center – Federal Award ID Number 15POVC-24-GK-03050-NONF (\$200,000);
 - o. NY LGBT Center – Funding from Substance Abuse and Mental Health Services Administration which is advising NY LGBT Center to exclude reference to DEI, transgender, diversity, inclusion, cultural competence, culturally-informed, he/She/They/Them, inclusivity, nonbinary, LGBTQ, LGBTQ+ in reporting.
 - p. Prisma Community Care – Federal Award ID Number CDC-PS-24-0047, subgrant numbers RFGA2024-003-04 (\$2,000,000) and RFGA2024-006-001(\$300,000) (funding threatened);
 - q. FORGE Inc. – Federal Award ID Number 15POVC-22-GK-01054-NONF (\$749,908);
 - r. FORGE Inc. – Federal Award ID Number 15POVC22GK03590SAFE;
 - s. FORGE Inc. – Federal Award ID Number 15POVC21GK00658NONF, subaward number 3984 (\$113,333);
 - t. FORGE Inc. – Application process terminated for Culturally Responsive Victim Services Grant Program through the National Center for Culturally Responsive Victim Services;
 - u. FORGE Inc. – Federal Award ID Number 15PBJA22GG04854ADVA (\$500,000);
 - v. FORGE Inc. – Office of Violence Against Women’s grants for the “LGBTQ+ Training for Coalitions Project” and the “LGBTQ+ Legal Access Project” to ABA and FORGE Inc.;
 - w. FORGE Inc. – Office of Violence Against Women Stalking Prevention, Awareness & Resource Center/Aequitas grant’s program manager’s instruction that no LGBTQ+ related content should be submitted to the Office of Violence Against Women.
3. This injunction shall take effect immediately.

- 1 4. This injunction shall apply to all Agency Defendants as well as any subagencies of Agency
2 Defendants and any officers, agents, servants, employees, or attorneys of Agency
3 Defendants or any of their subagencies. This injunction shall further apply to any other
4 persons who are in active concert or participation with Agency Defendants or Agency
5 Defendants' officers, agents, servants, employees, and attorneys. Fed. R. Civ. P. 65(d)(2).
6 5. Plaintiffs shall post a nominal bond in the amount of \$1,000.00.⁵
7 6. This injunction shall remain in effect until further order of the Court.

8 **IT IS SO ORDERED.**

9 Dated this 13th of June, 2025.

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11 HON. JUDGE JON S. TIGAR
12 UNITED STATES DISTRICT JUDGE
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27 ⁵ The Court is advised by Notice dated June 12, 2025 (ECF No. 85) that Plaintiffs have complied
28 with this requirement.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO A.I.D.S.
FOUNDATION, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

Case No. 25-cv-01824-JST

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION FOR
PRELIMINARY INJUNCTION**

Re: ECF No. 47

Within the first two days of taking office in January 2025, President Trump issued two Executive Orders aiming to roll back diversity, equity, and inclusion (“DEI”) programs within the government and private sector as well as an Executive Order targeting initiatives promoting “gender ideology,” or the idea that one can identify as a gender identity different from one’s sex assigned at birth. Plaintiffs¹ are a group of nonprofit organizations that provide healthcare, social services, and advocacy for LGBTQ² communities—many specifically serving transgender individuals—and that rely heavily on federal funding to carry out their missions. They move for a preliminary injunction enjoining nine provisions of those Executive Orders. The Court will grant the motion in part and deny it in part.

Of the nine Challenged Provisions, Plaintiffs have demonstrated that they likely have standing to challenge: (1) a provision requiring them to certify that they do “not operate any

¹ Plaintiffs are Baltimore Safe Haven Corp (“BSH”); Bradbury-Sullivan LGBT Community Center (“Bradbury-Sullivan”); FORGE, Inc. (“FORGE”); Gay Lesbian Bisexual Transgender Historical Society (“GLBT Historical Society”); Los Angeles LGBT Center (“LA LGBT Center”); Lesbian and Gay Community Services Center, Inc. d/b/a The LGBT Community Center (“NY LGBT Center”); Prisma Community Care (“Prisma”); San Francisco Aids Foundation (“SFAF”); Asian and Pacific Islander Wellness Center, Inc. d/b/a San Francisco Community Health Center (“SFCHC”).

² As used in this Order, LGBTQ stands for lesbian, gay, bisexual, transgender, and queer.

programs promoting DEI that violate any applicable Federal anti-discrimination laws” (the “Certification Provision”); (2) a provision directing agencies to terminate funding for all “equity-related grants or contracts” (the “Equity Termination Provision”); and (3) two provisions commanding agencies to terminate funding for any programs that “promote gender ideology” (the “Gender Termination Provision” and “Gender Promotion Provision”).

These three funding provisions reflect an effort to censor constitutionally protected speech and services promoting DEI and recognizing the existence of transgender individuals. These provisions seek to strip funding from programs that serve historically disenfranchised populations in direct contravention of several statutes under which Plaintiffs receive funding. Plaintiffs have therefore demonstrated a likelihood of success on the merits that these provisions violate their rights under the First Amendment, Fifth Amendment, and the Separation of Powers. Plaintiffs, however, have not demonstrated that they likely to succeed in their challenge to the Certification Provision because they have not shown at this juncture that the provision goes beyond targeting DEI programs that violate federal antidiscrimination law.

While the Executive requires some degree of freedom to implement its political agenda, it is still bound by the Constitution. And even in the context of federal subsidies, it cannot weaponize Congressionally appropriated funds to single out protected communities for disfavored treatment or suppress ideas that it does not like or has deemed dangerous. It further cannot do so in such a vague manner that all federal grantees and contractors are left to wonder what activities or expression they can engage in without risking the funding on which they depend.

Absent injunctive relief, Plaintiffs face the imminent loss of federal funding critical to their ability to provide lifesaving healthcare and support services to marginalized LGBTQ populations. This loss not only threatens the survival of critical programs but also forces Plaintiffs to choose between their constitutional rights and their continued existence.

Accordingly, the Court grants Plaintiffs’ motion to enjoin Defendants from enforcing the Equity Termination Provision, Gender Termination Provision, and Gender Promotion Provision against them. The Court addresses the parties’ arguments and explores the Court’s reasoning for granting Plaintiffs’ motion in part and denying it in part more fully below.

I. BACKGROUND

A. The Executive Orders

On January 20, 2025, President Donald J. Trump signed Executive Order No. 14168, 90 Fed. Reg. 8650 (Jan. 20, 2025), “Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government” (“Gender Order”). That same day, he also signed Executive Order 14151, 90 Fed. Reg. 8339 (Jan. 20, 2025), “Ending Radical and Wasteful Government DEI³ Programs and Preferencing” (“DEI-1 Order”). On January 21, President Trump signed Executive Order 14173, 90 Fed. Reg. 8633, “Ending Illegal Discrimination and Restoring Merit-Based Opportunity” (“DEI-2 Order”) (collectively, “Challenged Orders”).

Plaintiffs move to enjoin the enforcement of the following provisions of the Challenged Orders against them: Section 3(e) of the Gender Order (the “Gender Termination Provision”); Section 3(g) of the Gender Order (the “Gender Promotion Provision”); Section 4(d) of the Gender Order (the “Intimate Spaces Provision”); Section 2(b)(i) of the DEI-1 Order (the “Equity Termination Provision”); Section 2(b)(ii)(C) of the DEI-1 Order (the “List Provision”); Section 3(c)(ii) of the DEI-2 Order (the “DEIA Principles Provision”); Section 3(c)(iii) of the DEI-2 Order (the “Diversity Termination Provision”); Section 3(b)(iv)(A)-(B) of the DEI-2 Order (the “Certification Provision”); and Section 4(b) of the DEI-2 Order (the “Enforcement Threat Provision”) (collectively, the “Challenged Provisions”). The language of these provisions is described further below.

B. Defendants

Defendants are President Donald J. Trump;⁴ the U.S. Department of Justice (“DOJ”); the Office of Federal Contract Compliance Programs (“OFCCP”); the Office of Management and Budget (“OMB”); the U.S. Department of Labor (“DOL”); the U.S. Department of Health and Human Services (“HHS”); the U.S. Department of Housing and Urban Development (“HUD”); the National Archives and Records Administration (“NARA”); the National Endowment for the

³ As used in this order, DEI stands for “diversity, equity, and inclusion,” and DEIA stands for “diversity, equity, inclusion, and accessibility.”

⁴ Plaintiffs seek only declaratory relief against President Trump, and the motion before the Court does not seek injunctive relief against him. ECF No. 47 at 10 n.1.

Humanities (“NEH”); and the highest-ranking officials within those agencies allegedly responsible for implementing the Executive Orders, including Attorney General Pamela Bondi, Acting Labor Secretary Vince Micone, Acting OFCCP Director Michael Schloss, OMB Director Russell Vought, HHS Secretary Robert K. Kennedy, Jr., HUD Secretary Scott Turner, Deputy Archivist William J. Bosanko, and NEH Chair Shelly C. Lowe. *See* ECF No. 1 ¶¶ 26–43.

C. Plaintiffs

Plaintiffs are a group of nonprofit organizations that receive federal funding to support their work providing services to “members of the LGBTQ communities.” ECF No. 47 at 12. “Speech, advocacy, and services advancing the civil rights and welfare of transgender and other LGBTQ people, and addressing systemic racism, sexism, and anti-LGBTQ bias, are central to each Plaintiff’s mission.” *Id.* Plaintiffs contend that they cannot “advertise, provide services, train staff, train other agencies or providers, or accomplish their core mission and mandates under existing grants while simultaneously complying with the Executive Orders.” ECF No. 47 at 20–21 (citing ECF Nos. 47-1 ¶¶ 10–14; 47-2 ¶¶ 26–28; 47-3 ¶¶ 20–21; 47-4 ¶¶ 12–13, 24; 47-7 ¶¶ 16–34; 47-5 ¶ 21; 47-8 ¶ 25; 47-9 ¶¶ 10–13, 34–47; 47-10 ¶ 23); *see also* ECF No. 47-10 ¶ 23 (“If the Executive Orders are allowed to stand, SFCHC will face the impossible choice of abandoning our mission to provide targeted, culturally competent care to marginalized communities, or forfeit the federal funding supporting many of our lifesaving services.”).

SFAF is a nonprofit organization based in San Francisco, California, that “promotes health, wellness, and social justice for communities most affected by HIV, through sexual health and substance use services, advocacy, and community partnerships.” ECF No. 1 ¶ 15. Specifically, SFAF “confronts and combats HIV-related health disparities among gay and bisexual men, transgender women, cisgender women, Black people, Latinx people, and, in particular, people residing at the intersections of these identities.” *Id.* ¶ 45. “For Fiscal Year 2025–2026, SFAF is contracted to receive \$2,275,557.00 in direct and indirect funding. Of this amount, \$641,625.00 is directly funded through agreements with CDC, and the balance of \$1,633,952.00 is indirectly funded by a variety of federal agencies through subcontracts with state and local agencies.” ECF No. 47-9 ¶ 5. “SFAF’s core HIV prevention efforts rely on federal funding to provide services

such as testing, treatment, PrEP, PEP, harm reduction, and telehealth to underserved communities.” *Id.* ¶ 11.

GLBT Historical Society is a nonprofit organization based in San Francisco, California, that “collects, preserves, exhibits, and makes accessible to the public materials and knowledge to support and promote understanding of LGBTQ history, culture, and arts in all their diversity.” ECF No. 1 ¶ 16. “The organization was founded during the height of the HIV/AIDS epidemic; community members began collecting materials belonging to primarily gay and bisexual men who were dying of AIDS-related illnesses when families of origin had abandoned them, and healthcare systems and the government had failed them.” ECF No. 47-4 ¶ 5. GLBT Historical Society receives federal funding primarily from the NEH and the National Archives through the National Historic Publications and Records Commission (“NHPRC”), including current funding from an open NHPRC grant of approximately \$122K to support work to “process, digitize, and create online access for collections related to LGBTQ+ Asian American/Pacific Islander people” and “an open NEH grant of around \$10K that supports the purchase of a new archival storage cabinet.” *Id.* ¶ 14.

SFCHC is a nonprofit organization based in San Francisco, California, that “seeks to celebrate and attend to the health and wellness of the communities that define San Francisco—immigrant and communities of color, queer, transgender, unhoused people, and all who are most affected by oppression—through comprehensive medical, dental, and mental health services.” ECF No. 1 ¶ 17. SFCHC currently receives more than \$5 million in federal grant funding, including several grants from the CDC and the Substance Abuse and Mental Health Services Administration to provide HIV-related health services to transgender people and young people of color. ECF No. 47-10 ¶¶ 5–8.

LA LGBT Center is a nonprofit organization based in Los Angeles, California, that “offers programs, services, and advocacy spanning four broad categories: (i) health, (ii) social services and housing, (iii) culture and education, and (iv) leadership and advocacy” to fulfill its mission of “build[ing] a world in which LGBTQ people thrive as healthy, equal, and complete members of society.” ECF No. 1 ¶ 18. LA LGBT Center states that “nearly every aspect of the services

provided by the LA LGBT Center directly or indirectly impacts the transgender community, and the LA LGBT Center has provided its services to more than 6,000 transgender individuals over the past ten years—the majority of such services relating to their medical care.” ECF No. 47-5 ¶ 5. “A significant portion of the LA LGBT Center’s revenue comes from federal programs, including, but not limited to, direct funding from the Department of Justice (DOJ) Office of Violence Against Women and the Department of Health & Human Services (HHS) divisions: Centers for Disease Control and Prevention (CDC); Health Resources and Services Administration (HRSA) Bureau of Primary Health Care, under which the LA LGBT Center is a Federally Qualified Health Center (FQHC); and the Administration for Children Youth & Families.” *Id.* ¶ 7. The LA LGBT Center is scheduled to receive \$22 million of federal funding for use over the next several years. *Id.*

Prisma is a nonprofit organization based in Phoenix, Arizona, that “offers a wide variety of healthcare services, including services related to HIV, sexual health, gender-affirming care, and mental and social wellness” to carry out its mission of providing “affirming and inclusive services to promote well-being and advance health equity for diverse communities particularly people of color, 2SLGBTQIA+ and queer individuals, and those affected by HIV.” ECF No. 1 ¶ 19. Prisma “receives over three million dollars in federal funding, either directly or as pass-through funding through state agencies like the Arizona Department of Health Services (ADHS).” ECF No. 47-8 ¶ 9.

NY LGBT Center is a nonprofit organization based in New York, New York, that was “established in 1983 at the height of the AIDS crisis to provide a safe and affirming place for LGBTQ New Yorkers to respond to the urgent threats facing the community.” ECF No. 1 ¶ 20. NY LGBT Center “provides recovery and wellness programs, economic advancement initiatives, family and youth support, advocacy, arts and cultural programming, and space for community organizing, connection, and celebration.” *Id.* “Over \$2 million of the NY LGBT Center’s annual budget comes from federal funding, both in direct grants from federal agencies and in pass-through federal funds received from New York State agencies. This accounts for approximately 12% of the NY LGBT Center’s annual budget.” ECF No. 47-7 ¶ 13. These federal funds “are

used to support services including substance use treatment and prevention, youth programming, HIV testing and prevention, mental health counseling, case management, support for survivors of violence, training for clinicians and capacity building for other providers on working with the LGBTQ+ community, and more.” *Id.* ¶ 15.

Bradbury-Sullivan is a nonprofit organization based in Allentown, Pennsylvania, that “provides a vibrant, inclusive space in Pennsylvania’s Lehigh Valley for all the region’s LGBTQ residents, offering affirming programming and health programs” to fulfill its mission of “provid[ing] safe and celebratory spaces for the LGBTQ community.” ECF No. 1 ¶ 21. About 62% of Bradbury-Sullivan’s budget comes from federal sources, including the CDC, through pass-through contracts with state and local agencies such as the Pennsylvania Department of Health. ECF No. 47-2 ¶ 7.

BSH is a nonprofit organization based in Baltimore, Maryland, that provides “comprehensive support services for marginalized TLGBQIA+ people, especially focusing on Black transgender women navigating survival mode living.” ECF No. 1 ¶ 22. BSH asserts that its origin as “an organization created by transgender people for transgender people [] makes it imperative that [it] not only fight injustices against transgender people but provide our services to our community in a culturally competent way. It is the cornerstone of [BSH’s] identity.” ECF No. 47-1 ¶ 10. Approximately “80% of BSH’s budget comes from federal grant money,” including “\$3 million in operating funds via federal grant money, whether directly or as a subgrantee.” *Id.* ¶ 9. One such grant includes “\$182,000 grant of funding from the Centers for Disease Control and Prevention (‘CDC’) via the Baltimore City Health Department (‘BCHD’) . . . through the CDC’s High Impact HIV and Surveillance Programs for Health Departments.” *Id.* “When the BCHD issued its request for proposals from subgrantees, it specifically invited proposals for HIV-prevention programs with a focus on transgender people in the zip codes BSH most regularly serves.” *Id.*

FORGE is a nonprofit organization based in Milwaukee, Wisconsin, that “offers programs and services to reduce the impact of trauma on transgender and nonbinary survivors of violence by empowering service providers, advocating for systems reform, and connecting survivors to healing

possibilities.” ECF No. 1 ¶ 23. About “90% of FORGE’s revenue arises from federal programs and grants, including but not limited to grants from the DOJ Offices for Victims of Crime (OVC), Justice Programs (OJP), and Violence Against Women (OVW) and National Institute of Justice (NIJ), the Substance Abuse and Mental Health Services Administration (SAMHSA), and the National Institutes of Health National Institute on Alcohol Abuse and Alcoholism (NIH-NIAAA).” ECF No. 47-3 ¶ 7. These federally funded grants support FORGE’s initiatives, “including the development of training materials and direct support services for transgender and nonbinary survivors.” *Id.*

Plaintiffs filed this lawsuit on February 20, 2025. ECF No. 1. They filed the motion for preliminary injunction now before the Court on March 3, 2025. ECF No. 47.

D. Related Litigation

Several plaintiffs have filed other cases challenging various provisions of the orders challenged here. Without providing an exhaustive summary of all such cases, the Court briefly recounts the cases involving issues similar to those here.

1. National Association of Diversity Officers in Higher Education

In *National Association of Diversity Officers in Higher Education v. Trump*, the District Court for the District of Maryland granted the plaintiffs’ motion for a preliminary injunction enjoining the enforcement of the Equity Termination Provision, the Certification Provision, and the Report Provision on a nationwide basis. No. 25-cv-333 (ABA), 2025 WL 573764, at *27–30 (D. Md. Feb. 21, 2025). The court held that the Equity Termination Provision was likely void for vagueness under the Fifth Amendment. *Id.* at *19–21. It also held that the plaintiffs’ First Amendment challenge to the Certification Provision was likely to succeed on the merits. *See id.* at *21–23. Finally, it held that the Enforcement Threat Provision likely violated the First Amendment and was also unconstitutionally vague. *See id.* at *24, 26.

The Fourth Circuit stayed that decision pending appeal. *See Nat’l Ass’n of Diversity Officers in Higher Educ. v. Trump*, No. 25-1189, ECF No. 29 (4th Cir. Mar. 14, 2025). The panel held that the government had carried its burden of “satisf[ying] the factors for a stay,” including likelihood of success on the merits. *Id.* at 2; *see also id.* at 7 (Harris, J., concurring). In her

concurrency explaining the reasoning of the panel, Judge Harris noted that the DEI-1 and DEI-2 Orders “are of distinctly limited scope” and that nothing in their text “purport[s] to establish the illegality of all efforts to advance diversity, equity or inclusion.” *Id.* at 7 (Harris, J., concurring). She found that the Certification Provision and Enforcement Threat Provision “appl[ied] only to conduct that violates existing federal anti-discrimination law” and that the DEI-1 and DEI-2 Orders did not “authorize the termination of grants based on a grantee’s speech or activities outside the scope of the funded activities.” *Id.* Lastly, Judge Harris explained that her “vote to grant the stay comes with a caveat,” explaining that “[a]gency enforcement actions that go beyond the Orders’ narrow scope may well raise serious First Amendment and Due Process concerns, for the reasons cogently explained by the district court.” *Id.*

2. Chicago Women in Trades

In the Northern District of Illinois, Chicago Women in Trades—a national nonprofit organization—sought a temporary restraining order enjoining the DOL, the OMB, the DOJ, and the heads of those agencies from enforcing parts of the DEI-1 and DEI-2 Orders. *See Chi. Women in Trades v. Trump*, No. 25-cv-2005 (MFK), 2025 WL 933871, at *1–2 (N.D. Ill. Mar. 27, 2025) (“*CWIT I*”). The court granted a temporary restraining order enjoining the DOL and its Acting Secretary from enforcing the Certification Provision on a nationwide basis and from enforcing the Equity Termination Provision against the plaintiff. *See id.* at *10–13. But the court reconsidered part of its decision upon ruling on the plaintiff’s motion for a preliminary injunction. *See Chi. Women in Trades v. Trump*, No. 25-cv-2005 (MFK), 2025 WL 1114466 (N.D. Ill. Apr. 14, 2025) (“*CWIT II*”). The court reaffirmed that the Certification Provision likely violated the First Amendment. In particular, it noted:

The Order that contains the Certification Provision does not define the term “DEI” itself, and it does not refer to any other source indicating what the term means as used in the Order—let alone what might make any given “DEI” program violate Federal anti-discrimination laws. And although the government emphasized, both in its briefing and at oral argument, that the Certification Provision implicates only illegal DEI programs, it has studiously declined to shed any light on what this means.

2025 WL 1114466, at *11. However, the court changed its holding as to the Equity Termination

Provision and found that provision likely did not violate either the First or Fifth Amendments. *See id.* at 12–16. In addition, the court found that the Equity Termination Provision likely violated the Separation of Powers under the Spending Clause as to one specific grant. *See id.* at 16–18.

3. PFLAG, Inc.

In the District of Maryland, six individual transgender plaintiffs who were seeking gender affirming care and two national nonprofit organizations that supported transgender individuals in seeking medical treatment for gender dysphoria moved for an emergency temporary restraining order. *PFLAG, Inc. v. Trump*, No. CV 25-337-BAH, 2025 WL 510050, at *1–3 (D. Md. Feb. 14, 2025) (“*PFLAG I*”). They sought an order enjoining various government defendants from enforcing the Gender Promotion Provision of the Gender Order and a provision of Executive Order 14187, 90 Fed. Reg. 8771 (Jan. 28, 2025), “Protecting Children from Chemical and Surgical Mutilation,” which directed all federal agencies to “immediately take appropriate steps to ensure that institutions receiving Federal research or education grants end the chemical and surgical mutilation of children.” *Id.* The court granted the temporary restraining order and found that the plaintiffs were likely to succeed on the merits of their claims that the challenged provisions there violated the Separation of Powers, conflicted with statutory law, and violated the Fifth Amendment’s guarantee to equal protection. *See id.* at *13–21. The court then reaffirmed those findings upon issuing a preliminary injunction. *PFLAG, Inc. v. Trump*, No. CV 25-337-BAH, 2025 WL 685124, at *14–28 (D. Md. Mar. 4, 2025) (“*PFLAG II*”).

4. National Urban League

In the District of Columbia, three national nonprofit organizations moved for a preliminary injunction regarding enforcement of eight of the nine Challenged Provisions.⁵ *Nat’l Urb. League v. Trump*, No. CV 25-471 (TJK), 2025 WL 1275613, at *3 (D.D.C. May 2, 2025). The court found that the plaintiffs had standing to challenge only the Gender Termination Provision, Gender Promotion Provision, Equity Termination Provision, and Certification Provision. *See id.* at *10–13. The court then held that the plaintiffs were unlikely to succeed on the merits of their

⁵ The plaintiffs there did not challenge the Intimate Spaces Provision.

challenges under the First and Fifth Amendments as to those provisions because the “government need not subsidize the exercise of constitutional rights to avoid infringing them, and the Constitution does not provide a right to violate federal antidiscrimination law.” *Id.* at *1, 13–26.

II. PRELIMINARY INJUNCTION STANDARD

Injunctive relief is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008). To obtain preliminary injunctive relief, a plaintiff “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Id.* at 20. A court may “balance the elements” of this test, “so long as a certain threshold showing is made on each factor.” *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011) (per curiam). Thus, for example, “serious questions going to the merits and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011) (quotation marks omitted).

III. THRESHOLD CHALLENGES

The Court addresses as a threshold matter Plaintiffs’ standing to bring this lawsuit. *See Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 101-02 (1998).

A. Article III Standing

Article III standing requires that a “plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). “To establish injury in fact, a plaintiff must show that he or she suffered ‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Id.* at 339 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)).

Because “[t]he party invoking federal jurisdiction bears the burden of establishing these elements,” they are “an indispensable part of the plaintiff’s case.” *Lujan*, 504 U.S. at 561.

Accordingly, “each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation.” *Id.* at 561.

1. List Provision and Enforcement Threat Provision

The “List Provision” directs each agency and department to provide the Director of the OMB with a list of all “Federal grantees who received Federal funding to provide or advance DEI, DEIA, or ‘environmental justice’ programs, services, or activities since January 20, 2021.” DEI-1 Order § 2(b)(ii)(C). The Enforcement Threat Provision directs the Attorney General to submit a report to the Assistant to the President for Domestic Policy. The report shall, in relevant part: contain the “most egregious and discriminatory DEI practitioners in each sector of concern” and include a “plan of specific steps or measures to deter DEI programs or principles . . . that constitute illegal discrimination or preferences,” wherein “each agency shall identify up to nine potential civil compliance investigations of . . . large non-profit corporations or associations.” DEI-2 Order § 4(b).

Plaintiffs appear to argue primarily that creating lists of organizations engaged in DEI or illegal DEI chills protected speech and that Plaintiffs would suffer reputational harm if they were placed on those lists. *See* ECF No. 47 at 20; ECF No. 64 at 15. But the List Provision operates intragovernmentally—directing all agencies and departments to submit a list to the OMB Director of all grantees who receive federal funding for DEI programs. It does not instruct the Director to do anything with the list or even publicly disseminate the list. It is thus unclear how the creation of an internal, intragovernmental list would operate to chill speech, particularly given that Plaintiffs have not stated an intent to discontinue their DEI activities if such a list is created. Plaintiffs have thus failed to adequately identify any injury that is “concrete and particularized” or any future injury that is imminent, rather than conjectural or hypothetical. *See Spokeo, Inc.*, 578 U.S. at 339 (quoting *Lujan*, 504 U.S. at 560)).

Plaintiffs’ challenge to the Enforcement Threat Provision, which also operates intragovernmentally, suffers from a similar flaw. Plaintiffs argue that requiring “government officials to produce lists of private citizens expressing disfavored views” gives rise to

constitutional concerns and risks causing Plaintiffs reputational harm. ECF No. 64 at 20. In doing so, Plaintiffs rely heavily on *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123 (1951). In that case, the Supreme Court found that the plaintiffs had sufficiently stated claims that they were defamed by the Attorney General’s arbitrary designation of their organizations as Communist on a list of subversives given to the Loyalty Review Board of the United States Civil Service Commission. *See id.* at 124–25, 139–41. Critically, the plaintiffs there had already been labeled as Communist and contested the basis of that classification. *See id.* Here, however, Plaintiffs’ theory of harm requires speculation as to the content of a report that has not yet issued—assuming that the report will identify Plaintiffs’ sectors as “sectors of concern” and then identify them as some of the “most egregious and discriminatory DEI practitioners” in those sectors. Alternatively, the report would have to identify Plaintiffs as the subjects of nine or fewer potential total civil compliance investigations—if Plaintiffs even qualify as “large non-profit corporations or associations.” Their theory thus rests “on a highly attenuated chain of possibilities” that “does not satisfy the requirement that threatened injury must be certainly impending.” *Clapper*, 568 U.S. at 410; *see also Nat’l Urb. League*, 2025 WL 1275613, at *7–8 (finding that the plaintiffs there lacked standing to challenge the Enforcement Threat Provision for the same reasons); *CWIT I*, No. 25 C 2005, 2025 WL 933871, at *2 (“[I]t is difficult to see how CWIT can be in imminent danger of an injury based on a provision that simply requires a cabinet official to issue a report at a future date.”). Accordingly, the Court finds that Plaintiffs have not sufficiently demonstrated any injury or imminent likelihood of injury resulting from the List Provision or the Enforcement Threat Provision.

2. Intimate Spaces Provision, DEIA Principles Provision, and Diversity Termination Provision

The Intimate Spaces Provision provides that “[a]gencies shall effectuate this policy by taking appropriate action to ensure that intimate spaces designated for women, girls, or females (or for men, boys, or males) are designated by sex and not identity.” Gender Order § 4(d). While the Court is unsure what exactly the Intimate Spaces Provision calls for, Plaintiffs do not sufficiently allege any injury specifically flowing from this provision. Indeed, despite identifying it as one of

the provisions they challenge, they do not otherwise reference this provision specifically in their briefing. The Court thus finds that Plaintiffs do not have standing to challenge the Intimate Spaces Provision.

Relatedly, the DEIA Principles Provision and Diversity Termination Provision fall under Section 3 of the DEI-2 Order, titled “Terminating Illegal Discrimination in the Federal Government.” The full subsection they fall under, Section 3(c), provides:

The Director of the Office of Management and Budget (OMB), with the assistance of the Attorney General as requested, shall:

- (i) Review and revise, as appropriate, all *Government-wide processes, directives, and guidance*;
- (ii) Excise references to DEI and DEIA principles, under whatever name they may appear, from Federal acquisition, contracting, grants, and financial assistance procedures to streamline those procedures, improve speed and efficiency, lower costs, and comply with civil-rights laws; and
- (iii) Terminate all ‘diversity,’ ‘equity,’ ‘equitable decision-making,’ ‘equitable deployment of financial and technical assistance,’ ‘advancing equity,’ and like mandates, requirements, programs, or activities, as appropriate.” DEI-2 Order § 3(c)(iii).

DEI-2 Order § 3(c) (emphasis added). Both provisions appear to—consistent with Defendants’ representations, ECF No. 64 at 19–20—apply internally within the government and to the government’s *own* processes, directives, and programs. While the Court wonders whether the scope of the language in this provision could be applied to result in injury to Plaintiffs, Plaintiffs have not adequately alleged what injuries they suffer from these two provisions. Unlike the Equity Termination Provision, the Diversity Termination Provision does not clearly implicate any of Plaintiffs’ programs or activities, as Plaintiffs have not alleged that they conduct any programming for the government. *See CWIT I*, 2025 WL 933871, at *2 (finding that the plaintiff there lacked standing to challenge the Diversity Termination Provision because the provision focuses on “internal government agency processes and programs”). And a reading of the Diversity Termination Provision to apply externally would render it duplicative of the Equity Termination Provision.

Accordingly, the Court finds that Plaintiffs likely lack standing to challenge the Intimate Spaces Provision, DEIA Principles Provision, and Diversity Termination Provision.

3. Equity Termination Provision, Gender Termination Provision, and Gender Promotion Provision

Three of the Challenged Provisions regard the ineligibility of federal funding for certain categories of grants or contracts. The Equity Termination Provision directs, in relevant part, each agency, department, or commission head to “terminate, to the maximum extent allowed by law, all . . . ‘equity-related’ grants or contracts.” DEI-1 Order § 2(b)(i). The Gender Termination Provision provides that agencies “shall take all necessary steps, as permitted by law, to end the Federal funding of gender ideology.” Gender Order § 3(e). And the Gender Promotion Provision states, “Federal funds shall not be used to promote gender ideology. Each agency shall assess grant conditions and grantee preferences and ensure grant funds do not promote gender ideology.” Gender Order § 3(g) (collectively, the “Funding Provisions”).

The Court finds that Plaintiffs have adequately alleged standing to challenge the Funding Provisions because a “loss of funds promised under federal law[] satisfies Article III’s standing requirement.” *See City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1235 (9th Cir. 2018) (quoting *Organized Vill. of Kake v. U.S. Dep’t of Agric.*, 795 F.3d 956, 965 (9th Cir. 2015)); *see also Nat’l Urb. League*, 2025 WL 1275613, at *13 (finding that the plaintiff there had standing to challenge the same Funding Provisions).

Plaintiffs challenge the Funding Provisions in part on the basis that they have lost or will likely lose federal funding for their organizational activities. For example, on February 1, 2025, SFCHC received a notice from Defendant HHS terminating, “in accordance with the [Gender Order],” SFCHC’s grant award for “Comprehensive High-Impact HIV Prevention Programs for Young Men of Color Who Have Sex With Men and Young Transgender Persons of Color,” effective January 31, 2025. ECF No. 47-10, Ex. C.⁶ Prisma and NY LGBT Center have also each received termination notices citing to the Challenged Orders. *See* ECF No. 47-8, Ex. A (termination notice from the Centers for Disease Control and Prevention (“CDC”) explaining that to implement DEI-1 Order, Prisma must “immediately terminate, to the maximum extent, all

⁶ On February 12, 2025, SFCHC received a notice that the termination was rescinded pursuant to the temporary restraining order that was issued by a federal district court in Rhode Island. *See id.*, Ex. D.

1 programs, personnel, activities, or contracts promoting ‘diversity, equity, and inclusion’ (DEI) at
2 every level and activity” that was supported by CDC funds); ECF No. 47-8, Ex. B (termination
3 notice from the CDC to Prisma explaining that to implement the Gender Order, “any vestige,
4 remnant, or re-named piece of any gender ideology programs funded by the U.S. government
5 under this award are immediately, completely, and permanently terminated”); ECF No. 47-7, Ex.
6 A (termination notice from the Health Resources and Services Administration (“HRSA”), a
7 component of HHS, stating that effectively immediately, HRSA grant funds “may not be used for
8 activities that do not align with” the DEI-1 Order or the Gender Order and that any “vestige,
9 remnant, or re-named piece of any programs in conflict with these E.O.s are terminated in whole
10 or in part”). These grant terminations—both threatened and actual—constitute “a classic
11 pocketbook injury sufficient to give [them] standing.” *Tyler v. Hennepin County*, 598 U.S. 631,
12 636 (2023); *see also, e.g., Collins v. Yellen*, 594 U.S. 220, 243 (2021) (describing “pocketbook
13 injury” as “a prototypical form of injury in fact”).

14 Defendants argue that Plaintiffs lack standing because their injuries are neither traceable to
15 these provisions nor redressable. First, they argue that Plaintiffs have failed to allege that the
16 terminations are fairly traceable to the Funding Provisions because the provisions did not directly
17 terminate any particular fund or program and instead “merely provided policy directives to federal
18 agencies.” ECF No. 61 at 22.⁷ Second, Defendants contend that Plaintiffs’ injuries are not
19 redressable because “even if this Court granted relief against the Executive Orders, that would not
20 prevent defendant agencies from exercising their own independent authorities to determine
21 whether, consistent with law, any termination of a fund/contract would be warranted.” ECF No.
22 61 at 23.

23 As for traceability, the Court does not read the Funding Provisions to consist of only
24 “policy directives.” They command specific action. *See* DEI-1 Order § 2(b)(i) (each agency
25 “*shall*” terminate all equity-related grants or contracts (emphasis added)); Gender Order § 3(e)

26
27 ⁷ Defendants also argue that Plaintiffs have not provided any termination letters stating that their
28 grants were terminated pursuant to the Challenged Orders. *Id.* But as discussed above,
Defendants’ argument is flatly contradicted by the record.

(each agency “*shall* take all necessary steps, as permitted by law, to end the Federal funding of gender ideology” (emphasis added)); Gender Order § 3(g) (each agency “*shall* assess grant conditions and grantee preferences and ensure grant funds do not promote gender ideology” (emphasis added)). Moreover, as discussed above, Plaintiffs have already received notices pursuant to the Challenged Orders terminating their grant awards. *See* ECF No. 47-10, Ex. C; ECF No. 47-8, Ex. A; ECF No. 47-8, Ex. B; ECF No. 47-7, Ex. A.

Furthermore, an order enjoining Defendants from enforcing those provisions against Plaintiffs would redress their injuries of losing grant funding by making them less likely to suffer monetary harm. And Defendants’ speculation that the Defendant agencies might nevertheless still terminate Plaintiffs’ funding for other reasons does not defeat redressability at this stage. For one thing, the Court rejects the suggestion that a court should not enjoin unlawful activity simply because a defendant might theoretically achieve the same outcome by different, lawful means. Illegality is illegality. In any event, as the requested relief need only be likely—not guaranteed in fact—to alleviate Plaintiffs’ injury. *See Lujan*, 504 U.S. at 561; *see also Nat’l Urb. League*, 2025 WL 1275613, at *11 & n.4 (rejecting the defendants’ speculative causation and redressability arguments regarding the same provisions).

The Court thus finds that Plaintiffs have demonstrated that they have standing to challenge the Equity Termination Provision, Gender Termination Provision, and Gender Promotion Provision.

4. Certification Provision

The Certification Provision requires the head of each agency to include in every contract or grant award (1) a term “requiring the contractual counterparty or grant recipient to agree that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government’s payment decisions for purposes of” the False Claims Act, and (2) a term “requiring such counterparty or recipient to certify that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws.” DEI-2 Order § 3(b)(iv)(A)-(B).

The Certification Provision directly affects Plaintiffs because of their activities as federal grantees. The additional terms in each federal contract or grant award create new obligations for

Plaintiffs. As another court explained, Plaintiffs are likely “to face the ‘forced choice’ that the Certification Provision presents: change their programming to enable them to make the certification; make the certification without changes and risk a false certification; or give up federal funds and contracts.” *Nat’l Urb. League*, 2025 WL 1275613, at *11 (finding that the plaintiff there had standing to challenge the Certification Provision for this reason) (quoting *Stavrianoudakis v. U.S. Fish & Wildlife Serv.*, 108 F.4th 1128, 1138 (9th Cir. 2024)). And as with above, the Court finds Defendants’ traceability and redressability arguments unpersuasive because the Certification Provision expressly requires agencies to include the two terms requiring certification. An injunction enjoining Defendants from enforcing the Certification Provision would thus redress Plaintiffs’ alleged injury of having to either modify their conduct or risk making a false certification.

The Court finds that Plaintiffs have adequately shown that they have standing to challenge the Certification Provision.

B. Tucker Act

Defendants argue that the Court lacks jurisdiction to review Plaintiffs’ claims relating to the termination or prospective termination of their grants because the Tucker Act provides that the United States Court of Federal Claims has exclusive jurisdiction over contract claims against the United States. ECF No. 61 at 23–25 (citing 28 U.S.C. § 1491(a)). They further argue that the Tucker Act still applies despite Plaintiffs’ constitutional claims because a “suit belongs in the Claims Court when the source of plaintiffs’ asserted right is a contract and what plaintiffs seek amounts to contractual remedies.” ECF No. 61 at 24 (citing *Dep’t of Educ. v. California*, 604 U.S.---, 145 S.Ct. 966, 2025 WL 1008354, at *1 (U.S. Apr. 4, 2025)).

The Tucker Act provides for exclusive jurisdiction in the Court of Federal Claims over actions based upon “any express or implied contract with the United States” exceeding \$10,000. See 28 U.S.C. § 1491(a). But “the mere fact that a court may rule on a contract issue does not . . . automatically transform an action . . . into one on the contract and deprive the court of jurisdiction it might otherwise have.” *Megapulse, Inc. v. Lewis*, 672 F.2d 959, 968 (D.C. Cir. 1982). Instead, an action triggers the Tucker Act’s jurisdictional hook only when the claim is “at

1 its essence” a contract claim. *Id.* at 967. “[W]here there is a possible alternative basis for
2 jurisdiction independent of the Tucker Act,” a court “must be more deliberat[ive] in [its]
3 examination” of whether the particular action is “one which is or is not ‘at its essence’ a contract
4 action.” *Id.* at 968. To determine the essence of an action, courts look at the source of the rights
5 on which the plaintiff bases its claims and the type of relief sought. *See United Aeronautical*
6 *Corp. v. United States Air Force*, 80 F.4th 1017, 1026 (9th Cir. 2023) (citing cases which in turn
7 cite *Megapulse*). “If rights and remedies are *statutorily* or *constitutionally* based, then districts
8 courts have jurisdiction; if rights and remedies are *contractually* based then only the Court of
9 Federal Claims does, even if the plaintiff formally seeks injunctive relief.” *Id.* (emphases in
10 original).

11 Here, Plaintiffs’ claims are not “at [their] essence” contract actions because both the source
12 of the rights claimed and the remedies sought are not contractually based. Plaintiffs’ claims are all
13 based upon the Constitution—arising under the First and Fifth Amendments, the Spending Clause,
14 and the Separation of Powers. These are not breach of contract claims just because they “requir[e]
15 some reference to or incorporation of a contract.” *See Megapulse, Inc.*, 672 F.2d at 967–68.
16 Similarly, Plaintiffs seek exclusively injunctive and other equitable relief. *See* ECF No. 1 at 71–
17 72 (seeking declaratory judgment, preliminary and permanent injunctions, and costs and
18 reasonable attorney’s fees). And while an injunction precluding Defendants from terminating
19 grants awarded to Plaintiffs would in effect require the government to keep funding those grants,
20 “[t]he fact that a judicial remedy may require one party to pay money to another is not a sufficient
21 reason to characterize the relief as ‘money damages.’” *Bowen v. Massachusetts*, 487 U.S. 879,
22 893 (1988). Indeed, the Court of Federal Claims “has no power to grant equitable relief” and thus
23 cannot address the remainder of the relief sought by Plaintiffs. *See id.* at 905 (citation omitted).

24 Defendants’ reliance on the two-page, per curiam opinion in *Department of*
25 *Education v. California* does not change the Court’s analysis. In that case, the plaintiffs asserted
26 only a claim that the government’s termination of grants was arbitrary and capricious under the
27 Administrative Procedures Act. *Dep’t of Educ.*, 145 S.Ct. at 968–69. The Supreme Court found
28 the government was “likely to succeed in showing the District Court lacked jurisdiction” and that

jurisdiction would likely lie in the Court of Federal Claims under the Tucker Act. *Id.* at 969–70. The case involved neither claims asserting the infringement of constitutional rights, a request for declaratory judgment, nor a request for injunctive relief preventing future harm. The Court therefore finds *Department of Education v. California* distinguishable and concludes that the Tucker Act does not preclude Plaintiffs from proceeding in district court. *See CWIT II*, 2025 WL 1114466, at *9–10 (concluding the same for the plaintiff’s identical set of claims challenging the DEI-1 and DEI-2 Orders).

C. Third-Party Standing

The parties dispute whether Plaintiffs have third-party standing to assert the equal protection rights of their transgender patients, clients, and patrons to challenge the Gender Termination Provision and Gender Promotion Provision.

The default rule is that “a litigant must assert his or her own legal rights and interests, and cannot rest a claim to relief on the legal rights or interests of third parties.” *Powers v. Ohio*, 499 U.S. 400, 410 (1991). To depart from that rule and assert a third party’s right: (1) “[t]he litigant must have suffered an ‘injury in fact;’” (2) “the litigant must have a close relationship to the third party;” and (3) “there must exist some hindrance to the third party’s ability to protect his or her own interests.” *Id.* at 410–11 (citation omitted).

First, as discussed above, the Gender Order imposes actual and threatened loss of funding to Plaintiffs such that Plaintiffs themselves have adequately demonstrated an injury in fact. Second, Plaintiffs provide a variety of healthcare services to transgender individuals within their communities, including HIV-testing and treatment, gender-affirming care, substance use treatment and prevention. ECF No. 47-9 ¶ 11; ECF No. 47-10 ¶¶ 5–8; ECF No. 1 ¶ 19; ECF No. 47-7 ¶ 15. As healthcare providers, Plaintiffs have a close relationship to their transgender patients and are likely “fully, or very nearly, as effective a proponent of the right” as those patients. *Washington v. Trump*, 847 F.3d 1151, 1160 (9th Cir. 2017) (quoting *Singleton v. Wulff*, 428 U.S. 106, 114–16 (1976)); *see also Whitman-Walker Clinic, Inc. v. U.S. Dep’t of Health & Hum. Servs.*, 485 F. Supp. 3d 1, 35 (D.D.C. 2020) (finding that “‘there can be no doubt’ that the health-provider Plaintiffs will be ‘motivated, effective advocate[s]’ for their LGBTQ patients” (quoting *Powers*,

499 U.S. at 414)). Indeed, many of the named plaintiffs were founded specifically to serve transgender people. *See, e.g.*, ECF No. 47-1 ¶ 10; ECF No. 47-3 ¶ 19 (“[E]very aspect of our programming and services revolve[s] around transgender and nonbinary survivors and the providers who serve them.”); ECF No. 47-5 ¶ 5 (“Respecting transgender people and advancing their civil rights is central to the LA LGBT Center’s identity, advocacy, and mission, and a necessary part of every aspect of the services we provide.”); ECF No. 47-7 ¶¶ 31–34 (“One of the NY LGBT Center’s core purposes is recognizing and affirming the existence of transgender and gender-diverse individuals. . . . Compliance with the Executive Order would dismantle the NY LGBT Center’s identity, rendering us incapable of serving the community we were established to support.”).

Finally, Plaintiffs’ transgender patients and clients likely face barriers to being able to protect their own interests under these circumstances. Defendants argue that because other individual plaintiffs have initiated lawsuits challenging the Gender Order, including by making equal protection claims, “this is not a case where individual litigants face ‘daunting’ barriers or have ‘little incentive’ to litigate their own claims.” ECF No. 61 at 45 (quoting *Powers*, 499 U.S. at 414–15). However, Plaintiffs need only show “some hindrance” to the ability of their patients to vindicate their rights, *see Powers*, 499 U.S. at 410–11, and Plaintiffs have done so. Many of the transgender persons they serve are some of the most vulnerable members of society, experiencing poverty, homelessness, and substance abuse. *See, e.g.*, ECF Nos. 47-1 ¶¶ 11, 14; 47-4 ¶ 11; 47-5 ¶¶ 13, 21; 47-6 ¶¶ 8, 18, 21; 47-7 ¶¶ 9, 17; 47-9 ¶¶ 19, 21; 47-10 ¶¶ 10, 14, 21–22. “[D]ue to the sensitive nature of the subject matter, fear of retaliation from the federal government, and lack of capacity and/or financial resources, [] Plaintiffs’ patients [and clients] are hindered from protecting their own interests.” *Washington v. Trump*, No. 2:25-CV-00244-LK, 2025 WL 659057, at *8 (W.D. Wash. Feb. 28, 2025). And transgender individuals in particular face obvious barriers to filing suit to assert their own rights, since disclosure of their transgender status exposes them to “a substantial risk of stigma, discrimination, intimidation, violence, and danger.” *Arroyo González v. Rosselló Nevares*, 305 F.Supp.3d 327, 333 (D.P.R. 2018); *see also Whitman-Walker Clinic*, 485 F. Supp. 3d at 36. (“It is enough that patients’ fear of stigmatization operates as a

powerful deterrent to bringing suit.”).

The Court thus rejects Defendants’ argument that Plaintiffs’ equal protection claim fails for lack of standing. *See* ECF No. 61 at 45.

IV. LIKELIHOOD OF SUCCESS ON THE MERITS

A. Fifth Amendment Equal Protection

The Fifth Amendment to the United States Constitution provides that “[n]o person shall . . . be deprived of life, liberty, or property, without due process of law.” U.S. Const. Amend. V. The “Due Process Clause of the Fifth Amendment forbids the Federal Government to deny equal protection of the laws.” *Davis v. Passman*, 442 U.S. 228, 234 (1979) (internal quotation marks omitted). “When considering an equal protection claim,” the Court determines “what level of scrutiny applies to a classification under a law or policy, and then decide[s] whether the policy at issue survives that level of scrutiny.” *Hecox v. Little*, 104 F.4th 1061, 1073 (9th Cir. 2024). The Ninth Circuit has held that “discrimination on the basis of transgender status is a form of sex-based discrimination” for equal protection purposes. *Id.* So if a law “discriminates based on transgender status, either purposefully or on its face, heightened scrutiny applies.” *Doe v. Horne*, 115 F.4th 1083, 1102 (9th Cir. 2024); *see also Karnoski v. Trump*, 926 F.3d 1180, 1200–01 (9th Cir. 2019). “To withstand heightened scrutiny, a classification ‘must serve important governmental objectives and must be substantially related to achievement of those objectives.’” *Horne*, 115 F.4th at 1106 (quoting *Clark ex rel. Clark v. Ariz. Interscholastic Ass’n*, 695 F.2d 1126, 1127 (9th Cir. 1982)). “The State bears the burden of demonstrating an ‘exceedingly persuasive justification’ for the classification, and ‘[t]he justification . . . must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females.’” *Id.* at 1106–07 (quoting *United States v. Virginia*, 518 U.S. 515, 531, 533 (1996)).

Plaintiffs argue that the Gender Order violates the Fifth Amendment’s guarantee of equal protection because it “purposefully discriminates based on transgender status and it facially classifies based on transgender status and sex.” ECF No. 47 at 36. They further contend that heightened scrutiny applies and that the funding provisions of the Gender Order fail heightened scrutiny because “directing agencies and federal grantees to” disapprove of transgender people is a

“plainly illegitimate purpose[.]” *Id.* at 37–38.

The Court finds that Plaintiffs have shown that they are likely to succeed on the merits of their equal protection challenge to the Gender Termination Provision and the Gender Promotion Provision.

1. Heightened Scrutiny

Defendants do not contest that heightened scrutiny applies to discrimination based on transgender status. Instead, they argue that (1) the Gender Order is merely rhetoric, not discriminatory action; and that (2) the funding provisions of the Gender Order “do not purport to withhold federal funding based on any protected characteristic of the recipients; they merely realign the government’s funding of particular *topics*.” ECF No. 61 at 43 (emphasis in original). This argument is not persuasive.

First, Defendants’ argument that the Gender Order is mere “rhetoric” flies in the face of the facts, given that Defendants have already terminated several of Plaintiffs’ federal grants pursuant to that order. SFCHC received a notice from the HHS specifically terminating SFCHC’s grant for its Comprehensive High-Impact HIV Prevention Programs for Young Men of Color Who Have Sex With Men and Young Transgender Persons of Color “*in accordance with the [Gender Order]*” effective January 31, 2025. ECF No. 47-10, Ex. C (emphasis added).⁸ That grant funds “the San Francisco Bay Transgender Alliance for Health Resources (STAHR), a program to reduce and prevent new cases of HIV transmission among young trans people of color (YTPC) and their partners in San Francisco and Alameda Counties in accordance with both the HIV National Strategic Plan and the CDC’s High-Impact, Status-Neutral HIV Prevention approach.” ECF No. 47-10 ¶ 5.

Furthermore, Prisma, SFCHC, NY LGBT Center, and SFAF have each received a notice from a government agency informing them that any programs in conflict with the Gender Order and funded by the federal government are immediately and permanently terminated. *See* ECF

⁸ On February 12, 2025, SFCHC received a notice that the termination was rescinded pursuant to the temporary restraining order that was issued by a federal district court in Rhode Island. *See id.*, Ex. D.

Nos. 47-7, Ex. A; 47-8, Ex. B; 47-10, Ex. B; 77-3, Ex. C. While the government has apparently added an element of confusion by leaving these grantees to deduce for themselves which particular grants have been terminated, there is no doubt that the actions are not merely rhetorical.

Second, the Gender Order withholds federal funding based on the transgender status of the individuals that grantees serve, rather than based on “topics” as Defendants argue. To adopt Defendants’ cramped reading requires ignoring the plainly intended consequences flowing from the Gender Termination and Gender Promotion Provisions. As Plaintiffs point out, the Gender Order imposes federal funding restrictions that preclude providing health and social services that “acknowledge the existence of transgender people because doing so in the operation of such programs is considered the ‘promotion of gender ideology.’” ECF No. 64 at 26; *see* Gender Order § 2(f) (defining “gender ideology” as “replac[ing] the biological category of sex with an ever-shifting concept of self-assessed gender identity, permitting the false claim that males can identify as and thus become women and vice versa,” and “includ[ing] the idea that there is a vast spectrum of genders that are disconnected from one’s sex”). In other words, these orders require grantees, who provide specialized services to transgender persons, to remove references to those persons—as well as the characteristics that caused those persons to need the services in the first place. It is as difficult to imagine how this would work as it is to imagine a pediatrician not acknowledging the existence of children or a gerontologist denying the existence of the elderly. The Gender Termination and Gender Promotion Provisions thus collapse content-based discrimination (as Defendants appear to concede) with status-based discrimination by excluding protected communities from receiving federally-funded services. Take, for example, SFCHC’s operation of an emergency shelter designed for transgender and non-binary individuals experiencing homelessness. *See* ECF No. 47-10 ¶ 12(e). The Gender Termination and Gender Promotion Provisions would terminate federal grants used for that project but place no similar restrictions on shelters designed to house only cisgender men or cisgender women. By singling out grants that serve transgender people, the Gender Order necessarily singles out *transgender people* and excludes them from being able to benefit from federal funds.

In addition to facially discriminating based on transgender status, the Gender Termination

and Gender Promotion Provisions purposefully discriminate based on transgender status. “A discriminatory purpose is shown when ‘the decisionmaker . . . selected or reaffirmed a particular course of action at least in part ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.” *Horne*, 115 F.4th at 1103 (quoting *Pers. Adm’r v. Feeney*, 442 U.S. 256, 279 (1979)). Here, the Gender Order’s stated purpose is to deny the existence of transgender persons entirely. See Gender Order § 2 (“It is the policy of the United States to recognize two sexes, male and female. These sexes are not changeable and are grounded in fundamental and incontrovertible reality.”).

Accordingly, because the Gender Termination and Gender Promotion Provisions discriminate based on transgender status, both purposefully and on their face, heightened scrutiny applies. See *Horne*, 115 F.4th at 1102.

2. Governmental Interest

Plaintiffs argue that the Gender Termination Provision and Gender Promotion Provision fail any level of scrutiny because the Gender Order is “transparently motivated by a ‘bare desire to harm’ transgender people.” ECF No. 47 at 36 (quoting *Romer v. Evans*, 517 U.S. 620, 635 (1996)). Defendants offer no response in their opposition, nor any argument that either provision advances any legitimate government interest, and thus concede the point.⁹ See *Tyler v. Travelers Com. Ins. Co.*, 499 F. Supp. 3d 693, 701 (N.D. Cal. 2020) (“Plaintiff concedes these arguments by failing to address them in her opposition.” (collecting cases)).

Indeed, the Gender Order’s express purpose is to disapprove of transgender people and declare their existence as “unmoored from biological facts” and “false.” See Gender Order §§ 1, 2(f). This facially discriminatory objective—achieved here by denying federal funding only to

⁹ Defendants at hearing argued that it is actually Plaintiffs who waived their arguments here because they did not properly identify the Gender Termination Provision or Gender Promotion Provision as the provisions they were challenging in their opening motion. The Court finds that while Plaintiffs could have been more explicit, Defendants received reasonable notice that Plaintiffs were primarily challenging those two funding provisions of the Gender Order in their motion. See, e.g., ECF No. 47 at 34–35 (“Moreover, the Gender Order facially discriminates based on sex. It directs agencies to withhold grants from entities that ‘promote gender ideology’”). Further, Defendants made no attempt to respond to Plaintiffs’ argument that the Gender Order advanced no legitimate governmental interest. Defendants’ argument is thus unavailing.

grantees who recognize the existence of transgender people—is not a legitimate government interest, let alone one that justifies the overt discrimination practiced here. *See Horne*, 115 F.4th at 1108 (finding that a sweeping ban on transgender girls from playing on sports teams did not satisfy heightened scrutiny because the ban was not substantially related to achievement of a legitimate state interest). As one other court considering the Gender Order explained, the Court “cannot fathom discrimination more direct than the plain pronouncement of a policy resting on the premise that the group to which the policy is directed does not exist.” *PFLAG II*, 2025 WL 685124, at *23.

Accordingly, the Court finds that the Gender Termination Provision and Gender Promotion Provision do not serve important governmental objectives sufficient to survive heightened scrutiny. Plaintiffs have thus shown that they are likely to succeed on the merits of their equal protection claim.

B. First Amendment Claims

The First Amendment prohibits the government from “abridging the freedom of speech.” *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (quoting U.S. Const. amend. I). Ordinarily, “the government may not regulate speech based on its substantive content or the message it conveys.” *Rosenberger v. Rector & Visitors of U. Va.*, 515 U.S. 819, 828 (1995). But in the context of federal funding, the government may place attach certain conditions to eligibility for that funding even if those conditions “may affect the recipient’s exercise of its First Amendment rights.” *Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.*, 570 U.S. 205, 214 (2013) (“*AID*”). That is because “if a party objects to a condition on the receipt of federal funding, its recourse is to decline the funds,” *id.*, and the “refusal to fund protected activity, without more, cannot be equated with the imposition of a ‘penalty’ on that activity.” *United States v. Am. Libr. Ass’n, Inc.*, 539 U.S. 194, 212 (2003) (plurality opinion) (quoting *Rust v. Sullivan*, 500 U.S. 173, 193 (1991)). However, there are still limitations on the types of conditions that the government may attach to federal funds without violating the First Amendment.

First, “a funding condition can result in an unconstitutional burden on First Amendment rights” if the condition “seek[s] to leverage funding to regulate speech outside the contours of the

program itself.” *AID*, 570 U.S. at 214–15. As noted by the Supreme Court, “conditions that define the federal program and those that reach outside it—is not always self-evident.” *Id.* at 217. But where the government “has placed a [speech] condition on the *recipient* of the subsidy rather than on a particular program or service,” that condition can violate the First Amendment. *Id.* at 218–19 (quoting *Rust*, 500 U.S. at 197) (emphasis in original). Furthermore, a funding condition that “is not relevant to the objectives of the program” can also place an unconstitutional burden on First Amendment rights. *See id.* at 214. This includes where a funding statute has “no programmatic message . . . to allow the Government to [regulate speech as] deemed necessary for its legitimate objectives” *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 548 (2001). Importantly, the government “cannot recast a condition on funding as a mere definition of its program in every case, lest the First Amendment be reduced to a simple semantic exercise.” *Id.* at 547.

Second, “even in the provision of subsidies, the government may not ‘ai[m] at the suppression of dangerous ideas.’” *Nat’l Endowment for the Arts v. Finley*, 524 U.S. 569, 587 (1998) (quoting *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540, 550 (1983)). As recognized by the Ninth Circuit, the line of Supreme Court unconstitutional-conditions cases “teaches that the government can violate the First Amendment by withholding benefits for a censorious purpose” *Koala v. Khosla*, 931 F.3d 887, 898 (9th Cir. 2019) (“The *Speiser-Perry-Regan-Finley* line of cases reflects the Supreme Court’s continued cautionary admonition that the First Amendment will not tolerate the administration of subsidy programs with a censorious purpose.” (citing *Regan*, 461 U.S. at 548; *Speiser v. Randall*, 357 U.S. 513, 518–19 (1958); *Perry v. Sindermann*, 408 U.S. 593, 597 (1972); *Finley*, 524 U.S. at 587)).

1. Gender Termination, Gender Promotion, and Equity Termination Provisions

Defendants primarily argue that the Funding Provisions “do not seek to regulate a grantee’s speech ‘outside the contours of’ any [] policy initiatives” paid for by the government. ECF No. 61 at 33 (quoting *AID*, 570 U.S. at 218). Further, they argue that “the government is permitted to have policy priorities, and it does not violate the First Amendment by not

affirmatively funding programs that do not align with those policies.” *Id.*

The Court finds that even if the Funding Provisions apply only to activities paid for by the federal government—rather than to the recipients’ private activity¹⁰—their blanket withholding of funding for all programs that are “equity-related” or that “promote gender ideology” is entirely untethered to any “legitimate objective[]” or “programmatic message” of the programs they burden to justify their intrusion on protected speech. *See Velazquez*, 531 U.S. at 548; *see also AID*, 570 U.S. at 214. Defendants hang their hat on the argument that the Funding Provisions limit Plaintiffs’ speech only while they are on the government’s dime. But “funding by the Government, even when coupled with the freedom of the fund recipients to speak outside the scope of the Government-funded project, is [not] invariably sufficient to justify Government control over the content of expression.” *Rust*, 500 U.S. at 199.

An examination of two relevant unconstitutional conditions cases illustrates why the government’s intrusion on speech is not permissible even in the context of federal subsidies. In *Rust*, the Supreme Court upheld regulations that prohibited “counseling, referral, and the provision of information regarding abortion as a method of family planning” because they were “designed to ensure that the limits of the federal program are observed,” i.e., that the “Title X program is designed not for prenatal care, but to encourage family planning.” *Rust*, 500 U.S. at 193–94. The Court thus reasoned that *Rust* was “not a case of the Government ‘suppressing a dangerous idea,’ but of a prohibition on a project grantee or its employees from engaging in activities outside of the project’s scope.” *Id.* Critically, the Court explained, “we have here not the case of a general law singling out a disfavored group on the basis of speech content, but a case of the Government refusing to fund activities, including speech, which are specifically excluded from the scope of the

¹⁰ The Court does note that it is unclear whether the provisions could be interpreted to apply to regulating expression outside of the grant-funded activity—for example, an organization’s name containing “equity-related” terms or terms that “promote gender ideology” as defined by the Gender Order. Furthermore, Plaintiffs point to Defendant HHS’s February 10, 2025, “issuance of a Secretarial Directive to ‘avoid[] the expenditure of federal funds on programs, or with contractors or vendors, that promote or take part in diversity, equity, and inclusion (‘DEI’) initiatives.’” ECF No. 64 at 16 (quoting ECF No. 64-4 at 1). This directive suggests that the engagement of any DEI activity at all—regardless of whether it’s on the government’s dime—could make an organization ineligible to receive federal funds.

project funded.” *Id.* at 194–95. “The condition that federal funds will be used only to further *the purposes of a grant* does not violate constitutional rights.” *Rust v. Sullivan*, 500 U.S. at 198 (emphasis added).

Then, in *Velazquez*, the Supreme Court examined the Legal Services Corporation Act, which established the Legal Services Corporation (“LSC”) to distribute federal funds to eligible local grantee organizations for the purpose of providing legal assistance to indigent individuals. 531 U.S. at 536. The Court found unconstitutional under the First Amendment a provision of the Act that prohibited an LSC grantee from representing clients if the grantee challenged the validity of the underlying welfare statutes and regulations. *See id.* at 549. In distinguishing *Rust*, the Court again noted that “Title X did not single out a particular idea for suppression because it was dangerous or disfavored; rather, Congress prohibited Title X doctors from counseling that was outside the scope of the project.” *Id.* at 541 (citing *Rust*, 500 U.S. at 194–95). “[A]nd in the context of [the LSC] statute there is no programmatic message of the kind recognized in *Rust* and which sufficed there to allow the Government to specify the advice deemed necessary for its legitimate objectives. This serves to distinguish § 504(a)(16) from any of the Title X program restrictions upheld in *Rust*, and to place it beyond any congressional funding condition approved in the past by this Court.” *Id.* at 548.

Here, the Funding Provisions more closely resemble the condition found unconstitutional in *Velasquez*. The Funding Provisions are not directed towards advancing any legitimate objectives embedded within the programs they burden—as appropriated and determined by Congress—but towards disfavored speech. They categorically bar funding for any “equity-related” or “gender ideology” activity or expression, regardless of the scope of the contract or grant in question—including, as discussed below on the Separation of Powers, for contracts and grants that explicitly call for the consideration of equity. As an example, Defendants took the position at hearing that an organization would lose its federal funding if it, in its day-to-day work on within the federally funded program, refers to clients by a pronoun other than Mr., Ms. Mrs., or Miss. They also represented that if an organization is receiving federal funds to provide Covid-19 vaccines, it would not lose that funding for promoting gender ideology on its own dime and time

1 outside of the vaccination project. But under Defendants’ logic, an organization receiving federal
2 funds to provide public health services—as many of Plaintiffs do—would not be able to refer to
3 the clients they serve under that project by any pronoun that would “promote gender ideology,”
4 even when addressing them by such pronouns is pure speech that has no relation to the public
5 health objectives for which the federal grants they receive aim to fund. So unlike in *Rust*, where
6 the government was merely “refusing to fund activities, including speech, which are specifically
7 excluded from the scope of the project funded”—in that case, promoting family planning—the
8 Funding Provisions “singl[e] out a disfavored group on the basis of speech content” with no
9 specific relation to the program under which they are receiving funds. *See Rust*, 500 U.S. at 194–
10 95. And the government “cannot recast a condition on funding as a mere definition of its program
11 [here], lest the First Amendment be reduced to a simple semantic exercise.” *Velazquez*, 531 U.S.
12 at 547.

13 Moreover, the Funding Provisions also violate the First Amendment by withholding
14 subsidies for a censorious purpose—aiming to suppress the dangerous ideas of “equity,” “DEI,”
15 and “gender ideology.” *See Koala*, 931 F.3d at 898; *see also Finley*, 524 U.S. at 587 (emphasizing
16 that “even in the provision of subsidies, the government may not ‘ai[m] at the suppression of
17 dangerous ideas’”). Indeed, the express purpose of the Gender Order is to root out the
18 “extrem[e],” “false claims” of gender identity that contradict the government’s view that there is
19 only one “biological reality of sex.” *See Gender Order* §§ 1, 2(f). Similarly, the DEI-1 Order
20 aims to eliminate DEI- and equity-related expression that it considers “radical” and “immoral.”
21 *See DEI-1 Order*. The government here is thus not merely selectively funding some programs but
22 not others—it is rendering ineligible for federal funding *all* activities, speech, and conduct that is
23 even related to the dangerous ideas it has identified. And it has drawn that line based on
24 viewpoint by targeting only speech that “promote[s] gender ideology” or that advances DEI and
25 equity, while tolerating speech in opposition to those ideas. This is precisely the kind of
26 “invidious viewpoint discrimination” that the Supreme Court has suggested would present First
27 Amendment concerns even in the context of federal subsidies. *See Finley*, 524 U.S. at 587
28 (explaining that the result in *Finley* would likely be different “if the NEA were to leverage its

power to award subsidies on the basis of subjective criteria into a penalty on disfavored viewpoints”). And the censorious purpose of the Funding Provisions together with their broad application to *all* recipients of federal funding “‘prohibit[] a substantial amount of protected speech’ relative to [their] ‘plainly legitimate sweep,’” to justify the likelihood of success on a facial First Amendment challenge. *United States v. Hansen*, 599 U.S. 762, 770 (2023) (quoting *United States v. Williams*, 553 U.S. 285, 292 (2008)).

Accordingly, the Court finds that Plaintiffs have shown a likelihood of success on the merits on their First Amendment challenge as to the Gender Termination, Gender Promotion, and Equity Termination Provisions.

2. Certification Provision

Defendants do not dispute that the Certification Provision applies to conduct outside of federally funded programs. Instead, Defendants argue that Plaintiff’s First Amendment challenge to the Certification Provision fails because they “have no First Amendment right to violate federal antidiscrimination laws in the first place.” ECF No 61 at 34. Defendants also argue that requiring Plaintiffs to sign the Certification Provision for purposes of the False Claims Act does not violate the First Amendment because Plaintiffs would be able to rely on a good-faith defense as to their reasonable interpretation that their conduct does not violate federal antidiscrimination laws. ECF No. 61 at 35.

Plaintiffs counter that despite arguing that the Certification Provision only implicates DEI programs that “violate any applicable Federal anti-discrimination law,” the government has not defined what that means and has made clear— through its actions—that it considers *all* DEI programs and initiatives to be unlawful. *See* ECF No. 64 at 17, 19. In other words, Plaintiffs argue that the Certification Provision does not mean what it says. Plaintiffs thus argue that they have no way of knowing whether their activities would be considered legal or illegal DEI. *See id.* at 17, 19, 23.

As evidence, Plaintiffs cite to the language of the DEI Orders and to the government’s termination of DEI programs. Plaintiffs assert that the DEI-1 and DEI-2 Orders “categorically refer to ‘illegal DEI,’ without distinguishing between legal DEI and a subset that is supposedly

unlawful.” ECF No. 64 at 22. Further, “in implementing the Orders, Defendants have canceled funding for programs that are even tangentially related to DEIA, without any indication that they have deemed those programs illegal.” *Id.* at 23. Plaintiffs also cite to various remarks that President Trump has made, including that he committed to “end all of the Marxist diversity, equity, and inclusion policies across the entire federal government,” but also to “ban these unlawful policies from . . . the private sector as well,” and that he announced having “ended the tyranny of so-called Diversity, Equity, and Inclusion policies all across the entire federal government and indeed the private sector and our military.” ECF No. 64 at 16 (first quoting ECF No. 64-15 and then quoting ECF No. 64-3).

Plaintiffs further cite to the U.S. Attorney General’s memorandum interpreting the DEI-2 Order as “making clear that policies relating to ‘diversity, equity, and inclusion’ (‘DEI’) and ‘diversity, equity, inclusion, and accessibility’ (‘DEIA’) ‘violate the text and spirit of our longstanding Federal civil-rights laws’ and ‘undermine our national unity,’” ECF No. 64 at 22–23 (quoting ECF No. 64-18 at 1). Plaintiffs contend that this memorandum demonstrates that the government interprets all DEI or DEIA policies as violating federal anti-discrimination law. However, the same memorandum goes on to refer specifically to “illegal DEI and DEIA preferences” and clarifies that it “is intended to encompass programs, initiatives, or policies that discriminate, exclude, or divide individuals based on race or sex” and does not prohibit “events that celebrate diversity, recognize historical contributions, and promote awareness without engaging in exclusion or discrimination.” ECF No. 64-18 at 1 & n.1.

Although the Court agrees that the government has made little attempt to define the distinction between “legal” and “illegal” DEI,¹¹ Plaintiffs have not provided sufficient evidence that the government has enforced or plans to enforce the *Certification Provision* in a way that implicates DEI programs beyond those that “violate any applicable Federal anti-discrimination law.” Indeed, Plaintiffs cite primarily to examples of the government’s *termination* of federally

¹¹ Indeed, Defendants struggled at hearing to provide any examples of DEI activities they would consider legal besides the cultural celebrations referenced in the Attorney General’s memorandum. Similarly, they avoided providing any concrete examples of DEI activities that would violate federal antidiscrimination law.

1 funded DEI programs. But the provisions of the DEI-1 and DEI-2 Orders directing the
2 termination of DEI and “equity-related” programs do not include the same limiting qualifier as the
3 Certification Provision. Instead, the termination provisions explicitly call for the termination of
4 *all* federally funded DEI programs, regardless of whether those programs violate
5 antidiscrimination law. *See* DEI-1 Order § 2(b)(i) (directing each agency, department, or
6 commission head terminate, in relevant part, *all* “‘equity-related’ grants or contracts”); DEI-2
7 Order § 3(c)(iii) (directing the Director of the OMB to “[t]erminate all ‘diversity,’ ‘equity,’
8 ‘equitable decision-making,’ ‘equitable deployment of financial and technical assistance,’
9 ‘advancing equity,’ and like mandates, requirements, programs, or activities, as appropriate”).
10 The fact that the Certification Provision specifically includes the qualifier limiting the certification
11 requirement to illegal DEI programs, when the DEI-1 and DEI-2 Orders elsewhere do not include
12 that qualifier for termination of funding, suggests that the qualifier was intentional and should be
13 given meaning. The Court thus agrees with Defendants that the Certification Provision does not
14 “penalize conduct beyond those prohibited by existing antidiscrimination laws.” *See* ECF No. 61
15 at 30.

16 Moreover, “[a]s is true of interpretation of statutes, the interpretation of an Executive
17 Order begins with its text,” which “must be construed consistently with the Order’s ‘object and
18 policy.’” *City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1238–39 (9th Cir. 2018)
19 (quoting *Bassidji v. Goe*, 413 F.3d 928, 934 (9th Cir. 2005)). And the DEI-1 Order begins by
20 stating its purpose as enforcing “[l]ongstanding Federal civil-rights laws [that] protect individual
21 Americans from discrimination based on race, color, religion, sex, or national origin.” DEI-1
22 Order § 1. It then discusses how many institutions in recent years have adopted DEI activities
23 “dangerous, demeaning, and immoral race- and sex-based preferences under the guise of so-called
24 ‘diversity, equity, and inclusion’ (DEI) or ‘diversity, equity, inclusion, and accessibility’ (DEIA)
25 that *can* violate the civil-rights laws of this Nation.” *Id.* The section ends with, “The Federal
26 Government is charged with enforcing our civil-rights laws. The purpose of this order is to ensure
27 that it does so by ending illegal preferences and discrimination.” *Id.*

28 Plaintiffs additionally argue that even if the Certification Provision is limited to promoting

1 “illegal DEI,” “it is bedrock First Amendment canon that advocating for violation of the law
2 cannot be proscribed unless it rises to incitement.” ECF No. 64 at 18 (citing *Virginia v. Black*,
3 538 U.S. 343, 359 (2003)). But Plaintiffs’ argument relies on a construction not supported by a
4 plain reading of the Certification Provision. The Certification Provision directs that every federal
5 contract or grant award include a term “requiring such counterparty or recipient to certify that it
6 does not operate any *programs* promoting DEI that *violate* any applicable Federal anti-
7 discrimination laws.” DEI-2 Order § 3(b)(iv)(B). The operative word, “violate,” modifies
8 “programs”—rather than “promoting” or “DEI.” In other words, the provision implicates the
9 *operation* of programs that both promote DEI and “violate any applicable Federal anti-
10 discrimination laws.” And while the First Amendment may protect speech that advocates for
11 violation of law, it does not protect activities that directly violate antidiscrimination law. See
12 *R.A.V. v. City of St. Paul*, 505 U.S. 377, 390 (1992) (“Where the government does not target
13 conduct on the basis of its expressive content, acts are not shielded from regulation merely
14 because they express a discriminatory idea or philosophy.”).

15 The Court therefore finds that Plaintiffs have not demonstrated a likelihood of success on
16 the merits for their First Amendment claim as to the Certification Provision.

17 **C. Fifth Amendment Due Process**

18 “It is a basic principle of due process that an enactment is void for vagueness if its
19 prohibitions are not clearly defined.” *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972); see
20 also *Williams*, 553 U.S. at 304 (describing vagueness doctrine as “an outgrowth . . . of the Due
21 Process Clause of the Fifth Amendment.”). “[C]larity in regulation is essential to the protections
22 provided by the Due Process Clause of the Fifth Amendment.” *F.C.C. v. Fox Television Stations,*
23 *Inc.*, 567 U.S. 239, 253 (2012) (citing *United States v. Williams*, 553 U.S. 285, 304 (2008)). The
24 two primary concerns with vague laws are that “(1) they do not give a ‘person of ordinary
25 intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly’;
26 and (2) they encourage arbitrary and discriminatory enforcement by not providing explicit
27 standards for policemen, judges, and juries.” *United States v. Jae Gab Kim*, 449 F.3d 933, 941–42
28 (9th Cir. 2006) (quoting *Grayned*, 408 U.S. at 108). And vague laws that implicate First

Amendment rights “also have the “potential for arbitrarily suppressing First Amendment liberties.” *Id.* n.15 (quoting *Shuttlesworth v. City of Birmingham*, 382 U.S. 87, 91 (1965)).

The applicable void-for-vagueness standard thus depends in part on whether “a vague statute abuts upon sensitive areas of basic First Amendment Freedoms.” *Grayned*, 408 U.S. at 109 (cleaned up). “Under the First and Fifth Amendments, speakers are protected from arbitrary and discriminatory enforcement of vague standards.” *Finley*, 524 U.S. at 588 (citing *NAACP v. Button*, 371 U.S. 415, 432–433 (1963)); *see also Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 499 (1982) (explaining that when a law “interferes with the right of free speech or of association, a more stringent vagueness test should apply”).

But “the degree of vagueness that the Constitution [allows] depends in part on the nature of the enactment.” *Sessions v. Dimaya*, 584 U.S. 148, 156 (2018) (quoting *Hoffman Estates*, 455 U.S. at 498). For example, the Supreme Court has “expressed greater tolerance of enactments with civil rather than criminal penalties because the consequences of imprecision are qualitatively less severe.” *Id.* at 156 (quoting *Hoffman Estates*, 455 U.S. at 498–99). And when the government awards “selective subsidies,” the tolerance for vagueness is even greater because “the consequences of imprecision are not constitutionally severe.” *See Finley*, 524 U.S. at 589.

As a preliminary matter, Defendants argue that the void-for-vagueness doctrine does not apply because the Challenged Orders do not regulate primary conduct, and no due process concerns arise “when the President gives his subordinates an unclear directive.” *See* ECF No. 61 at 26. Defendants cite no authority for that proposition. Regardless, Defendants’ description of the Challenged Orders is incomplete, given that they expressly command action—and various agencies have already taken such action against Plaintiffs pursuant to the Challenged Orders. The vagueness of the remaining Challenged Provisions thus implicates the traditional concerns under the vagueness doctrine, i.e., that they do not give fair notice so that grantees can act accordingly, and they encourage arbitrary and discriminatory enforcement by the implementing agencies. *See Kim*, 449 F.3d at 941–42. And in the context of Plaintiffs’ combined First Amendment arguments, the vague provisions also risk “arbitrarily suppressing First Amendment liberties.” *Shuttlesworth*, 382 U.S. at 91.

Defendants further contend that Plaintiffs’ facial vagueness challenges fail because “the appropriate posture for Due Process vagueness challenges is as-applied,” and that facial challenges are reserved for criminal laws or civil statutes involving severe penalties that implicate liberty interests. ECF No. 61 at 26–27. That statement of the law is incomplete: “[i]n the First Amendment context, facial vagueness challenges are appropriate if the statute clearly implicates free speech rights.” *California Tchrs. Ass’n v. State Bd. of Educ.*, 271 F.3d 1141, 1149 (9th Cir. 2001); *see also Kashem v. Barr*, 941 F.3d 358, 375 (9th Cir. 2019) (only “[v]agueness challenges to statutes that do not involve First Amendment violations must be examined as applied to the defendant”) (quoting *United States v. Kim*, 449 F.3d 933, 942 (9th Cir. 2006)); *Maynard v. Cartwright*, 486 U.S. 356, 361 (1988) (“Vagueness challenges to statutes not threatening First Amendment interests are examined in light of the facts of the case at hand.”); *Isaacson v. Mayes*, 84 F.4th 1089, 1098–99 (9th Cir. 2023) (rejecting “district court’s suggestion that . . . vagueness challenges, cannot be reviewed before enforcement” because the court must “decide whether the harm is sufficiently likely so that the litigant need not wait until the harm occurs”)

Because Plaintiffs raise combined Fifth and First Amendment challenges, there is no categorical bar preventing Plaintiffs from raising a facial challenge to the vagueness of the remaining Challenged Provisions. Moreover, Plaintiffs bring both facial and as-applied challenges. *See* ECF No. 64 at 21–22.

1. Equity Termination Provision

The Court finds that Plaintiffs are likely to succeed on the merits of their claim that the Equity Termination Provision is impermissibly vague under the Fifth Amendment. The Equity Termination Provision directs the head of each agency to “terminate, to the maximum extent allowed by law, all . . . ‘equity-related’ grants or contracts.” DEI-1 Order § 2(b)(i). The vagueness of the term “‘equity-related’ grants or contracts” invites arbitrary and discriminatory enforcement and does not provide sufficient notice to grantees as to what types of speech or activity they must avoid to prevent termination of their grants or contracts—compelling grantees and grant applicants to “steer far too clear of [the] ‘forbidden area’” of anything related to the broad and undefined term of “equity.” *Cf. Finley*, 524 U.S. at 588.

1 The Supreme Court case *National Endowment for the Arts v. Finley* provides a useful
2 counterpoint. In *Finley*, the plaintiff raised a facial challenge under the First and Fifth
3 Amendments to language in the National Foundation on the Arts and Humanities Act. See 524
4 U.S. at 569. The Act provided that the Chairperson of the National Endowment for the Arts, in
5 establishing procedures to judge the artistic merit of grant applications, shall ensure that “artistic
6 excellence and artistic merit are the criteria by which applications are judged, taking into
7 consideration general standards of decency and respect for the diverse beliefs and values of the
8 American public.” *Id.* at 572 (quoting 20 U.S.C. § 954(d)(1)). The plaintiff challenged the
9 portion of the Act directing the grantor to “tak[e] into consideration general standards of decency
10 and respect for the diverse beliefs and values of the American public.” *Id.* (quoting 20 U.S.C. §
11 954(d)(1)). Because the challenged statute in *Finley* dealt with the “competitive process according
12 to which [art] grants [were] allocated,” *id.* at 586, wherein grantees would be selected based on
13 “artistic excellence and artistic merit,” the Supreme Court reasoned that the challenged language
14 “merely adds some imprecise considerations to an already subjective selection process,” *id.* at 590.
15 The Supreme Court thus ultimately held that the statute was not unconstitutionally vague because
16 while “[t]he terms of the provision are undeniably opaque,” it was unlikely “that speakers will be
17 compelled to steer too far clear of any ‘forbidden area’ in the context of grants of this nature.” *Id.*
18 at 588–89.

19 Here, the Court finds that the Equity Termination Provision is likely to compel speakers to
20 “steer too far clear of [a] ‘forbidden area’” of protected speech and activity. *Finley*, 524 U.S. at
21 588. Indeed, it is hard to imagine an Executive Order vaguer in its command (providing that
22 agencies *shall* terminate any grant or contract for being “equity-related”) or broader in its facial
23 scope (applying to *all* federal grants and contracts).

24 First, whereas the vague language in *Finley* was only another factor to be considered in an
25 inherently subjective evaluation alongside “artistic excellence and artistic merit,” the Equity
26 Termination Provision renders categorically ineligible for funding any contract or grant based on
27 the single determination of whether it is “equity-related” without any guidelines as to what that
28 term may mean. See *Finley*, 524 U.S. at 581, 583–84 (noting that the challenged text “imposes no

1 categorical requirement” and instead operates as “advisory language” with “the vague
2 exhortation to ‘take [decency] into consideration’”). The Equity Termination Provision is vague
3 here not because “it may at times be difficult to prove an incriminating fact but rather because it is
4 unclear as to what fact must be proved.” See *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239,
5 253 (2012). Indeed, the DEI-1 Order does not define what “equity” or “equity-related” means at
6 all. And the government has avoided offering any concrete definition of the term—taking the
7 position at hearing that it need not put forward *any* definition. This lack of definition is
8 particularly problematic given the broad nature and applications of the term “equity,” let alone
9 with the additional modifier of “-related.” “Equity,” could mean (1) “fairness or justice in the way
10 people are treated;” (2) “freedom from disparities in the way people of different races, genders,
11 etc. are treated;” or (3) “something that is equitable.” Equity, *Merriam-Webster.com*,
12 <https://www.merriam-webster.com/dictionary/equity> (last visited May 7, 2025). To give just one
13 example, surely many federal grants expressly fund programs about fairness. But the Equity
14 Termination Provision could reasonably cover any grantee activity or speech about fairness in the
15 treatment of others, as well as that acknowledging the import or mere existence of gender,
16 inequality, race, age, disability, sexuality, socioeconomic status, religion, or citizenship.

17 “[T]his lack of clarity may operate to inhibit the exercise of freedom of expression because
18 individuals will not know whether the ordinance allows their conduct, and may choose not to
19 exercise their rights for fear of being . . . punished.” *Hunt v. City of Los Angeles*, 638 F.3d 703,
20 713 (9th Cir. 2011); see also *Baggett v. Bullitt*, 377 U.S. 360, 372–73 (1964) (finding that the
21 challenged statute was unconstitutionally vague because it required individuals to take vague oaths
22 that would require the oath-taker to “steer far wider of the unlawful zone than if the boundaries of
23 the forbidden areas were clearly marked”) (internal quotation marks omitted). Indeed, the
24 uncertainty created by the Equity Termination Provision has left grantees to interpret for
25 themselves which of their awarded grants even fall under the scope of the provision. See ECF No.
26 47-7 ¶ 35; see also *id.*, Ex. A; ECF No. 47-8, Ex. A; ECF No. 47-10, Ex. A; ECF No. 77-4, Ex. D.
27 But even after undertaking these efforts, the vagueness of the Equity Termination Provision
28 prevents grantees from determining how they can modify their expression to avoid termination or

1 from even assessing which grants are implicated. Could a Plaintiff’s very organizational name, if
2 it attempts to promote the inclusion of certain identities, (such as the Gay Lesbian Bisexual
3 Transgender Historical Society) trigger the Equity Termination Provision as “equity-related” and
4 cause all their federal grants or contracts to be terminated? Plaintiffs and similar organizations are
5 left to wonder.

6 Second, the Equity Termination Provision applies with maximum scope—terminating
7 funding for *all* federal grants and contracts, including future awards and those that already have
8 been awarded. Whereas *Finley* dealt with a statute whose “mandate is to make esthetic
9 judgments” and which involved an “inherently content-based ‘excellence’ threshold,” *Finley*, 524
10 U.S. at 586, the Equity Termination Provision risks chilling First Amendment speech and activity
11 across *all* federal grants and contracts regardless of the statutory mandates from which they arise.
12 See *id.* at 569, 589–90 (noting that while the challenged language of the Act may cause artists to
13 “conform their speech to what they believe to be the decisionmaking criteria in order to acquire
14 funding,” this was common in “the context of selective subsidies” where government programs
15 award scholarships and grants on the basis of subjective criteria such as “excellence”). As
16 discussed in the Court’s First Amendment analysis, the Equity Termination Provision’s broad
17 sweep—applying uniformly with no regard to the objectives of any individual grant or contract—
18 makes its intrusion upon First Amendment rights particularly pernicious and likely to chill a
19 “substantial amount of protected speech” relative to its legitimate purposes. See *United States v.*
20 *Stevens*, 559 U.S. 460, 473–481 (2010). In other words, the vague categorically prohibition set
21 out in the Equity Termination Provision creates an enormous “forbidden area” of speech (across
22 all federally funded grants or contracts) that grantees must steer clear of—all without any guidance
23 as to how they can do so.

24 Accordingly, the Court finds that Plaintiffs are likely to succeed on the merits of their Fifth
25 Amendment vagueness challenge—both facial and as-applied—to the Equity Termination
26 Provision. See *Santa Cruz Lesbian & Gay Cmty. Ctr. v. Trump*, 508 F. Supp. 3d 521, 543–44
27 (N.D. Cal. 2020) (finding that an Executive Order provision conditioning federal funds on the
28 “recipient’s certification that it will not use federal funds to ‘promote’ [divisive concepts,

including] . . . that “an individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously” because the provision was “so vague that it is impossible for Plaintiffs to determine what conduct is prohibited”).

2. Gender Termination Provision and Gender Promotion Provision

The Gender Termination Provision provides that agencies “shall take all necessary steps, as permitted by law, to end the Federal funding of gender ideology.” Gender Order § 3(e). Similarly, the Gender Promotion Provision states, “Federal funds shall not be used to promote gender ideology. Each agency shall assess grant conditions and grantee preferences and ensure grant funds do not promote gender ideology.” Gender Order § 3(g). Critically, unlike the Equity Termination Provision, the Gender Order provides a definition of the key phrase “gender ideology.” “Gender ideology” is defined in the order as “replac[ing] the biological category of sex with an ever-shifting concept of self-assessed gender identity, permitting the false claim that males can identify as and thus become women and vice versa,” and “includ[ing] the idea that there is a vast spectrum of genders that are disconnected from one’s sex.” Gender Order § 2(f).

A plain reading of these provisions thus suggests that they are aimed at prohibiting federal funding used to “promote” ideas of “self-assessed gender identity,” i.e., that “there is a vast spectrum of genders that are disconnected from one’s sex.” At hearing, Plaintiffs contended that the term “promote” makes the provisions unconstitutionally vague because it does not sufficiently explain which activities would constitute “promoting gender ideology”—for example, referring to their transgender patients by their pronouns, asking patients for their gender identities, or even generally providing services to transgender people at all. But the Gender Order as a whole offers greater determinacy to what the plain term “promote” means in the context of the two challenged provisions. To be specific, the Gender Order stands in opposition to the principle that persons can identify as other than strictly male or female, or that persons may have a gender identity different from their biological sex as classified at birth. Plaintiffs appear to attach this same meaning to the Gender Termination Provision and the Gender Promotion Provision. In their reply brief, they write:

The Gender Order requires agencies to “ensure grant funds do not

promote gender ideology” and “*to end the Federal funding of gender ideology*,” which it defines as the recognition that a person may have a gender identity that differs from their birth sex. Gender Order §§ 2(f), 3(e), (g) (emphasis added). At their core, the Gender Order and its implementing agency actions seek to prohibit transgender people from accessing federally funded healthcare and social services if such services are provided in a way that acknowledges and respects their identities.

ECF No. 64 at 25.¹² Plaintiffs thus appear to be able to construe the general application of the term “promote gender ideology.” And “the mere fact that close cases can be envisioned [does not] render[] a statute vague.” *United States v. Williams*, 553 U.S. 285, 305 (2008). The Court thus finds that the Gender Termination Provision and Gender Promotion Provision are not so vague that their “prohibitions are not clearly defined.” *See Grayned*, 408 U.S. at 108. Accordingly, Plaintiffs have not shown that they are likely to succeed on the merits on their Fifth Amendment challenge as to the Gender Termination Provision and Gender Promotion Provision.

3. Certification Provision

Defendants argue that Plaintiffs’ vagueness challenge to the Certification Provision fails because the provision applies only to conduct that violates existing federal antidiscrimination law and does not penalize any new conduct, so Plaintiffs “have no legitimate concern that they will not be given a “reasonable opportunity to know what is prohibited.” ECF No. 61 at 30 (quoting *Grayned*, 408 U.S. at 108). Plaintiffs primarily make the same arguments as in their First Amendment challenge to the Certification Provision—arguing that an “ordinary person has no way of knowing whether their expression relating to DEI satisfies Defendants’ conception of ‘legal’ DEI where Defendants refuse to explain the distinction between ‘legal’ and ‘illegal’ DEI.” ECF No. 64 at 23.

For the reasons discussed above, the Court does not now find that the Certification Provision implicates DEI activities beyond those described in its express text, i.e., DEI programs that “violate any applicable Federal anti-discrimination law.” While the term “DEI” is undefined and vague, the limiting qualifier implicating only DEI programs that “violate any applicable Federal anti-discrimination law” is sufficiently defined because it incorporates by reference the

¹² Defendants do not attempt to define these terms in their opposition brief.

body of existing federal law. As another court examining the Certification Provision has noted, “[i]f Plaintiffs worry that this administration takes a broader view of what counts as illegal discrimination, that is a concern with the interpretation of the underlying federal antidiscrimination law—which Plaintiffs do not challenge—rather than the Certification Provision. . . . Plaintiffs may contest whether their DEI programs fall within the scope of that law if they ever face an enforcement action connected to the Certification Provision.” *Nat’l Urb. League v. Trump*, 2025 WL 1275613, at *24; *see also Nat’l Ass’n of Diversity Officers in Higher Educ. v. Trump*, No. 25-1189, ECF No. 29 at 7 (4th Cir. Mar. 14, 2025) (Harris, J., concurring) (finding that the Certification Provision does not “purport to establish the illegality of all efforts to advance [DEI],” and instead applies “only to conduct that violates existing federal anti-discrimination law”); *but see CWIT II*, 2025 WL 1114466, at *11 (finding that the Certification Provision’s limitation to only “illegal DEI programs” was “left entirely to the grantee’s imagination” because the government did not provide any meaningful definition as to what it meant for a DEI program to violate federal anti-discrimination law). Without clearer evidence that the Executive intends to enforce the Certification Provision to target all legal DEI activity, Plaintiffs’ challenge is more appropriately considered in a post-enforcement posture.

Because the Court concludes that Plaintiffs are unlikely to succeed in their claim that the Gender Termination Provision, Gender Promotion Provision, and Certification Provision are unconstitutionally vague, the Court need not address arguments regarding whether Plaintiffs hold an underlying property right to their grants or liberty interest in their reputations. *See CWIT II*, 2025 WL 1114466, at *16.

D. Separation of Powers

Plaintiffs assert both facial and as-applied challenges under the Separation of Powers against the remaining Challenged Provisions. Plaintiffs argue that the Challenged Provisions “improperly usurp Congress’s spending power by directing that grants or contracts authorized by Congress be cancelled based on conditions not set by Congress.” ECF No. 64 at 29. Defendants respond that Plaintiffs cannot satisfy the requirement under a facial challenge that the Challenged Provisions are unconstitutional in all of their applications. ECF No. 61 at 39–40.

“The President’s authority to act ‘must stem either from an act of Congress or from the Constitution itself.’” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). “[W]hen it comes to spending, the President has none of ‘his own constitutional powers’ to ‘rely’ upon.” *City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1233–34 (9th Cir. 2018) (quoting *id.* at 637 (Jackson, J., concurring)). Instead, the President has an affirmative obligation to enforce the law relating to appropriations. *Id.* at 1234. “Absent congressional authorization, the Administration may not redistribute or withhold properly appropriated funds in order to effectuate its own policy goals.” *Id.* at 1235. “To bring a successful facial challenge outside the context of the First Amendment, ‘the challenger must establish that no set of circumstances exists under which the [challenged law] would be valid.’” *Hotel & Motel Ass’n of Oakland v. City of Oakland*, 344 F.3d 959, 971 (9th Cir. 2003) (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)).

1. Facial Challenge

The Court finds that Plaintiffs have not carried their burden of showing that the remaining Challenged Provisions violate Separation-of-Powers principles in all of their applications. Defendants correctly identify at least two circumstances implicated by the Challenged Provisions where the Executive has discretion to act without seeking Congressional approval. First, the Challenged Provisions apply to both federal grants and contracts. And the Executive has “broad” discretion to “terminate a contract for convenience.” *Northrop Grumman Corp. v. United States*, 46 Fed. Cl. 622, 626 (2000) (citation omitted). Second, at least some of the federal grants implicated here may, under the terms of the applicable regulations, be terminated by the Executive if the grant “award no longer effectuates the program goals or agency priorities.” *See, e.g.*, ECF No. 58-3 (quoting 2 C.F.R. § 200.340(a)(2)). Each of the remaining Challenged Provisions thus involve at least some contracts and grants that can properly be terminated without violating the Spending Clause. *See Chicago Women in Trades v. Trump*, No. 25 C 2005, 2025 WL 1114466, at *16–17 (N.D. Ill. Apr. 14, 2025) (finding that because the Equity Termination Provision impacts grant statutes “that do not require the government to fund equity-related projects, . . . there are situations in which the Executive Branch could lawfully terminate such grants without running afoul of the separation of powers”).

Plaintiffs’ reliance on *City and County of San Francisco v. Trump*, does not warrant a different result. There, the Ninth Circuit found that an executive order directing the Attorney General and Secretary of the Department of Homeland Security to make “sanctuary jurisdictions” ineligible to receive federal grants violated the Spending Clause and Separation of Powers. *Id.*, 897 F.3d at 1235. But that case involved grants that were specifically appropriated for the plaintiff jurisdictions. And “to condition the States’ receipt of federal funds, [Congress] ‘must do so unambiguously . . . , enabl[ing] the States to exercise their choice knowingly, cognizant of the consequences of their participation,’” due to federalism principles. *S. Dakota v. Dole*, 483 U.S. 203, 207 (1987). Whereas here, the grants received by Plaintiffs were appropriated by Congress for more general purposes and to be allocated by the implementing agencies, including with terms (as discussed above) that give the Executive discretion to terminate at least in some instances. Accordingly, Plaintiffs have not sufficiently demonstrated that they are likely to succeed in their facial Separation of Powers challenge.

2. As-Applied Challenge/Conflict with Statutory Requirements

Plaintiffs’ as-applied Separation of Powers challenge essentially collapses with their claim that the Equity Termination Provision, Gender Termination Provision, and Gender Promotion Provision are *ultra vires* because they are contrary to the statutes identified by Plaintiffs. Plaintiffs argue that the Equity Termination Provision conflicts with the following funding statutes under which Plaintiffs receive funding: (1) Ryan White Program; (2) the Housing Opportunities for People with AIDS (“HOPWA”) program; and (3) the statutory framework governing Federally Qualified Health Centers (“FQHCs”). The Court agrees.

First, the Ryan White Program provides that for the purpose of “address[ing] the disproportionate impact of HIV/AIDS on, and the disparities in access, treatment, care, and outcomes for, racial and ethnic minorities,” there are specifically appropriated funds for which the Secretary “shall develop a formula for the awarding of grants . . . that ensures that *funding is provided based on the distribution of populations disproportionately impacted by HIV/AIDS.*” 42 U.S. Code § 300ff-121(a) (emphases added). By directing the termination of all “‘equity-related’ grants or contracts,” the Equity Termination Provision runs headlong into the Ryan White

Program’s statutory mandate—as a distribution of funds to populations based on how they were disproportionately impacted is a classic example of “equitable” distribution. *See CWIT II*, 2025 WL 1114466, at *17–18 (finding that the Equity Termination Provision likely violated the separation of powers when applied to plaintiff’s grant under the Women in Apprenticeship and Nontraditional Occupations Act, in which Congress explicitly stated that the Executive “shall” award grants for projects impacting women (quoting 29 U.S.C. § 2503(a) (emphasis in original))).

Second, under the subsection entitled “[a]ffirmative outreach,” HOPWA regulations provide that a “grantee or project sponsor must adopt procedures to ensure that all persons who qualify for the assistance, regardless of their race, color, religion, sex, age, national origin, familial status, or handicap, know of the availability of the HOPWA program.” 24 C.F.R. § 574.603(b). While HOPWA’s requirement here *could* lead to a grantee adopting procedures in such a way that prioritizes outreach based on equitable principles, it is not clear to the Court that a grantee *must* adopt procedures in exactly that fashion to satisfy HOPWA’s regulations. However, because Defendants do not respond to this specific argument, they have waived it and conceded the point. *See Tyler*, 499 F. Supp. 3d at 701.

Third, the statutory framework for FQHCs, which applies to Plaintiffs SFCHC and LA LGBT Center, mandates them as receivers of federal funding to provide medical care to “medically underserved populations” and specific minority groups facing systemic barriers to healthcare access. *See* 42 U.S.C. § 254b(a)(1). Furthermore, Congress has directly appropriated funds for providing healthcare services to specific minority populations under the FQHC program—a core “equity-related” purpose. *See* 42 U.S.C. § 254c-1 (providing that the HHS Secretary “shall provide grants to, or enter into contracts with, public or private nonprofit agencies that have demonstrated experience in serving the health needs of Pacific Islanders living in the Territory of American Samoa, the Commonwealth of Northern Mariana Islands, the Territory of Guam, the Republic of the Marshall Islands, the Republic of Palau, and the Federated States of Micronesia” and that such grants “shall be used, among other items . . . to continue, as a priority, the medical officer training program in Pohnpei, Federated States of Micronesia”); *see also* 42 U.S.C. § 254c-3 (providing that the HHS Secretary “shall make grants for providing services for

the prevention and treatment of diabetes” through the Indian Health Service, an Indian health program operated by an Indian tribe or tribal organization, or an urban Indian health program operated by an urban Indian organization). The Equity Termination Provision thus also conflicts with the statutory framework providing federal funding to FQHCs.

Plaintiffs further argue that because the Gender Order’s termination provisions facially discriminate based on transgender status—and thus sex—they violate the antidiscrimination requirements contained within the Affordable Care Act (“ACA”), 42 U.S.C. § 18116, and the Public Health Service Act (“PHSA”), 42 U.S.C. § 300w-7. Section 1557 of the ACA provides that an individual shall not, among other things, “be excluded [on the basis of sex under Title IX, 20 U.S.C. 1681 et seq.] from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance.” 42 U.S.C. § 18116(a). Section 1908 of the PHSA similarly prohibits discrimination on the basis of sex in programs, services, and activities “receiving Federal financial assistance” through Preventive Health and Health Services Block Grants, which are allotted by the HHS Secretary. *See* 42 U.S.C. § 300w-7.

For the reasons explained in the Court’s discussion on Plaintiffs’ equal protection claim, the Gender Termination Provision and Gender Promotion Provision contravene the antidiscrimination requirements within the ACA and PHSA. *See Bostock v. Clayton County*, 590 U.S. 644, 660 (2020) (holding in the context of Title VII that “it is impossible to discriminate against a person for being . . . transgender without discriminating against that individual based on sex”); *see also Doe v. Snyder*, 28 F.4th 103, 114 (9th Cir. 2022) (“We construe Title IX’s protections consistently with those of Title VII.”); *PFLAG II*, 2025 WL 510050, at *18 (finding that the plaintiff was likely to succeed on its claim that the Gender Promotion Provision was *ultra vires* as contrary to statutes because it was “facially discriminatory on the basis of transgender identity” and therefore on the basis of sex and thus violated Section 1557 of the ACA and Section 1908 of the PHSA); *C.P. v. Blue Cross Blue Shield of Ill.*, No. 3:20-CV-06145-RJB, 2022 WL 17788148, at *6 (W.D. Wash. Dec. 19, 2022) (“Section 1557 [of the ACA] forbids sex discrimination based on transgender status.”).

Defendants do not explicitly argue that the Funding Provisions do not conflict with the statutory frameworks identified above but rather that they “do not unequivocally compel agencies to improperly withhold congressionally appropriated funds” and instead only “provide general directives to agencies to align government funding with policy priorities while explicitly directing them to yield to any and all applicable laws before terminating any grant/contact.” ECF No. 61 at 40–41. So, Defendants argue, the qualifiers “to the maximum extent allowed by law” in the Equity Termination Provision and “as permitted by law” in the Gender Termination Provision operate as applicable savings clauses. Essentially, Defendants argue that if Plaintiffs are correct that an applicable statute bars the termination of their grants, then the Equity Termination Provision “would instruct agencies to yield to the statutory and regulatory mandates and refrain from terminating those grants.” ECF No. 61 at 42. In making this argument, Defendants rely heavily on the D.C. Circuit’s decision in *Building and Construction Trades Department, AFL-CIO v. Allbaugh*, 295 F.3d 28 (D.C. Cir. 2002).

In *Allbaugh*, the D.C. Circuit considered an executive order which barred any federal agency, “to the extent permitted by law,” from requiring or prohibiting contractors or bidders from entering into a labor agreement. *Id.* at 29. The D.C. Circuit found that because the executive order limited agencies’ power “to the extent permitted by law,” the order did not infringe on Congress’s spending power, as it only “instruct[ed] . . . agenc[ies] to follow the law.” *Id.* at 33. The court concluded that “[t]he mere possibility that some agency might make a legally suspect decision . . . does not justify an injunction against enforcement of a policy.” *Id.*

However, the Ninth Circuit has distinguished the application of *Allbaugh* in a case more similar to the one at hand. In *City and County of San Francisco v. Trump*, the Ninth Circuit found that the executive order directing the Attorney General and Secretary of the Department of Homeland Security to make “sanctuary jurisdictions” ineligible to receive federal grants “to the extent consistent with law” “unambiguously command[ed] action” and hence created more than a “mere possibility that some agency might make a legally suspect decision.” 897 F.3d at 1240 (quoting *Allbaugh*, 295 F.3d at 33). The court thus distinguished *Allbaugh* and found that the order’s savings clause “does not and cannot override [the executive order’s] meaning.” *Id.* “If

1 ‘consistent with law’ precludes a court from examining whether the Executive Order is consistent
2 with law,” the court explained, “judicial review [would be] a meaningless exercise, precluding
3 resolution of the critical legal issues” and leading the court into “an intellectual cul-de-sac.” *Id.*

4 Here, as in *City and County of San Francisco*, the Equity Termination Provision, Gender
5 Termination Provision, and Gender Promotion Provision all “unambiguously command[] action,”
6 *see id.* at 1240, by expressly requiring agencies and departments to terminate all “‘equity-related’
7 grants or contracts,” “end the Federal funding of gender ideology,” and “ensure grant funds do not
8 promote gender ideology.” *See* DEI-1 Order § 2(b)(i); Gender Order § 3(e); Gender Order § 3(g).
9 Indeed, agencies have already begun terminating grants or contracts pursuant to these
10 provisions—even though such terminations conflict with the statutory requirements cited above.
11 *See, e.g.*, ECF No. 47-10, Ex. C; ECF No. 57 ¶¶ 5–16; ECF No. 77 ¶¶ 3–11. The Court thus
12 rejects Defendants’ argument that the provisions here merely provide general directives to
13 agencies and direct them to yield to all applicable laws before terminating any grant or contract.
14 *See PFLAG II*, 2025 WL 685124, at *18 (finding that the Gender Promotion Provision’s savings
15 clause did not override its plain meaning and stated purpose of “unlawfully restrict[ing] federal
16 funding without congressional authorization”) (citing *HIAS, Inc. v. Trump*, 985 F.3d 309, 325 (4th
17 Cir. 2021) and *City & Cnty. of San Francisco*, 897 F.3d at 1240); *see also CWIT II*, 2025 WL
18 1114466, at *17–18 (finding that the Equity Termination Provision’s savings clause did not
19 immunize the provision from contravening the WANTO Act’s prescriptions).

20 Accordingly, the Court finds that Plaintiffs have demonstrated a likelihood of success on
21 their claim that the Equity Termination Provision violates the Separation of Powers as applied to
22 the grants Plaintiffs receive under the Ryan White Program, under the HOPWA program, and as
23 FQHCs. And Plaintiffs have demonstrated a likelihood of success on their claim that the Gender
24 Termination Provision and Gender Promotion Provision violate the Separation of Powers by
25 contravening the antidiscrimination provisions of the ACA and PHSA.

26 **V. IRREPARABLE HARM**

27 As the Court found in its analysis on the merits, Plaintiffs have demonstrated that the
28 Gender Promotion, Gender Termination, and Equity Termination Provisions likely violate the

equal protection rights of Plaintiffs and their clients as well as Plaintiffs’ constitutional rights under the First and Fifth Amendments.

That means that Plaintiffs have also made a sufficient showing of irreparable harm that would result from enforcement of those provisions, as it is “well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). This is particularly true when the First Amendment is implicated, because the “loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (citing *New York Times Co. v. United States*, 403 U.S. 713 (1971)).

Furthermore, enforcement of the Gender Termination Provision and Gender Promotion Provision prevents Plaintiffs from being able to effectively serve their transgender patients and clients. Without an injunction against those provisions, Plaintiffs’ patients and clients will suffer irreparable harm in being deprived vital healthcare services. *See Washington*, 2025 WL 659057, at *26

VI. BALANCE OF THE HARMS AND PUBLIC INTEREST

“Where the government is a party to a case in which a preliminary injunction is sought, the balance of the equities and public interest factors merge.” *Roman v. Wolf*, 977 F.3d 935, 940–41 (9th Cir. 2020). To begin, the Ninth Circuit has consistently recognized that “it is always in the public interest to prevent the violation of a party’s constitutional rights.” *Melendres*, 695 F.3d at 1002 (internal quotations omitted). Furthermore, as discussed above, Plaintiffs have established specific operational harms that they have suffered and will continue to suffer absent an injunction. Defendants mainly argue that granting an injunction here would disable the Executive from being able to implement the President’s priorities and chill agency action because agencies “may feel obligated to forgo pursuing legally permissible actions in furtherance of the President’s policy priorities—independent of the Executive Orders—for fear of risking contempt.” ECF No. 61 at 46.

The Court finds that the balance of harms and public interest weigh in favor of issuing an

injunction. The injunction requested here would not prevent the Executive from taking any number of lawful actions to implement the President’s priorities, including promulgating regulations, proposing legislation, or taking litigation positions. The problem here is that three of the Challenged Provisions attempt to implement those priorities in ways that are inconsistent with the Constitution and existing statutes. Defendants thus do not suffer harm from being unable to enforce those unlawful provisions. And any potential “chill” on agency action is speculative at this stage and does not outweigh the strong public interest in upholding the rule of law and Plaintiffs’ constitutional rights. *See Washington*, 2025 WL 509617, at *14; *see also PFLAG II*, 2025 WL 510050, at *23.

VII. SCOPE OF INJUNCTION

Plaintiffs request a preliminary injunction enjoining the Agency Defendants¹³ from enforcing the Challenged Provisions against them. The Court thus grants a preliminary injunction barring Agency Defendants from enforcing the Gender Termination Provision, Gender Promotion Provision, and Equity Termination Provision against Plaintiffs.

Separately, the Court rejects Defendants’ request that the Court “clarify that it does not prohibit the President from reissuing a different directive or Executive Order and does not limit the defendant agencies from taking actions pursuant to their legal authority to regulate in furtherance of the substantive policy priorities in the Executive Orders,” ECF No. 61 at 48, because those questions are not properly before the Court.

VIII. BOND

Rule 65(c) provides that the Court “may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P 65(c). But “[d]espite the seemingly mandatory language, ‘Rule 65(c)

¹³ Defendants DOJ; Attorney General Pamela Bondi; DOL; Acting Labor Secretary Vince Micone; OFCCP; Acting OFCCP Director Michael Schloss; OMB; OMB Director Russell Vought; HHS; HHS Secretary Robert K. Kennedy, Jr.; HUD; HUD Secretary Scott Turner; NARA; Deputy Archivist William J. Bosanko; NEH; and NEH Chair Shelly C. Lowe.

invests the district court ‘with discretion as to the amount of security required, *if any*.’” *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) (quoting *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003)) (emphasis in original). The District Court thus “may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct.” *Id.* (quoting *Jorgensen*, 320 F.3d at 919). Here, because the Court finds Plaintiffs likely to succeed on the merits of their claims as to the three enjoined provisions, the Court does not find that a preliminary injunction is likely to pose any harm to Defendants by preventing them from enforcing those unlawful provisions. Furthermore, waiving bond is particularly appropriate here where Plaintiffs are nonprofit organizations suing in large part because they are suffering monetary harm from the unlawful provisions of the Challenged Orders that have withheld federal funding critical to their everyday operations. *See Miller v. Carlson*, 768 F. Supp. 1331, 1340 (N.D. Cal. 1991) (explaining that courts have waived bond to avoid denying access to judicial review).

The Court therefore orders Plaintiffs to post a nominal bond in the amount of \$1,000.00. *See Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999), *supplemented*, 236 F.3d 1115 (9th Cir. 2001).

IX. REQUEST FOR STAY

Defendants request that the Court stay its preliminary injunction pending the disposition of any appeal filed, or in the alternative, administratively stay the injunction “for a period of seven days to allow the United States to seek an emergency, expedited stay from the court of appeals if an appeal is authorized.” *See* ECF No. 61 at 48–49.

As a threshold matter, Defendants’ request is procedurally improper. *See* Fed. R. Civ. P. 7(b)(1) (“A request for a court order must be made by motion.”). But regardless, as the Court has found that *Plaintiffs* are likely to succeed on the merits relating to the three enjoined provisions, the Court denies Defendants’ request for a stay. *See Manrique v. Kolc*, 65 F.4th 1037, 1040 (9th Cir. 2023) (providing that one of the primary factors considered for whether a stay should be issued is whether the applicant for the stay has “made a strong showing that he is likely to succeed on the merits” (quoting *Nken v. Holder*, 556 U.S. 418, 434 (2009))); *see also Washington v.*

1 *Trump*, No. 25-807, 2025 WL 553485, at *3 (9th Cir. Feb. 19, 2025). Moreover, Defendants have
2 not carried their burden of showing that they are likely to face “irreparable injury . . . during the
3 period before the appeal is decided.” *See Doe #1 v. Trump*, 957 F.3d 1050, 1058–59 (9th Cir.
4 2020).

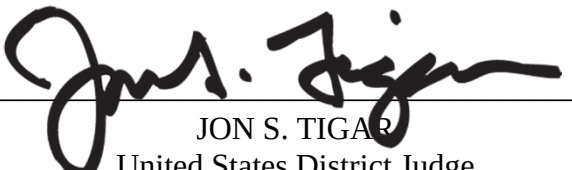
5 Similarly, the Court denies Defendants’ request for an administrative stay. The purpose of
6 an administrative stay is to “preserve the status quo until the substantive motion for a stay pending
7 appeal can be considered on the merits.” *See Nat’l Urban League v. Ross*, 977 F.3d 698, 700–01
8 (9th Cir. 2020). Because the Court has found that a preliminary injunction is necessary precisely
9 to alter the status quo and address the irreparable harm that Plaintiffs face absent an injunction, an
10 administrative stay is not appropriate here.

11 CONCLUSION

12 The Court grants, in part, Plaintiffs’ motion for a preliminary injunction consistent with
13 the discussion in this Order. The Court will enter a separate preliminary injunction order.
14 Plaintiffs are directed to file a proposed preliminary injunction order, and submit a Word version
15 of the same to the to the Court’s proposed order email address, by June 13, 2025.

16 **IT IS SO ORDERED.**

17 Dated: June 9, 2025

18 
19 JON S. TIGAR
20 United States District Judge
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28

Attorneys for Defendants

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

SAN FRANCISCO AIDS FOUNDATION,
et al.,

Plaintiffs,

V.

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

Defendants.

Case No. 25-cv-1824-JST

DEFENDANTS' NOTICE OF APPEAL

PLEASE TAKE NOTICE that Defendants hereby appeal to the United States Court of Appeals for the Ninth Circuit from this Court's Memorandum Opinion and Order. *See* ECF Nos. 81 & 87.

Respectfully submitted,

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ADRMOP,APPEAL,STAYED

**U.S. District Court
California Northern District (Oakland)
CIVIL DOCKET FOR CASE #: 4:25-cv-01824-JST**

San Francisco A.I.D.S. Foundation et al v. Trump et al
Assigned to: Judge Jon S. Tigar
Case in other court: Ninth Circuit, 25-04988
Cause: 28:1331 Fed. Question

Date Filed: 02/20/2025
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: U.S. Government Defendant

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Date Filed	#	Docket Text
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02/20/2025	<u>1</u>	COMPLAINT against Pamela Bondi, William Bosanko, Robert F. Kennedy, Jr, Shelly C. Lowe, Vincent N. Micone, National Archives and Records Administration, National Endowment for the Humanities, Office of Federal Contracts Compliance Programs, Office of Management and Budget, Michael Schloss, Donald J. Trump, Scott Turner, U. S. Department of Health and Human Services, U.S. Department of Housing and Urban Development, U.S. Department of Justice, U.S. Department of Labor, Russell T. Vought (Filing fee \$ 405, receipt number ACANDC-20371575.). Injunction against the US government/official or APA vacatur requested. Filed by Bradbury-Sullivan LGBT Community Center, Gay Lesbian Bisexual Transgender Historical Society, San Francisco A.I.D.S. Foundation, Prisma Community Care, San Francisco Community Health Center (Asian Pacific Islander), FORGE, Inc., Baltimore Safe Haven Corp., Los Angeles LGBT Center, Lesbian and Gay Community Services Center. (Attachments: # <u>1</u> Civil Cover Sheet)(Pizer, Jennifer) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/20/2025	2	Case assigned to Magistrate Judge Sallie Kim. Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit <i>E-Filing A New Civil Case</i> at http://cand.uscourts.gov/ecf/caseopening. Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges. Upon receipt, the summons will be issued and returned electronically. A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. Consent/Declination due by 3/6/2025. (smc, COURT STAFF) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/20/2025	<u>3</u>	Proposed Summons. (Pizer, Jennifer) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/20/2025	<u>4</u>	Certificate of Interested Entities by San Francisco A.I.D.S. Foundation (Pizer, Jennifer) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/20/2025	<u>5</u>	Certificate of Interested Entities by Baltimore Safe Haven Corp. (Pizer, Jennifer) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/20/2025	<u>6</u>	Certificate of Interested Entities by Bradbury-Sullivan LGBT Community Center (Pizer, Jennifer) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/20/2025	<u>7</u>	Certificate of Interested Entities by FORGE, Inc. (Pizer, Jennifer) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/20/2025	<u>8</u>	Certificate of Interested Entities by Gay Lesbian Bisexual Transgender Historical Society (Pizer, Jennifer) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/20/2025	<u>9</u>	Certificate of Interested Entities by Lesbian and Gay Community Services Center (Pizer, Jennifer) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/20/2025	<u>10</u>	Certificate of Interested Entities by Los Angeles LGBT Center (Pizer, Jennifer) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/20/2025	<u>11</u>	Certificate of Interested Entities by Prisma Community Care (Pizer, Jennifer) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/20/2025	<u>12</u>	Certificate of Interested Entities by San Francisco Community Health Center (Asian Pacific Islander) (Pizer, Jennifer) (Filed on 2/20/2025) (Entered: 02/20/2025)

02/20/2025	<u>13</u>	Corporate Disclosure Statement by San Francisco A.I.D.S. Foundation (Pizer, Jennifer) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/20/2025	<u>14</u>	Corporate Disclosure Statement by Baltimore Safe Haven Corp. (Pizer, Jennifer) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/20/2025	<u>15</u>	Corporate Disclosure Statement by Bradbury-Sullivan LGBT Community Center (Pizer, Jennifer) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/20/2025	<u>16</u>	Corporate Disclosure Statement by FORGE, Inc. (Pizer, Jennifer) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/20/2025	<u>17</u>	Corporate Disclosure Statement by Gay Lesbian Bisexual Transgender Historical Society (Pizer, Jennifer) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/20/2025	<u>18</u>	Corporate Disclosure Statement by Lesbian and Gay Community Services Center (Pizer, Jennifer) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/20/2025	<u>19</u>	Corporate Disclosure Statement by Los Angeles LGBT Center (Pizer, Jennifer) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/20/2025	<u>20</u>	Corporate Disclosure Statement by Prisma Community Care (Pizer, Jennifer) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/20/2025	<u>21</u>	Corporate Disclosure Statement by San Francisco Community Health Center (Asian Pacific Islander) (Pizer, Jennifer) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/20/2025	<u>22</u>	Summons Issued as to Pamela Bondi, William Bosanko, Robert F. Kennedy, Jr, Shelly C. Lowe, Vincent N. Micone, National Archives and Records Administration, National Endowment for the Humanities, Office of Federal Contracts Compliance Programs, Office of Management and Budget, Michael Schloss, Donald J. Trump, Scott Turner, U. S. Department of Health and Human Services, U.S. Department of Housing and Urban Development, U.S. Department of Justice, U.S. Department of Labor, U.S. Attorney and U.S. Attorney General (cv, COURT STAFF) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/20/2025	<u>23</u>	Initial Case Management Scheduling Order with ADR Deadlines: Case Management Statement due by 5/26/2025. Initial Case Management Conference set for 6/2/2025 01:30 PM in San Francisco, - Videoconference Only. (cv, COURT STAFF) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/20/2025	<u>24</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 328, receipt number ACANDC-20373170.) filed by San Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc.. (Abrigo, Jose) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/20/2025	<u>25</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 328, receipt number ACANDC-20373206.) filed by San Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc.. (Gonzalez-Pagan, Omar) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/20/2025	<u>26</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 328, receipt number ACANDC-20373229.) filed by San Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles LGBT Center, Lesbian and Gay

		Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc.. (Loewy, Karen) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/20/2025	<u>27</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 328, receipt number ACANDC-20373239.) filed by San Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc.. (Pelecanos, Sophia) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/20/2025	<u>28</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 328, receipt number ACANDC-20373263.) filed by San Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc.. (Taylor, Camilla) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/20/2025	<u>29</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 328, receipt number ACANDC-20373283.) filed by San Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc.. (Upton, Kenneth) (Filed on 2/20/2025) (Entered: 02/20/2025)
02/21/2025	<u>30</u>	Order by Magistrate Judge Sallie Kim granting <u>24</u> Motion for Pro Hac Vice as to Jose I. Abrigo. (bxl, COURT STAFF) (Filed on 2/21/2025) (Entered: 02/21/2025)
02/21/2025	<u>31</u>	Order by Magistrate Judge Sallie Kim granting <u>25</u> Motion for Pro Hac Vice as to Omar Gonzalez-Pagan. (bxl, COURT STAFF) (Filed on 2/21/2025) (Entered: 02/21/2025)
02/21/2025	<u>32</u>	Order by Magistrate Judge Sallie Kim granting <u>26</u> Motion for Pro Hac Vice as to Karen L. Loewy. (bxl, COURT STAFF) (Filed on 2/21/2025) (Entered: 02/21/2025)
02/21/2025	<u>33</u>	Order by Magistrate Judge Sallie Kim denying <u>27</u> Motion for Pro Hac Vice as to Sophia Pelecanos. (bxl, COURT STAFF) (Filed on 2/21/2025) (Entered: 02/21/2025)
02/21/2025	<u>34</u>	Order by Magistrate Judge Sallie Kim granting <u>28</u> Motion for Pro Hac Vice as to Camilla B. Taylor. (bxl, COURT STAFF) (Filed on 2/21/2025) (Entered: 02/21/2025)
02/21/2025	<u>35</u>	Order by Magistrate Judge Sallie Kim granting <u>29</u> Motion for Pro Hac Vice as to Kenneth D. Upton, Jr. (bxl, COURT STAFF) (Filed on 2/21/2025) (Entered: 02/21/2025)
02/24/2025	<u>36</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 328, receipt number ACANDC-20373239.) Filing fee previously paid on 2/20/2025 filed by San Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc.. (Pelecanos, Sophia) (Filed on 2/24/2025) (Entered: 02/24/2025)
02/25/2025	<u>37</u>	Order by Magistrate Judge Sallie Kim granting <u>36</u> Motion for Pro Hac Vice as to Sophia Pelecanos. (bxl, COURT STAFF) (Filed on 2/25/2025) (Entered: 02/25/2025)
02/25/2025	<u>38</u>	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by San Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los

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		Angeles LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc... (Gonzalez-Pagan, Omar) (Filed on 2/25/2025) (Entered: 02/25/2025)
02/25/2025	39	CLERK'S NOTICE OF IMPENDING REASSIGNMENT TO A U.S. DISTRICT COURT JUDGE: The Clerk of this Court will now randomly reassign this case to a District Judge because either (1) a party has not consented to the jurisdiction of a Magistrate Judge, or (2) time is of the essence in deciding a pending judicial action for which the necessary consents to Magistrate Judge jurisdiction have not been secured. You will be informed by separate notice of the district judge to whom this case is reassigned. ALL HEARING DATES PRESENTLY SCHEDULED BEFORE THE CURRENT MAGISTRATE JUDGE ARE VACATED AND SHOULD BE RE-NOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THIS CASE IS REASSIGNED. <i>This is a text only docket entry; there is no document associated with this notice. (b)1, COURT STAFF) (Filed on 2/25/2025) (Entered: 02/25/2025)</i>
02/26/2025	40	<u>ORDER REASSIGNING CASE</u> IT IS ORDERED that this case is reassigned using a proportionate, random and blind system pursuant to General Order No. 44 to Judge Jon S. Tigar. Magistrate Judge Sallie Kim no longer assigned to the case. Counsel are instructed that all future filings shall bear the updated judicial initials immediately after the case number. Counsel are reminded to verify the location of the judge on the court website. All hearing and trial dates presently scheduled are vacated. However, existing briefing schedules for motions remain unchanged. Motions must be renoticed for hearing before the judge to whom the case has been reassigned, but the renoticing of the hearing does not affect the prior briefing schedule. Other deadlines such as those for ADR compliance and discovery cutoff also remain unchanged. Notice: The assigned judge participates in the Cameras in the Courtroom Pilot Project. See General Order 65 and cand.uscourts.gov/cameras. Mark B. Busby Clerk, United States District Court <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (as, COURT STAFF) (Filed on 2/26/2025) (Entered: 02/26/2025)
02/26/2025	41	ADMINISTRATIVE MOTION Leave to File Oversized Brief in Support of Motion for Preliminary Injunction filed by San Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc.. Responses due by 3/3/2025. (Attachments: # 1 Proposed Order to File Oversized Brief)(Upton, Kenneth) (Filed on 2/26/2025) (Entered: 02/26/2025)
02/26/2025	42	CLERKS NOTICE SETTING CASE MANAGEMENT CONFERENCE AND ZOOM HEARING. Joint Case Management Statement due by 6/3/2025. Initial Case Management Conference set for 6/10/2025 at 02:00 PM - Videoconference Only. This proceeding will be held via a Zoom webinar.

		Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/jst Court Appearances: Advanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be participating in the argument at the hearing. One list of all counsel appearing for all parties should be sent in one email to the CRD at jstcrd@cand.uscourts.gov no later than 06/09/2025 at 2:00PM PST. General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited. Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/. (dms, COURT STAFF) (Filed on 2/26/2025) (Entered: 02/26/2025)
02/28/2025	43	NOTICE of Appearance filed by Christopher Frederick Jeu on behalf of Donald J. Trump, U.S. Department of Justice, Pamela Bondi, U.S. Department of Labor, Vincent N. Micone, Office of Federal Contracts Compliance Programs, Michael Schloss, Office of Management and Budget, Russell T. Vought, U. S. Department of Health and Human Services, Robert F. Kennedy, Jr, U.S. Department of Housing and Urban Development, Scott Turner, National Archives and Records Administration, William Bosanko, National Endowment for the Humanities, Shelly C. Lowe (Jeu, Christopher) (Filed on 2/28/2025) (Entered: 02/28/2025)
03/03/2025	44	***Please disregard per filer - Corrected Statement at ECF No. 48 *** Statement of Non-Opposition re 41 ADMINISTRATIVE MOTION Leave to File Oversized Brief in Support of Motion for Preliminary Injunction filed by Donald J. Trump, U.S. Department of Justice, Pamela Bondi, U.S. Department of Labor, Vincent N. Micone, Office of Federal Contracts Compliance Programs, Michael Schloss, Office of Management and Budget, Russell T. Vought, U. S. Department of Health and Human Services, Robert F. Kennedy, Jr, U.S. Department of Housing and Urban Development, Scott Turner, National Archives and Records Administration, William Bosanko, National Endowment for the Humanities, Shelly C. Lowe. (Related document(s) 41) (Jeu, Christopher) (Filed on 3/3/2025) Modified on 3/5/2025 (dms, COURT STAFF). (Entered: 03/03/2025)
03/03/2025	45	ORDER GRANTING ADMINISTRATIVE MOTION TO FILE OVERSIZED BRIEF IN SUPPORT OF PLAINTIFFS MOTION FOR A PRELIMINARY INJUNCTION by Judge Jon S. Tigar granting 41 Administrative Motion. (dms, COURT STAFF) (Filed on 3/3/2025) (Entered: 03/03/2025)
03/03/2025	46	ORDER. Signed by Judge Jon S. Tigar on 03/03/2025. (dms, COURT STAFF) (Filed on 3/3/2025) (Entered: 03/03/2025)
03/03/2025	47	MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities</i> filed by San Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc.. Motion Hearing set for 5/22/2025 02:00 PM before Judge Jon S. Tigar. Responses due by 3/17/2025. Replies due by 3/24/2025. (Attachments: # 1 Declaration Iya Dammons of Baltimore Safe Haven Corp., # 2 Declaration Krista Brown-Ly of Bradbury-Sullivan LGBT Community Center, # 3 Declaration Michael Munson of FORGE, Inc., # 4 Declaration Roberto Ordenana of the Gay Lesbian Bisexual Transgender Historical Society, # 5 Declaration Joe Hollendonner of Los Angeles LGBT Center, # 6 Declaration

		Dr. Katherine Duffy of Los Angeles LGBT Center, # 7 Declaration Jeffrey Klein of Lesbian and Gay Community Services Center, Inc. d/b/a The LGBT Community Center, # 8 Declaration Jessyca Leach of Prisma Community Care, # 9 Declaration Dr. Tyler TerMeer of San Francisco Aids Foundation, # 10 Declaration Lance Toma of the San Francisco Community Health Center, # 11 Declaration Jose Abrigo, # 12 Proposed Order Proposed Order)(Pizer, Jennifer) (Filed on 3/3/2025) (Entered: 03/03/2025)
03/04/2025	48	Statement of Non-Opposition re 41 ADMINISTRATIVE MOTION Leave to File Oversized Brief in Support of Motion for Preliminary Injunction and 44 Statement of Non-Opposition, <i>CORRECTION OF DOCKET</i> # 44 filed by Donald J. Trump, U.S. Department of Justice, Pamela Bondi, U.S. Department of Labor, Vincent N. Micone, Office of Federal Contracts Compliance Programs, Michael Schloss, Office of Management and Budget, Russell T. Vought, U. S. Department of Health and Human Services, Robert F. Kennedy, Jr, U.S. Department of Housing and Urban Development, Scott Turner, National Archives and Records Administration, William Bosanko, National Endowment for the Humanities, Shelly C. Lowe. (Related document(s) 41) (Jeu, Christopher) (Filed on 3/4/2025) Modified on 3/5/2025 (dms, COURT STAFF). (Entered: 03/04/2025)
03/10/2025	49	ORDER RE: AMICUS CURIAE BRIEFS. Signed by Judge Jon S. Tigar on 03/10/2025. Motion for leave to file amicus briefs due by 3/24/2025. (dms, COURT STAFF) (Filed on 3/10/2025) (Entered: 03/10/2025)
03/13/2025	50	STIPULATION WITH PROPOSED ORDER re 47 MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities Request for Extension re: Briefing Schedule</i> filed by Donald J. Trump, U.S. Department of Justice, Pamela Bondi, U.S. Department of Labor, Vincent N. Micone, Office of Federal Contracts Compliance Programs, Michael Schloss, Office of Management and Budget, Russell T. Vought, U. S. Department of Health and Human Services, Robert F. Kennedy, Jr, U.S. Department of Housing and Urban Development, Scott Turner, National Archives and Records Administration, William Bosanko, National Endowment for the Humanities, Shelly C. Lowe. (Attachments: # 1 Declaration C. Jeu, # 2 Proposed Order)(Jeu, Christopher) (Filed on 3/13/2025) (Entered: 03/13/2025)
03/14/2025	51	ORDER re 50 STIPULATION WITH PROPOSED ORDER by Judge Jon S. Tigar re 47 MOTION for Preliminary Injunction. Set/Reset Deadlines as to 47 MOTION for Preliminary Injunction. Response due by 4/11/2025. Reply due by 4/18/2025. Motions for Leave to File Amicus Briefs due by 4/18/2025. Motion Hearing set for 5/22/2025 at 02:00 PM - Videoconference Only before Judge Jon S. Tigar. This proceeding will be held via a Zoom webinar.

		Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/jst Court Appearances: Advanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be participating in the argument at the hearing. One list of names of all counsel appearing for all parties must be sent in one email to the CRD at jstcrd@cand.uscourts.gov no later than 05/21/2025 at 2:00PM PST. General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited. Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/. (dms, COURT STAFF) (Filed on 3/14/2025) (Entered: 03/17/2025)
03/20/2025	52	NOTICE of Appearance filed by Pardis Gheibi on behalf of Donald J. Trump, U.S. Department of Justice, Pamela Bondi, U.S. Department of Labor, Vincent N. Micone, Office of Federal Contracts Compliance Programs, Michael Schloss, Office of Management and Budget, Russell T. Vought, U. S. Department of Health and Human Services, Robert F. Kennedy, Jr, U.S. Department of Housing and Urban Development, Scott Turner, National Archives and Records Administration, William Bosanko, National Endowment for the Humanities, Shelly C. Lowe (Gheibi, Pardis) (Filed on 3/20/2025) (Entered: 03/20/2025)
04/03/2025	53	CLERK'S NOTICE CHANGING ZOOM MOTION HEARING TO IN PERSON. You are hereby notified that 47 MOTION for Preliminary Injunction will be heard in person on May 22, 2025 at 2:00 PM in Oakland, Courtroom 1, 4th Floor before Judge Jon S. Tigar. The briefing schedule remains in effect. Court Appearances: Advanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be participating in the argument at the hearing. One list of names of all counsel appearing for all parties must be sent in one email to the CRD at jstcrd@cand.uscourts.gov no later than 05/21/2025 at 2:00PM PST. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (dms, COURT STAFF) (Filed on 4/3/2025) (Entered: 04/03/2025)
04/03/2025	54	STIPULATION WITH PROPOSED ORDER re 47 MOTION for Preliminary Injunction and Memorandum of Points and Authorities <i>SEEKING LEAVE TO SUPPLEMENT RECORD</i> filed by San Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc.. (Attachments: # 1 Declaration Kenneth D Upton Jr., # 2 Proposed Order Stipulated Order)(Upton, Kenneth) (Filed on 4/3/2025) (Entered: 04/03/2025)
04/04/2025	55	Order by Judge Jon S. Tigar granting 54 Stipulation. Supplemental Documentation re 47 Motion due by 4/7/2025. (dms, COURT STAFF) (Filed on 4/4/2025) (Entered: 04/04/2025)
04/07/2025	56	Declaration of ROBERTO ORDENANA in Support of 47 MOTION for Preliminary Injunction and Memorandum of Points and Authorities filed by San Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles

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		LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc.. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B, # 3 Exhibit Exhibit C, # 4 Exhibit Exhibit D, # 5 Exhibit Exhibit E)(Related document(s) 47) (Pizer, Jennifer) (Filed on 4/7/2025) (Entered: 04/07/2025)
04/07/2025	57	Declaration of JOE HOLLENDONER in Support of 47 MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities</i> filed bySan Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc.. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B, # 3 Exhibit Exhibit C, # 4 Exhibit Exhibit D, # 5 Exhibit Exhibit E)(Related document(s) 47) (Pizer, Jennifer) (Filed on 4/7/2025) (Entered: 04/07/2025)
04/07/2025	58	Declaration of TYLER TERMEER in Support of 47 MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities</i> filed bySan Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc.. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B, # 3 Exhibit Exhibit C, # 4 Exhibit Exhibit D, # 5 Exhibit Exhibit E) (Related document(s) 47) (Pizer, Jennifer) (Filed on 4/7/2025) (Entered: 04/07/2025)
04/11/2025	59	STIPULATION WITH PROPOSED ORDER re 47 MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities TO EXPAND PAGE LIMITS RE: BRIEFING</i> filed by Donald J. Trump, U.S. Department of Justice, Pamela Bondi, U.S. Department of Labor, Vincent N. Micone, Office of Federal Contracts Compliance Programs, Michael Schloss, Office of Management and Budget, Russell T. Vought, U. S. Department of Health and Human Services, Robert F. Kennedy, Jr, U.S. Department of Housing and Urban Development, Scott Turner, National Archives and Records Administration, William Bosanko, National Endowment for the Humanities, Shelly C. Lowe. (Attachments: # 1 Proposed Order)(Jeu, Christopher) (Filed on 4/11/2025) (Entered: 04/11/2025)
04/11/2025	60	ORDER by Judge Jon S. Tigar granting 59 Stipulation re 47 MOTION for Preliminary Injunction and Memorandum of Points and Authorities. Response page limit is 45 pages. Reply page limit is 25 pages. (dms, COURT STAFF) (Filed on 4/11/2025) (Entered: 04/11/2025)
04/11/2025	61	OPPOSITION/RESPONSE (re 47 MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities</i>) filed byDonald J. Trump, U.S. Department of Justice, Pamela Bondi, U.S. Department of Labor, Vincent N. Micone, Office of Federal Contracts Compliance Programs, Michael Schloss, Office of Management and Budget, Russell T. Vought, U. S. Department of Health and Human Services, Robert F. Kennedy, Jr, U.S. Department of Housing and Urban Development, Scott Turner, National Archives and Records Administration, William Bosanko, National Endowment for the Humanities, Shelly C. Lowe. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Gheibi, Pardis) (Filed on 4/11/2025) (Entered: 04/11/2025)
04/16/2025	62	NOTICE by Donald J. Trump, U.S. Department of Justice, Pamela Bondi, U.S. Department of Labor, Vincent N. Micone, Office of Federal Contracts Compliance Programs, Michael Schloss, Office of Management and Budget, Russell T. Vought, U. S. Department of Health and Human Services, Robert F. Kennedy, Jr, U.S. Department of Housing and Urban Development, Scott Turner, National Archives and Records Administration, William Bosanko, National Endowment for the Humanities, Shelly C.

		Lowe re 47 MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities</i> (Attachments: # 1 Exhibit A)(Gheibi, Pardis) (Filed on 4/16/2025) (Entered: 04/16/2025)
04/18/2025	63	STIPULATION re 1 Complaint,,, filed by Donald J. Trump, U.S. Department of Justice, Pamela Bondi, U.S. Department of Labor, Vincent N. Micone, Office of Federal Contracts Compliance Programs, Michael Schloss, Office of Management and Budget, Russell T. Vought, U. S. Department of Health and Human Services, Robert F. Kennedy, Jr, U.S. Department of Housing and Urban Development, Scott Turner, National Archives and Records Administration, William Bosanko, National Endowment for the Humanities, Shelly C. Lowe. (Gheibi, Pardis) (Filed on 4/18/2025) (Entered: 04/18/2025)
04/18/2025	64	REPLY (re 47 MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities</i>) filed bySan Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc.. (Attachments: # 1 Proposed Order, # 2 Declaration Jose Abrigo, # 3 Exhibit R-1, # 4 Exhibit R-2, # 5 Exhibit R-3, # 6 Exhibit R-4, # 7 Exhibit R-5, # 8 Exhibit R-6, # 9 Exhibit R-7, # 10 Exhibit R-8, # 11 Exhibit R-9, # 12 Exhibit R-10, # 13 Exhibit R-11, # 14 Exhibit R-12, # 15 Exhibit R-13, # 16 Exhibit R-14, # 17 Exhibit R-15, # 18 Exhibit R-16)(Pizer, Jennifer) (Filed on 4/18/2025) (Entered: 04/18/2025)
04/30/2025	65	STIPULATION WITH PROPOSED ORDER re 47 MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities Second Request for Leave to Supplement Record</i> filed by San Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc.. (Attachments: # 1 Declaration Kenneth D Upton Jr, # 2 Proposed Order) (Upton, Kenneth) (Filed on 4/30/2025) (Entered: 04/30/2025)
05/01/2025	66	ORDER by Judge Jon S. Tigar granting 65 Stipulation re 47 MOTION for Preliminary Injunction. Reply due by 5/16/2025. (dms, COURT STAFF) (Filed on 5/1/2025) (Entered: 05/01/2025)
05/05/2025	67	NOTICE by Donald J. Trump, U.S. Department of Justice, Pamela Bondi, U.S. Department of Labor, Vincent N. Micone, Office of Federal Contracts Compliance Programs, Michael Schloss, Office of Management and Budget, Russell T. Vought, U. S. Department of Health and Human Services, Robert F. Kennedy, Jr, U.S. Department of Housing and Urban Development, Scott Turner, National Archives and Records Administration, William Bosanko, National Endowment for the Humanities, Shelly C. Lowe re 47 MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities</i> (Attachments: # 1 Exhibit A)(Gheibi, Pardis) (Filed on 5/5/2025) (Entered: 05/05/2025)
05/08/2025	68	CLERK'S NOTICE. Notice is hereby given that the Court will conduct a hearing by a Zoom webinar in another case on May 22, 2025 at 2:00 PM first. Shortly after that hearing, we will proceed with the 47 MOTION for Preliminary Injunction in this case. 47 MOTION for Preliminary Injunction will be heard in person on May 22, 2025 at 2:00 PM in Oakland, Courtroom 1, 4th Floor before Judge Jon S. Tigar and will be broadcasted via a Zoom webinar. Court Appearances: Advanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be participating in the argument at the in person hearing. One list of names of all counsel appearing for all parties must be

		sent in one email to the CRD at jstcrd@cand.uscourts.gov no later than 05/21/2025 at 2:00PM PST. (This is a text-only entry generated by the court. There is no document associated with this entry.) (dms, COURT STAFF) (Filed on 5/8/2025) (Entered: 05/08/2025)
05/12/2025	69	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options <i>Federal Defendants'</i> (Jeu, Christopher) (Filed on 5/12/2025) (Entered: 05/12/2025)
05/12/2025	70	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options <i>All Plaintiffs</i> (Upton, Kenneth) (Filed on 5/12/2025) (Entered: 05/12/2025)
05/13/2025	71	AFFIDAVIT of Service for Summons served on All Defendants on February 24, 2025, filed by San Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc.. (Attachments: # 1 Exhibit Exhibit A)(Pizer, Jennifer) (Filed on 5/13/2025) (Entered: 05/13/2025)
05/16/2025	72	Declaration of Iya Dammons in Support of 47 MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities</i> filed by San Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc.. (Attachments: # 1 Exhibit Ex A, # 2 Exhibit Ex B, # 3 Exhibit Ex C)(Related document(s) 47) (Pizer, Jennifer) (Filed on 5/16/2025) (Entered: 05/16/2025)
05/16/2025	73	Declaration of Michael Munson in Support of 47 MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities</i> filed by San Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc.. (Attachments: # 1 Exhibit Ex A, # 2 Exhibit Ex B, # 3 Exhibit Ex C, # 4 Exhibit Ex D, # 5 Exhibit Ex E, # 6 Exhibit Ex F, # 7 Exhibit Ex G, # 8 Exhibit Ex H, # 9 Exhibit Ex I)(Related document(s) 47) (Pizer, Jennifer) (Filed on 5/16/2025) (Entered: 05/16/2025)
05/16/2025	74	Declaration of Joe Hollendoner in Support of 47 MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities</i> filed by San Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc.. (Attachments: # 1 Exhibit Ex A, # 2 Exhibit Ex B, # 3 Exhibit Ex C, # 4 Exhibit Ex D, # 5 Exhibit Ex E)(Related document(s) 47) (Pizer, Jennifer) (Filed on 5/16/2025) (Entered: 05/16/2025)
05/16/2025	75	Declaration of Jeffrey Klein in Support of 47 MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities</i> filed by San Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc.. (Attachments: # 1 Exhibit Ex A, # 2 Exhibit Ex B, # 3 Exhibit Ex C)(Related document(s) 47) (Pizer, Jennifer) (Filed on 5/16/2025) (Entered: 05/16/2025)

05/16/2025	76	Declaration of Jessyca Leach in Support of 47 MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities</i> filed by San Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc.. (Attachments: # 1 Exhibit Ex A, # 2 Exhibit Ex B)(Related document(s) 47) (Pizer, Jennifer) (Filed on 5/16/2025) (Entered: 05/16/2025)
05/16/2025	77	Declaration of Tyler Termeer in Support of 47 MOTION for Preliminary Injunction <i>and Memorandum of Points and Authorities</i> filed by San Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc.. (Attachments: # 1 Exhibit Ex A, # 2 Exhibit Ex B, # 3 Exhibit Ex C, # 4 Exhibit Ex D)(Related document(s) 47) (Pizer, Jennifer) (Filed on 5/16/2025) (Entered: 05/16/2025)
05/22/2025	78	Minute Entry for proceedings held before Judge Jon S. Tigar: Motion Hearing held on 5/22/2025. Arguments heard from the parties. Motion is taken under submission. Written Order to be issued. Total Time in Court: 1 hour, 34 minutes. Court Reporter: Kendra Steppler via zoom. Plaintiff Attorney: Camilla Taylor; Jose Abrigo; Omar Gonzalez-Pagan; Pelecanos. Defendant Attorney: Pardis Gehibi; Christopher Jeu. (This is a text-only entry generated by the court. There is no document associated with this entry.) (dms, COURT STAFF) (Date Filed: 5/22/2025) (Entered: 05/23/2025)
06/03/2025	79	JOINT CASE MANAGEMENT STATEMENT filed by San Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc.. (Upton, Kenneth) (Filed on 6/3/2025) (Entered: 06/03/2025)
06/05/2025	80	TRANSCRIPT ORDER for proceedings held on 05/22/2025 before Judge Jon S. Tigar by San Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc., for Court Reporter Kendra Steppler. (Abrigo, Jose) (Filed on 6/5/2025) (Entered: 06/05/2025)
06/09/2025	81	ORDER GRANTING IN PART AND DENYING IN PART 47 MOTION FOR PRELIMINARY INJUNCTION. Proposed preliminary injunction order due by 6/13/2025. Signed by Judge Jon S. Tigar on June 9, 2025. (jstlc3, COURT STAFF) (Filed on 6/9/2025) (Entered: 06/09/2025)
06/09/2025	82	TRANSCRIPT ORDER for proceedings held on May 22, 2025 before Judge Jon S. Tigar by Donald J. Trump, U.S. Department of Justice, Pamela Bondi, U.S. Department of Labor, Vincent N. Micone, Office of Federal Contracts Compliance Programs, Michael Schloss, Office of Management and Budget, Russell T. Vought, U. S. Department of Health and Human Services, Robert F. Kennedy, Jr, U.S. Department of Housing and Urban Development, Scott Turner, National Archives and Records Administration, William Bosanko, National Endowment for the Humanities, Shelly C. Lowe, for Court Reporter Kendra Steppler. (Jeu, Christopher) (Filed on 6/9/2025) (Entered: 06/09/2025)

06/10/2025	83	Minute Entry for proceedings held before Judge Jon S. Tigar: Initial Case Management Conference held on 6/10/2025. Parties have not met and conferred since the Court issued the 81 ORDER. Matter is continued two weeks for the parties to meet and confer to file an Updated Joint Case Management Statement due by 6/17/2025. Further Case Management Conference set for 6/24/2025 at 09:30 AM - Videoconference Only. This proceeding will be held via a Zoom webinar. Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/jst Court Appearances: Advanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be participating in the argument at the hearing. One list of names of all counsel appearing for all parties must be sent in one email to the CRD at jstcrd@cand.uscourts.gov no later than 06/23/2025 at 09:30AM PST. General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited. Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/. Total Time in Court: 4 minutes. Court Reporter: Not Reported. Plaintiff Attorney: Kenneth Upton, Jr. Defendant Attorney: Christopher Jeu. (This is a text-only entry generated by the court. There is no document associated with this entry.) (dms, COURT STAFF) (Date Filed: 6/10/2025) (Entered: 06/10/2025)
06/12/2025	84	Transcript of Proceedings held on May 22, 2025, before Judge Jon S. Tigar. Court Reporter Kendra Steppler, telephone number 406-489-3498, email address kendra_steppler@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter until the deadline for the Release of Transcript Restriction. After that date, it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re 82 Transcript Order,,) Release of Transcript Restriction set for 9/10/2025. (Related documents(s) 82) (Steppler, Kendra) (Filed on 6/12/2025) (Entered: 06/12/2025)
06/12/2025	85	NOTICE OF POSTING \$1000. BOND Pursuant to Order 81 by San Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc. (Upton, Kenneth) (Filed on 6/12/2025) Modified text on 6/13/2025 (dhm, COURT STAFF). (Entered: 06/12/2025)
06/13/2025	86	Proposed Order <i>PRELIMINARY INJUNCTION RE 81 ORDER GRANTING IN PART AND DENYING IN PART 47 MOTION FOR PRELIMINARY INJUNCTION</i> by San Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc.. (Pizer, Jennifer) (Filed on 6/13/2025) (Entered: 06/13/2025)
06/13/2025	87	PRELIMINARY INJUNCTION ORDER. Signed by Judge Jon S. Tigar on 06/13/2025. (dms, COURT STAFF) (Filed on 6/13/2025) (Entered: 06/13/2025)

06/17/2025	<u>88</u>	STIPULATION WITH PROPOSED ORDER re <u>83</u> Case Management Conference - Initial,,,,,,,,, Set Deadlines/Hearings,,,,,,,,, Util - Teleconference Zoom,,,,,,,,, <i>re: Stipulated Request to Continue Case Management Conference</i> filed by Donald J. Trump, U.S. Department of Justice, Pamela Bondi, U.S. Department of Labor, Vincent N. Micone, Office of Federal Contracts Compliance Programs, Michael Schloss, Office of Management and Budget, Russell T. Vought, U. S. Department of Health and Human Services, Robert F. Kennedy, Jr, U.S. Department of Housing and Urban Development, Scott Turner, National Archives and Records Administration, William Bosanko, National Endowment for the Humanities, Shelly C. Lowe. (Attachments: # <u>1</u> Declaration C. Jeu, # <u>2</u> Proposed Order)(Jeu, Christopher) (Filed on 6/17/2025) (Entered: 06/17/2025)
06/18/2025	<u>89</u>	STIPULATED REQUEST TO CONTINUE CASE MANAGEMENT CONFERENCE; ORDER by Judge Jon S. Tigar granting <u>88</u> Stipulation. Joint Case Management Statement due by 7/8/2025. Further Case Management Conference set for 7/15/2025 at 09:30 AM - Videoconference Only. This proceeding will be held via a Zoom webinar. Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/jst Court Appearances: Advanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be participating in the argument at the hearing. One list of names of all counsel appearing for all parties must be sent in one email to the CRD at jstcrd@cand.uscourts.gov no later than 07/14/2025 at 9:30AM PST. General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited. Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/. (dms, COURT STAFF) (Filed on 6/18/2025) (Entered: 06/18/2025)
06/23/2025	<u>90</u>	STIPULATION WITH PROPOSED ORDER re <u>87</u> Order <i>re: Stipulated Request for Extension of Time to Comply with Preliminary Injunction Order</i> filed by Donald J. Trump, U.S. Department of Justice, Pamela Bondi, U.S. Department of Labor, Vincent N. Micone, Office of Federal Contracts Compliance Programs, Michael Schloss, Office of Management and Budget, Russell T. Vought, U. S. Department of Health and Human Services, Robert F. Kennedy, Jr, U.S. Department of Housing and Urban Development, Scott Turner, National Archives and Records Administration, William Bosanko, National Endowment for the Humanities, Shelly C. Lowe. (Attachments: # <u>1</u> Declaration C. Jeu, # <u>2</u> Proposed Order)(Jeu, Christopher) (Filed on 6/23/2025) (Entered: 06/23/2025)
06/24/2025	<u>91</u>	STIPULATED REQUEST FOR EXTENSION OF TIME TO COMPLY WITH PRELIMINARY INJUNCTION ORDER (DKT. NO. <u>87</u>) by Judge Jon S. Tigar granting <u>90</u> Stipulation. Joint Status Report due by 7/2/2025. (dms, COURT STAFF) (Filed on 6/24/2025) (Entered: 06/24/2025)
07/02/2025	<u>92</u>	STATUS REPORT <i>JOINT</i> by Donald J. Trump, U.S. Department of Justice, Pamela Bondi, U.S. Department of Labor, Vincent N. Micone, Office of Federal Contracts Compliance Programs, Michael Schloss, Office of Management and Budget, Russell T. Vought, U. S. Department of Health and Human Services, Robert F. Kennedy, Jr, U.S. Department of Housing and Urban Development, Scott Turner, National Archives and Records

		Administration, William Bosanko, National Endowment for the Humanities, Shelly C. Lowe. (Jeu, Christopher) (Filed on 7/2/2025) (Entered: 07/02/2025)
07/07/2025	93	STIPULATION WITH PROPOSED ORDER <i>FOR A CONTINUANCE OF CERTAIN PROCEEDINGS UNTIL AUGUST 28, 2025</i> filed by San Francisco A.I.D.S. Foundation, Prisma Community Care, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc.. (Attachments: # 1 Proposed Order Proposed Order)(Abrigo, Jose) (Filed on 7/7/2025) (Entered: 07/07/2025)
07/07/2025	94	ORDER GRANTING IN PART AND DENYING IN PART STIPULATED REQUEST TO MODIFY CASE SCHEDULE by Judge Jon S. Tigar granting in part and denying in part 93 Stipulation. An Updated Joint Case Management Statement due by 8/27/2025. Further Case Management Conference set for 9/3/2025 at 09:30 AM - Videoconference Only. Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/jst Court Appearances: Advanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be participating in the argument at the hearing. One list of names of all counsel appearing for all parties must be sent in one email to the CRD at jstcrd@cand.uscourts.gov no later than 09/02/2025 at 9:30AM PST. Civ LR 77-3(b): Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited. Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/. (dms, COURT STAFF) (Filed on 7/7/2025) (Entered: 07/07/2025)
08/07/2025	95	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Donald J. Trump, U.S. Department of Justice, Pamela Bondi, U.S. Department of Labor, Vincent N. Micone, Office of Federal Contracts Compliance Programs, Michael Schloss, Office of Management and Budget, Russell T. Vought, U. S. Department of Health and Human Services, Robert F. Kennedy, Jr, U.S. Department of Housing and Urban Development, Scott Turner, National Archives and Records Administration, William Bosanko, National Endowment for the Humanities, Shelly C. Lowe. Appeal of Order, Terminate Motions, Set Deadlines 81 , Order 87 (Appeal fee FEE WAIVED.) (Gheibi, Pardis) (Filed on 8/7/2025) (Entered: 08/07/2025)
08/07/2025	96	USCA Case Number 25-4988 Ninth Circuit for 95 Notice of Appeal to the Ninth Circuit,, filed by U.S. Department of Labor, U.S. Department of Housing and Urban Development, William Bosanko, Office of Federal Contracts Compliance Programs, Office of Management and Budget, Michael Schloss, Donald J. Trump, National Archives and Records Administration, Vincent N. Micone, Robert F. Kennedy, Jr., Shelly C. Lowe, Russell T. Vought, Pamela Bondi, U.S. Department of Justice, Scott Turner, National Endowment for the Humanities, U. S. Department of Health and Human Services. (dhm, COURT STAFF) (Filed on 8/7/2025) (Entered: 08/08/2025)
08/22/2025	97	NOTICE of Substitution of Counsel: Attorney Michael A. Keough substituted for Chris Jeu, Pardis Gheibi on behalf of Donald J. Trump, U.S. Department of Justice, Pamela Bondi, U.S. Department of Labor, Vincent N. Micone, Office of Federal Contracts

		Compliance Programs, Michael Schloss, Office of Management and Budget, Russell T. Vought, U. S. Department of Health and Human Services, Robert F. Kennedy, Jr, U.S. Department of Housing and Urban Development, Scott Turner, National Archives and Records Administration, William Bosanko, National Endowment for the Humanities, Shelly C. Lowe (Keough, Michael) (Filed on 8/22/2025) (Entered: 08/22/2025)
08/25/2025	98	STIPULATION WITH PROPOSED ORDER <i>to Stay Remainder of Proceedings Pending Appeal of Preliminary Injunction</i> filed by San Francisco A.I.D.S. Foundation, Gay Lesbian Bisexual Transgender Historical Society, San Francisco Community Health Center (Asian Pacific Islander), Los Angeles LGBT Center, Lesbian and Gay Community Services Center, Bradbury-Sullivan LGBT Community Center, Baltimore Safe Haven Corp., FORGE, Inc.. (Attachments: # 1 Declaration Declaration of Kenneth Upton, # 2 Proposed Order Proposed stipulated Order)(Upton, Kenneth) (Filed on 8/25/2025) (Entered: 08/25/2025)
08/26/2025	99	STIPULATED REQUEST TO STAY REMAINDER OF PROCEEDINGS PENDING APPEAL OF PRELIMINARY INJUNCTION; ORDER by Judge Jon S. Tigar granting 98 Stipulation. Set Flag STAYED. Further Case Mgmt Conference set for 09/03/2025 is VACATED. (dms, COURT STAFF) (Filed on 8/26/2025) (Entered: 08/26/2025)

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CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Service will be accomplished by the appellate CM/ECF system.

s/ Jack Starcher
Jack Starcher