

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

RHODE ISLAND COALITION
AGAINST DOMESTIC VIOLENCE, *et al.*,

Plaintiffs,

v.

ROBERT F. KENNEDY, JR., *et al.*,

Defendants.

Case No. 1:25-cv-342-MRD-PAS

**DEFENDANTS' REPLY
IN SUPPORT OF THEIR CROSS-MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

Grants are not unconditional transfers of funds; they carry obligations designed to ensure accountability. Those conditions are essential to safeguarding taxpayer dollars and ensuring that federal funds are spent according to the Government’s expectations. The grant conditions that Plaintiffs challenge in this case serve precisely that function. They ensure that the taxpayer dollars administered by Health and Human Services (“HHS”) and the Department of Housing and Urban Development (“HUD”) are used for the intended purpose of each specific grant program (such as alleviating homelessness or childhood illnesses) and not diverted for unintended purposes (such as funding DEI programs). Specifically, the grant conditions at issue require grant recipients to (1) comply with executive orders and preexisting federal law; and (2) use taxpayer dollars consistent with the purposes Congress expressly established. These restrictions either reflect limitations Congress has already embedded in the governing statutes or fall squarely within Defendants’ authority to ensure effective, efficient, and lawful administration of the underlying grant programs. Agencies charged with administering federal funds not only may—but must—ensure that those funds are expended in a manner consistent with statutory objectives.

Plaintiffs are free to disagree with the Administration’s policy priorities, including the Administration’s funding priorities. But their disagreement is not a valid basis upon which to order the drastic and extraordinary remedy of issuing a nationwide injunction against HHS and HUD that prohibits them—not just from enforcing the grant conditions at issue—but from adopting any new grant conditions that might be considered “substantially similar.” The Court should decline Plaintiffs’ request for a nationwide injunction and, for the reasons stated in Defendants’ summary-judgment briefing, order summary judgment in Defendants’ favor on all of Plaintiffs’ claims under Federal Rule of Civil Procedure 56.

ARGUMENT

I. Plaintiffs' APA claims fail.

Plaintiffs assert six claims under the Administrative Procedure Act (“APA”). *See* First Am. Compl. for Declaratory & Injunctive Relief (“Am. Compl.”) at 62-83, ECF No. 60. For the reasons stated in Defendants’ principal brief and below, the Court should grant summary judgment for Defendants on those claims. Defs.’ Mem. at 15-24. Nothing in Plaintiffs’ response brief demonstrates otherwise. *Contra* Combined Reply in Supp. of Pls.’ Mot for Summ. J. & Opp’n to Defs.’ Cross-motion for Summ. J. (“Pls.’ Reply”), ECF No. 99.

A. Plaintiffs’ first three APA claims fail because Defendants have the authority to adopt the challenged conditions and the challenged conditions are lawful.

As Defendants explained in their principal brief, the challenged grant conditions fall squarely within Defendants’ statutory authority and reinforce compliance obligations that already exist under federal law. Defs.’ Mem. at 16-22.

In response, Plaintiffs first urge the Court to deprive HHS and HUD of the deference ordinarily afforded agency action. They contend that, following the Supreme Court’s ruling in *Loper Bright Enterprises v. Ramundo*, 603 U.S. 369 (2024), no deference is due to an agency when a plaintiff accuses the agency of exceeding its statutory authority. Pls.’ Reply. at 2. But Plaintiffs ignore the Supreme Court’s recent holding that *Loper Bright* “is not applicable ‘when a particular statute’ mandates deferential review or otherwise ‘delegates authority to an agency consistent with constitutional limits.’” *Urias-Orellana v. Bondi*, 607 U.S. ---, 146 S. Ct. 845, 854 n.6 (2026). Here, the applicable statutes delegate authority to HUD and HHS to adopt the challenged conditions, as Defendants established in their primary brief. Defs.’ Mem. 16-22. For example:

- Title VI of the Civil Rights Act of 1964 “authorize[s] and direct[s]” federal agencies that award federal funds to “effectuate” § 2000d [the Act’s antidiscrimination provision] by issuing rules and regulations.
42 U.S.C. § 2000d-1.

- Title IX authorizes federal agencies to promulgate regulations requiring grant recipients to certify compliance with the statute. *See* 20 U.S.C. § 1682.
- The statute governing HUD’s Continuum of Care (“CoC”) Program contains a catchall provision—42 U.S.C. § 11386(b)(8)—that makes the disbursement of CoC grant funds dependent on the recipient’s “compl[iance] with such other terms and conditions as the Secretary [of HUD] may establish to carry out” the CoC Program in “an effective and efficient manner.” 42 U.S.C. § 11386(b)(8).

Because those statutes, and the others cited in Defendants’ principal brief, delegate authority to HUD and HHS to adopt the challenged conditions, *Loper Bright* is not applicable, and the Defendants’ actions are entitled to deference. Under the applicable standard, “a reviewing court may not substitute its judgment for that of the agency, even if it disagrees with the agency’s conclusions.” *Atieh v. Riordan*, 797 F.3d 135, 138 (1st Cir. 2015) (citation modified). “[A]gency action is presumptively valid” *R.I. Hosp. v. Leavitt*, 548 F.3d 29, 33-34 (1st Cir. 2008).

The existence of those authorizing statutes also debunks Plaintiffs’ claim that HUD and HHS lacked authority to adopt the challenged conditions, as explained more fully in the following sections.

1. The antidiscrimination certifications

Plaintiffs concede that “Defendants have authority to require grantees to certify they will comply with Title IX and other antidiscrimination laws.” Pls.’ Reply at 3. That concession is key because that is what the antidiscrimination certifications do here—they require grant recipients to certify they will comply with Title IX and other antidiscrimination laws. HUD-AR 97; Pls.’ App’x 1-3, ECF No. 96-1. Plaintiffs’ arguments cannot overcome this conclusion.

Plaintiffs contend that the (1) five of the antidiscrimination certifications exceed Defendants’ statutory authority because they require compliance with the “Gender Ideology” Executive Order; and (2) all the antidiscrimination provisions exceed Defendants’ statutory authority because they require grant recipients to certify that complying with antidiscrimination

laws is a material condition of receiving federal funding for purposes of the False Claims Act. Pls.’ Reply at 3. Neither theory holds water.

Plaintiffs’ first theory is flawed for two reasons. First, it is based on nothing more than Plaintiffs’ speculation that the Government will interpret the “Gender Ideology” Executive Order in a way that is inconsistent with existing law.

Second, Plaintiffs’ theory ignores the savings clauses that would apply in the event of any inconsistency between the Executive Order and an applicable statute. Specifically, in the event of any inconsistency, HHS policy expressly provides that statutes and duly promulgated regulations take precedence over executive orders. HHS-AR 972 ¶ 1 (directing grant recipients to the HHS Administrative and National Policy Requirements “[i]n case of conflicting or inconsistent requirements); HHS, Admin. & Nat’l Pol’y Requirements 2, <https://perma.cc/9M5Y-8PHG>). Similarly, HUD requires compliance with the Gender Ideology Executive Order, but the Executive Order expressly requires its application in accordance with existing law. Specifically, by its express terms, the Gender Ideology Executive Order cannot be “construed to impair or otherwise affect . . . the authority granted by law to an executive department or agency, or the head thereof[.]” Exec. Order No. 14,168 § 8(a)(i), 90 Fed. Reg. 8617, 8618 (Jan 30, 2025). The Executive Order also states that agencies must also implement the order “consistent with applicable law.” *Id.* § 8(b). Thus, the Executive Order itself forecloses any interpretation that would require agencies to act beyond their statutory authority.

Plaintiffs’ second theory attacks the False Claims Act materiality requirement, which requires federal grant recipients to affirm that the Government considers compliance with antidiscrimination laws material to its payment decisions. HUD-AR 97; HHS-AR 132. Although Plaintiffs state (at 3) that Defendants failed to address the False Claims Act materiality requirement in their brief, Defendants’ brief not only defends the requirement, but also explains how it is lawful and within Defendants’ statutory authority to adopt. Defs’ Mem. at 16-17 (citing 42 U.S.C. § 2000d and 20 U.S.C. § 1682).

2. The remaining CoC conditions

The remaining challenged CoC grant conditions that HUD has put in place are lawful, consistent with statutory authority, and aligned with existing federal funding restrictions. These conditions prohibit grant recipients from (1) using CoC funds to promote “gender ideology” (as defined in Executive Order 14,168); and (2) funding or promoting elective abortions. HUD-AR 97. These conditions fall squarely within HUD’s authority under the McKinney–Vento Homeless Assistance Act’s “catchall provision,” which makes HUD’s disbursement of CoC grant funds dependent on the recipient’s “compl[iance] with such other terms and conditions as the Secretary [of HUD] may establish to carry out” the CoC program in “an effective and efficient manner” to further the Act’s purposes. 42 U.S.C. § 11386(b)(8); *cf. City of Providence v. Barr*, 954 F.3d 23, 41-42 (1st Cir. 2020) (endorsing similar language used by Congress to allow agency to “impose reasonable conditions on grant awards to ensure that the States [grant recipients] meet statutory, regulatory, and other program requirements”).

Confronted with that express statutory authority, Plaintiffs offer nothing more than two hypotheticals. Pls.’ Br. at 5. Hypotheticals are often a flimsy basis for prohibiting a federal agency from exercising the statutory authority delegated to it by Congress, and the hypotheticals Plaintiffs provide are no exception. In Plaintiffs’ scenarios, legitimate CoC funding activities (such as providing housing and supportive services for the homeless) have a tangential impact on gender-identity or reproductive issues (such as a grant recipient’s use of a client’s preferred pronouns). First, Plaintiffs point to no authority that HUD would consider the grant recipient’s conduct in those hypotheticals to violate the grant conditions. Second, Plaintiffs’ hypotheticals ignore the applicable savings clause. HUD’s written policy states that executive orders “apply only to the extent they are consistent with the requirements stated by applicable Federal statutes, regulations, and the applicable program.” HUD-AR 43. Consistent with that policy, when applicable grant statutes conflict with grant conditions for specific programs, HUD will not require that grantees follow those conditions. *See* Decl. of Claudette Fernandez in Supp. of

United States’ Resp. in Opp’n to Mot. for Prelim. Inj. (“Fernandez Decl.”) ¶ 9, ECF No. 43-1. In sum, Plaintiffs’ hypotheticals do not provide a basis for enjoining the CoC grant conditions here.

Next, Plaintiffs’ brief misses the point of Defendants’ invocation of the Hyde Amendment, which bars the use of federal funds for abortions. Pls.’ Reply at 5. It is true that the Hyde Amendment applies to HHS, not HUD; Defendants’ brief never said otherwise. Defs.’ Mem. at 18. Rather, Defendants said that the CoC condition prohibiting grantees from funding or promoting elective abortions was “*consistent with congressional intent as expressed in the Hyde Amendment to preclude the federal grant money set aside for such supportive services from being used to promote abortion.*” Defs.’ Mem. at 18 (emphasis added); *citing Rust v. Sullivan*, 500 U.S. 173 (1991) (affirming constitutionality of regulations that prohibit use of federal funds to encourage, promote, or advocate abortion as a method of family planning). The fact that the CoC condition largely tracks similar Congressional restrictions on funding abortions is further evidence that the condition is lawful and routine.

In sum, Plaintiffs’ first three APA claims—that the challenged conditions are either not authorized by existing law or are contrary to existing law—are without merit and warrant summary judgment in Defendants’ favor.

B. Plaintiffs’ fourth APA claim fails because the challenged conditions are not arbitrary or capricious.

In support of their arbitrary-and-capricious claim, Plaintiffs continue to express their dissatisfaction with the Defendants’ rationale for adopting the challenged conditions. Pls.’ Reply at 7-10. But whether Plaintiffs are satisfied with the Agencies’ rationale is not the relevant test for whether agency action is arbitrary and capricious in violation of the APA. Rather, the test is whether the agency’s “path may reasonably be discerned.” *City of Los Angeles v. Barr*, 929 F.3d 1163, 1181 (9th Cir. 2019) (quoting *Bowman Transp., Inc. v. Arkansas-Best Freight Sys., Inc.*, 419 U.S. 281, 286 (1974)). If so, the conditions are “rational,” and the district court should not “substitut[e] its judgment” for that of Defendants. *Motor Vehicle Mfrs. Ass’n v. State Farm*, 463 U.S. 29, 42-43 (1983).

Here, the Agencies' path may reasonably be discerned. In fact, the Agencies' rationale for the challenged conditions is self-evident from the language of the conditions themselves—i.e., to prevent violations of federal antidiscrimination laws and ensure that federal grant funds advance, rather than undermine, the statutory purposes of the programs.

A more comprehensive explanation is not required because agencies have typically not been compelled to provide a more extensive explanation where, as here, the challenged agency action is one establishing funding conditions or setting policy priorities. Even if such an explanation were required, the Administrative Record contains documentation of each Agency's rationale for adopting the challenged conditions, as explained in Defendants' primary brief. Defs.' Mem. 21-22.

Again, the APA does not require Defendants to demonstrate to Plaintiffs' satisfaction "that the reasons for the new policy are *better* than the reasons for the old one." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). After all, "new administrations are entitled to reevaluate and modify agency practices, even longstanding ones." *People for the Ethical Treatment of Animals v. U.S. Dep't of Agric.*, 918 F.3d 151, 158 (D.C. Cir. 2019). Here, the Trump Administration is entitled to determine its policy priorities and to make funding decisions based on them. President Trump has decided that promoting DEI is not a priority in his administration. Consistent with the Administration's priorities and using their statutory authority, HUD and HHS have adopted lawful grant conditions to prohibit using grant funds to promote DEI. The agencies' path "may reasonably be discerned," which is all that is required under the APA's arbitrary-and-capricious test. *Barr*, 929 F.3d at 1181.

C. Plaintiffs' fifth APA claim fails because the challenged conditions are constitutional.

Plaintiffs' fifth APA claim—that the challenged conditions are unconstitutional—merely duplicates their constitutional claims and fails for the same reasons, as explained below. *See* Defs.' Mem. at 22; Argument, Section II at 10-16, *infra*.

D. Plaintiffs' sixth APA claim fails because HUD did not forgo any required procedures when adopting its new grant conditions.

Plaintiffs continue to insist that a HUD regulation, 24 C.F.R. § 10.1, required HUD “to undertake notice and comment before imposing the New Conditions.” Pls.’ Reply at 10. But that argument rests on a misreading of the regulation and a mischaracterization of the challenged HUD grant conditions.

By its own terms, the regulation does not require a notice-and-comment period, where, as here, the Agency action is either a statement of policy or interpretive rule:

Notice and public procedure may also be omitted with respect to *statements of policy, interpretative rules*, rules governing the Department’s organization or *its own internal practices or procedures*, or if a statute expressly so authorizes.

24 C.F.R. § 10.1 (emphasis added). Plaintiffs describe the challenged HUD grant conditions as “substantive rules.” Pls.’ Reply at 11. That is inaccurate. They are instead statements of policy. Some of the grant conditions appear in a document titled as such; the others appear in the grant agreement template. *See* HUD-AR 43, 51-52 (“General Administrative, National, and Departmental *Policy Requirements* and Terms for HUD’s Financial Assistance Programs” (emphasis added)); HUD-AR 94, 97 (template titled “Continuum of Care Grant Agreement.”) Neither one of those documents could be accurately characterized as a rule or regulation. By their terms, they embody a general statement of policy and provide a formal notice of a policy to individual grants. As the Supreme Court has recognized, the APA, § 553(b)(A), “exempts ‘general statements of policy,’ which we have previously described as ‘statements issued by an agency to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power.’” *Lincoln v. Vigil*, 508 U.S. 182, 197 (1993) (quoting *Chrysler Corp. v. Brown*, 441 U.S. 281, 302 n.31 (1979)).

Alternatively, the challenged HUD grant conditions are interpretive rules. Such rules “are ‘issued by an agency to advise the public of the agency’s construction of the statutes and rules which it administers.’” *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 97 (2015) (quoting *Shalala v. Guernsey Mem. Hosp.*, 514 U.S. 87, 99 (1995)). And the HUD grant conditions at issue here

are an extension of HUD’s authority to issue CoC conditions under McKinney–Vento’s catchall provision. 42 U.S.C. § 11386(b)(8).

In sum, no notice-and-comment period was required here. Plaintiffs have not demonstrated otherwise. Therefore, their APA claim based on that theory fails as a matter of law.

II. Plaintiffs’ constitutional claims fail.

A. The challenged conditions do not violate the Spending Clause or other constitutional separation-of-powers provisions.

Plaintiffs do not disagree that “[n]othing in the Constitution requires Congress to codify every operational requirement of a grant program in statutory text before it may be enforced.” Pls.’ Reply at 12. In fact, they acknowledge that the Constitution allows executive agencies to impose grant terms pursuant to Congressional authorization. Pls.’ Reply at 13. Those two acknowledgements are vital because, as explained above, Congress has authorized HHS and HUD to impose the challenged conditions here. *See* Section I(A) at 2-6, *supra*; Defs.’ Mem. at 16-20.

Where, as here, Congress confers authority to an agency to impose new conditions on participants in federally funded programs, that authority goes beyond merely issuing “bureaucratic rules regarding the technical administration of” those programs. *Biden v. Missouri*, 595 U.S. 87, 93 (2022) (per curiam). As demonstrated by “longstanding practice,” it allows an agency to impose a “host of conditions.” *Id.*

Because the challenged conditions fall within HHS and HUD’s Congressional authority, they do not violate the Spending Clause or any other constitutional separation-of-powers provision.

B. The “gender ideology”-related conditions and DEI-related conditions do not violate the First Amendment.

Contrary to Plaintiffs’ representation in their brief (at 13), to prevail on their facial attack, Plaintiffs must show that the challenged conditions are unconstitutional “in all [their] applications,” as this Court previously ruled. Am. Mem. & Order at 24, ECF No. 77 (citing authority for the proposition that a plaintiff bringing a facial challenge must “demonstrate that

the law is impermissibly vague in all of its applications”). Because facial attacks “often rest on speculation about the law’s coverage and its future enforcement” and “threaten to short circuit the democratic process,” the Supreme Court has intentionally made them “hard to win.” *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024).

Plaintiffs contend that when evaluating whether the challenged conditions, on their face, violate the First Amendment, the Court should ignore the fact that the challenged conditions merely prohibit discrimination that is already unlawful under other statutes. Pls.’ Reply at 13-14. But the case they cite for that approach—*City of Los Angeles v. Patel*, 576 U.S. 409, 412 (2015)—advocates for that approach based on a Supreme Court case that has since been expressly overturned—*Planned Parenthood v. Casey*, 505 U.S. 833 (1992) *overruled by Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 230 (2022). Moreover, if the Plaintiffs’ incorrect approach were adopted, then federal agencies could never require a grant recipient to certify that it complies with a federal law because the certification would only be prohibiting conduct that is unlawful under other statutes.

1. The antidiscrimination certifications govern government funding, not private speech.

Plaintiffs do not dispute that the Government can, without violating the First Amendment, selectively fund a program to encourage certain activities it believes to be in the public interest because, in so doing, “the Government has not discriminated on the basis of viewpoint; it has merely chosen to fund one activity to the exclusion of the other.” *Rust v. Sullivan*, 500 U.S. 173, 193 (1991); Pls’ Reply at 14-15. Thus, “[a]s a general matter, if a party objects to a condition on the receipt of federal funding, its recourse is to decline the funds. This remains true when the objection is that a condition 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) (collecting cases) (“*Open Society*”).

Applying those principles, the Fourth Circuit recently rejected a First Amendment challenge to a provision that required a grant recipient to certify “that it does not operate *any*

programs promoting DEI that violate any applicable Federal anti-discrimination laws.” *Nat’l Ass’n of Diversity Officers in Higher Educ. v. Trump*, 167 F.4th 86, 103 (4th Cir. 2026) (emphasis added) (“*Diversity Officers*”). The court held that the provision passed muster under the First Amendment, even though it required certification as to “any programs,” not just federally funded ones:

To start, to make out a First Amendment claim, “[p]laintiffs must show that the certification requirement impermissibly restricts their ability to engage in protected speech.” But the Provision requires only that plaintiffs certify compliance with federal antidiscrimination laws, which the First Amendment doesn’t confer a right to violate. Put another way, plaintiffs have no protectable speech interest in operating, and “no constitutional right to operate[,] DEI programs that violate federal antidiscrimination law.”

Indeed, existing federal law already demands such compliance, and plaintiffs have not challenged existing law as viewpoint-discriminatory or as over or underinclusive.

Diversity Officers, 167 F.4th at 103-104 (citations omitted). The DEI certification in this case is the same as the one upheld in *Diversity Officers*: it requires a grant recipient to certify that it does not “operate any program in violation of Federal anti-discrimination laws.” HUD-AR 97; Pls.’ App’x at 2-3 (HHS April GPS Discrimination Certification and May ACF Discrimination Certification). Like the plaintiffs in *Diversity Officers*, Plaintiffs here have no protectable First Amendment right to operate programs in violation of Federal anti-discrimination law.

2. The antidiscrimination certifications are lawful and routine.

Like the unsuccessful plaintiffs in *Diversity Officers*, Plaintiffs try to support their First Amendment challenge with speculation that HHS and HUD will view *all* diversity related conduct as illegal under federal antidiscrimination law. *Compare Diversity Officers*, 167 F.4th at 104, *with* Pls.’ Reply at 16-17. The Fourth Circuit explained that such speculation cannot support a First Amendment challenge because, in a facial challenge, it is the actual text of the challenged certification provision that matters:

Plaintiffs suggest that defendants view all DEI programs as illegal under existing antidiscrimination law. Perhaps, but the Certification Provision doesn’t say that.

What plaintiffs are really asking us to do is read subtext into the Provision's text. And what they're really challenging is how the Administration and its agency actors interpret antidiscrimination law in relation to plaintiffs' DEI programming. Neither is fertile ground for a facial attack against the Certification Provision.

Instead, we're bound by the text. If the President, his subordinates, or another grantor misinterprets federal antidiscrimination law, plaintiffs "can challenge that interpretation in a specific enforcement action." But we can't conclude today that a "substantial number of the Certification Provision's applications" will be unconstitutional.

Diversity Officers, 167 F.4th at 104 (internal punctuation and citations omitted). The same rationale applies here: Plaintiffs cannot prevail on a First Amendment challenge by making unsupported and speculative assumptions that the Government will enforce the DEI-related certifications in bad faith by targeting legal diversity-related conduct.

Plaintiffs acknowledge that if HHS or HUD were to actually misinterpret federal antidiscrimination laws in relation to DEI programs, then they would have a legal remedy. In that instance, they could challenge the Government's interpretation of those laws. Pls.' Reply at 16; *see Nat'l Urban League v. Trump*, 783 F. Supp. 3d 61, 104-105 (D.D.C. 2025) (pointing out that grant recipients could challenge the Government's interpretation of what constitutes illegal DEI in a specific case); *see also Diversity Officers*, 167 F.4th at 104 (recognizing that a grant recipient may challenge the Government's interpretation of a grant condition "in a specific enforcement action").

In sum, the arguments that Plaintiffs assert in support of their First Amendment challenge have already been considered and rejected. Summary judgment for Defendants is proper on Plaintiffs' First Amendment claim.

C. The challenged conditions are not unconstitutionally vague.

Plaintiffs' void-for-vagueness claim (Am. Compl. ¶¶ 352-365) fails as a matter of law because there is no unconstitutional vagueness in the challenged conditions.

Try as they might, Plaintiffs cannot squirm out from underneath the weight of two dauntingly heavy burdens they face when attacking a federal-funding condition on the ground that it is void on its face, rather than as applied to any particular speech.

The first preliminary challenge Plaintiffs face is this: facial challenges in the Due Process context are “typically disfavored” because they rest on speculation, which leads to the risk of premature interpretations. *Draper v. Healey*, 98 F. Supp. 3d 77, 82 (D. Mass. 2015), *aff’d*, 827 F.3d 1 (1st Cir. 2016). “The First Circuit has similarly recognized that even ‘where an enactment is alleged to be ‘impermissibly vague in all of its applications,’ . . . it is clear that such an allegation must first be considered in light of the facts of the case—i.e., on an as-applied basis.’” *Worman v. Healey*, 293 F. Supp. 3d 251, 267 (D. Mass. 2018) (alterations in original) (quoting *Love v. Butler*, 952 F.2d 10, 13 (1st Cir. 1991)), *aff’d*, 922 F.3d 26 (1st Cir. 2019); *see also* *Draper*, 827 F.3d at 3 (explaining that a claim that state regulation is vague, in violation of due process, is “a constitutional claim eligible only for as-applied, not facial, review”); *Bldg. & Const. Trades Dep’t, AFL-CIO v. Allbaugh*, 295 F.3d 28, 33 (D.C. Cir. 2002) (“The 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 . . . is above suspicion in the ordinary course of administration.” (citation omitted)).

Plaintiffs attempt to distinguish those cases by contending that they apply only when a plaintiff complains “of the vagueness of the law as applied to the conduct of others.” Pls.’ Reply at 18. That is incorrect. For example, the lead case Defendants cited—*Draper v. Healey*—involved a void-for-vagueness challenge to a state regulation that governed the conduct of the plaintiffs who brought the suit. *See* Defs.’ Mem. at 32 (citing *Draper*, 98 F. Supp. 3d at 79). The plaintiffs in that case included handgun dealers who were challenging a state regulation that governed their conduct. *Draper*, 98 F. Supp. 3d at 79.¹ Plaintiffs’ unsuccessful attempt to

¹ Similarly, another case Defendants cited—*Worman v. Healey*—was brought by both firearm dealers and owners to challenge a statute that restricted their conduct by banning transfer or possession of certain assault weapons. 293 F. Supp. 3d 251, 267-71 (D. Mass. 218).

distinguish those cases fails. The fact remains that the void-for-vagueness challenge they bring is one the law disfavors.

The second burden Plaintiffs face is this: the vagueness doctrine applies less stringently in the context of federal funding conditions, such as federal grant conditions. *See Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 572-73 (1998). The Supreme Court held as much when rejecting a facial vagueness challenge to standards in the National Foundation on the Arts and Humanities Act. *Id.* at 572–73. Those standards directed the National Endowment for the Arts “to ensure that ‘artistic excellence and artistic merit are the criteria by which [grant] applications are judged, taking into consideration general standards of decency and respect for the diverse beliefs and values of the American public.’” *Id.* at 572 (citation modified). The Court acknowledged that “[t]he terms of the provision are undeniably opaque, and if they appeared in a criminal statute or regulatory scheme, they could raise substantial vagueness concerns.” *Id.* at 588. But it explained that, in the funding context, “when the Government is acting as patron rather than as sovereign, the consequences of imprecision are not constitutionally severe.” *Id.* at 589.

Applying *Finley*'s permissive standard, the Fourth Circuit recently held that certain provisions in executive orders directing agencies to end “diversity, equity, and inclusion” programs within federal grant and contract processes were not unconstitutionally vague. *Diversity Officers*, 167 F.4th at 101-102. Although Plaintiffs try to distinguish *Diversity Officers* in their reply (at n.8), their reading of the case is too narrow. They interpret it as resting wholly on the ground that challenged executive orders were not directed to the plaintiffs. *Id.* But that is

Plaintiffs' brief also questions why Defendants cited a case in which the D.C. Circuit rejected a facial attack to an executive order—*Building and Construction Trades Department, AFL-CIO v. Allbaugh*, 295 F.3d 28, 33 (D.C. Cir. 2022). Pls.' Reply at 18 n. 9. But the answer is obvious from Defendants' brief itself. Defs.' Mem. at 32. The parenthetical to the case quoted this sentence from *Allbaugh*: “The 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 . . . is above suspicion in the ordinary course of administration.” *Id.* (citing *Allbaugh*, 295 F.3d at 33).

not what the Fourth Circuit cited as the exclusive basis for its ruling. Rather, the court stated that it was “also guided by *Finley*’s refrain that courts should afford greater latitude for vagueness in funding decisions than they would ‘in a criminal statute or regulatory scheme.’” *Diversity Officers*, 167 F.4 at 102. Affording that greater latitude to the executive orders, the Fourth Circuit held that they satisfied the Fifth Amendment’s requirement that they provide fair notice and prohibit arbitrary enforcement. *Id.* at 101-102.

Here, particularly when afforded the greater latitude for funding conditions, the challenged conditions pass muster under the Fifth Amendment. Many of the provisions Plaintiffs challenge—such as the antidiscrimination provisions—simply require compliance with existing federal law. The same is true for the conditions referencing executive orders or prohibiting the use of funds to “promote gender ideology” or elective abortion. Those provisions are not free-floating or standardless. They are expressly defined by, and must be read in conjunction with, the underlying executive orders and longstanding federal funding restrictions. *See, e.g., United States v. Hansen*, 599 U.S. 762, 774 (2023) (explaining that words and phrases within statutes must be interpreted in the context of their legal origin and longstanding use). When read in context and afforded the required degree of latitude—as these grant conditions must be—they convey a sufficiently definite meaning to grant recipients.

Finally, once again, Plaintiffs are not without a legal remedy if the Government were to arbitrarily enforce the challenged provisions. In fact, Plaintiffs do not deny that federal regulations expressly provide them, as grant recipients, with notice and an opportunity to cure or appeal before the termination or cancellation of funding for non-compliance with the terms and conditions of the grants. *See, e.g.,* 2 C.F.R. §§ 200.341, 200.342 (uniform requirements); 24 C.F.R. § 578.99(e) (CoC); 24 C.F.R. §§ 570.496, 570.502, 570.900(b)(5)-(7), 570.910(a) (CDBG); *id.* § 576.501(b) (ESG grantee opportunity to cure); *id.* § 92.552 (same for HOME-ARP); 45 C.F.R. § 75.374 (HHS). These provisions ensure that grant recipients like Plaintiffs are afforded meaningful procedural protections before any adverse funding action for non-compliance is finalized.

Unable to deny the existence of that legal remedy, Plaintiffs backtrack and contend that their real concern is not potential grant cancellations, but potential liability under the False Claims Act. Pls.’ Reply at 20. But the False Claims Act is “a fraud statute” that punishes false statements made with a “culpable state of mind.” *United States ex rel. Schutte v. SuperValu Inc.*, 598 U.S. 739, 749-52 (2023) (emphasis added) (quotation marks omitted). The Act reaches neither “an innocent, good-faith mistake about the meaning of an applicable rule,” nor “claims made based on reasonable but erroneous interpretations of a defendant’s legal obligations.” *United States ex rel. Purcell v. MWI Corp.*, 807 F.3d 281, 287-88 (D.C. Cir. 2015). Those limitations provide ample protection against the sort of unfair liability that Plaintiffs now contend is the real source of their worry.

For all these reasons, the challenged conditions are not unconstitutionally vague, and Plaintiffs’ Fifth Amendment claim should be rejected.

III. Plaintiffs’ ultra vires claim is no longer at issue.

Summary judgment is proper when a party explicitly abandons a claim. *See Schneider v. Loc. 103 I.B.E.W. Health Plan*, 442 F.3d 1, 3 (1st Cir. 2006) (affirming summary judgment for the defendant on two claims because the plaintiff had abandoned them in his summary-judgment opposition brief). Here, in their response brief, Plaintiffs explicitly abandon their ultra vires claim. Pls.’ Reply at 20-21. There is “no need for the Court to consider Plaintiffs’ ultra vires claim,” Plaintiffs concede, because, as Defendants pointed out in their principal summary-judgment brief, ultra vires review is not available here. Pls.’ Reply 21; Defs.’ Mem. at 34-35. Summary judgment for Defendants on Plaintiffs’ ultra vires claim is therefore appropriate.

IV. Should the Court grant summary judgment for Plaintiffs, the only proper remedy would be vacatur and remand.

The parties agree that if the Plaintiffs were to prevail on summary judgment, this Court has the authority to vacate the challenged conditions. Pls.’ Reply at 21; Defs.’ Mem. at 36. But Plaintiffs encourage the Court to overstep and issue a broader injunction that disregards the bedrock principles of equity—i.e., that “injunctive relief should be no more burdensome to the

defendant than necessary to provide complete relief to the plaintiffs.” *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979); *see* Pls.’ Reply at 21-22. Specifically, Plaintiffs seek an injunction that would be impermissibly overbroad in two respects.

First, the injunction Plaintiffs seek is overly broad because it would enjoin Defendants from adopting “substantially similar” grant conditions. Pls.’ Reply. at 22. For the reasons stated in Defendants’ primary brief, this Court lacks jurisdiction to issue an injunction barring hypothetical agency action. Defs.’ Mem. at 38-40. Contrary to Plaintiffs’ argument, an injunction barring a federal agency from taking future action is far from “ordinary.” Pls.’ Reply at 24. To the contrary, the Supreme Court has described it as “a drastic and extraordinary remedy, which should not be granted as a matter of course.” *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). In fact, the Supreme Court has cautioned district courts not to issue “the additional and extraordinary relief of an injunction” when, as is the case here, vacatur is enough. *Id.* at 166. The one case Plaintiffs cite for the proposition that the prospective injunctive relief they seek is “ordinary” is not on point. Pls.’ Reply at 24 (citing *FTC v. Pukke*, 53 F.4th 80, 110 (4th Cir. 2022)). That Fourth Circuit case concerned an injunction issued against private parties—not a federal agency, so there was no problem (as there is here) with the injunction intruding on a domain that Congress has delegated to an administrative agency. *See Pukke*, 53 F.4th at 110; *SEC v. Chenery Corp.*, 318 U.S. 80, 88 (1943) (explaining that the reviewing court should not “intrude upon the domain which Congress has exclusively entrusted to an administrative agency”); *Cnty. of L.A. v. Shalala*, 192 F.3d 1005, 1011 (D.C. Cir. 1999) (explaining that, under settled principles of administrative law, when a court reviewing agency action determines that an agency made an error of law, the court’s inquiry is at an end: the case must be remanded to the agency for further action consistent with the corrected legal standards).

In response, Plaintiffs contend that a nationwide injunction would be necessary to “help those Plaintiffs who have already accepted awards from enforcement of conditions already incorporated into signed agreements.” Pls.’ Reply at 22. Not so. Vacating the challenged conditions would necessarily mean that Defendants could not enforce them (assuming no court

in ongoing litigation later finds that the conditions are permissible, at which point the challenged conditions would be enforced).

Second, the injunction Plaintiffs seek is overly broad because it would apply not just to Plaintiff and their members but to all grant applicants nationwide. Pls.' Br. at 24-25. Not only do Plaintiffs lack standing for such a request (*see* Defs.' Mem. at 40-41), such an injunction would be the equivalent of a universal injunction, which, as the Supreme Court recently held, a federal court lacks the equitable power to grant. *Trump v. CASA, Inc.*, 606 U.S. 831, 841, (2025) (“A universal injunction can be justified only as an exercise of equitable authority, yet Congress has granted federal courts no such power.”). Rather than issue an overbroad injunction, if it determines that an injunction is necessary, the Court should tailor any relief to Plaintiffs and not to all applicants or grantees. *Id.* at 861 (staying preliminary injunctions “to the extent that the injunctions are broader than necessary to provide complete relief to each plaintiff with standing to sue”).

In short, even if Plaintiffs were to prevail, settled principles of administrative and equitable law make clear that vacatur and remand—not a sweeping, nationwide injunction—provide the proper and sufficient remedy. Any broader relief would exceed this Court’s authority and impermissibly intrude upon functions Congress has committed to the Agencies.

CONCLUSION

The Court should decline Plaintiffs’ request for a nationwide injunction and, for the reasons stated above and in Defendants’ principal briefing, issue summary judgment in Defendants’ favor on all of Plaintiffs’ claims.

Dated: May 6, 2026

U.S. DEPARTMENT OF HOUSING & URBAN
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STATEMENT RE NEED FOR HEARING

Pursuant to Local Rule 7(c), Defendants state that they do not request oral argument or an evidentiary hearing.

/s/ Andrea Hyatt

Andrea Hyatt
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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2026, I electronically filed the foregoing document and the accompanying exhibits through this Court's Electronic Case Filing (ECF) system, which will serve it upon all registered users in accordance with Federal Rule of Civil Procedure 5(b)(2) (E).

/s/ Andrea Hyatt

Andrea Hyatt
Assistant U.S. Attorney