

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

AMERICAN ACADEMY OF HIV
MEDICINE; *et al.*,

Plaintiffs,

v.

HEALTH RESOURCES AND SERVICES
ADMINISTRATION; *et al.*,

Defendants.

Case No. 1:26-cv-12638-WGY

**PLAINTIFFS' RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS**

TABLE OF CONTENTS

TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES.....	iii
INTRODUCTION	1
ARGUMENT.....	1
I. Plaintiffs Have Standing.....	1
II. The Tucker Act Does Not Deprive the Court of Subject Matter Jurisdiction.	3
A. The Court Has Jurisdiction Over Plaintiffs’ APA Claims (Claims I-IV).....	4
B. The Court Has Jurisdiction Over Plaintiffs’ Non-APA Claims (Claims V-VII).	7
III. The Challenged Conditions Constitute Final Agency Action.	8
IV. Plaintiffs’ Claims Are Ripe for Review.	14
V. The Conditions Are Not Actions Committed to Agency Discretion.	17
VI. The Scope of Relief Should Not Be Limited to Provider Plaintiffs.	20
CONCLUSION.....	20
CERTIFICATE OF SERVICE	22

TABLE OF AUTHORITIES

CASES	Page(s)
<i>Aguasvivas v. Pompeo</i> , 984 F.3d 1047 (1st Cir. 2021)	15
<i>Am. Ass’n of Physicians for Hum. Rts., Inc. v. Nat’l Inst. of Health</i> , 795 F.Supp.3d 678 (D. Md. 2025)	2, 7
<i>Am. Ass’n of Physics Tchrs., Inc. v. Nat’l Sci. Found.</i> , 804 F.Supp.3d 45 (D.D.C. 2025)	7
<i>Am. Fed’n of Tchrs. v. Dep’t of Educ.</i> , 796 F.Supp.3d 66 (D. Md. 2025)	14
<i>Am. Pub. Health Ass’n v. Nat’l Inst. of Health</i> , 786 F.Supp.3d 237 (D. Mass. 2025)	2
<i>Am. Pub. Health Ass’n v. Nat’l Inst. of Health</i> , 791 F.Supp.3d 119 (D. Mass. 2025).....	12, 13
<i>Ass’n of Am. Universities v. Dep’t of Def.</i> , 792 F.Supp.3d 143 (D. Mass. 2025)	20
<i>Ass’n of Am. Universities v. Dep’t of Def.</i> , 806 F.Supp.3d 79 (D. Mass. 2025)	20
<i>Ass’n of Am. Universities v. Nat’l Sci. Found.</i> , 788 F.Supp.3d 106 (D. Mass. 2025)	2
<i>Barlow v. Collins</i> , 397 U.S. 159 (1970).....	1
<i>Bennett v. Spear</i> , 520 U.S. 154 (1997).....	9
<i>Biden v. Missouri</i> , 595 U.S. 87 (2022).....	18
<i>Bowen v. Massachusetts</i> , 487 U.S. 879 (1988)	1
<i>Citizens Alert Regarding the Env’t v. EPA</i> , 102 F. App’x 167 (D.C. Cir. 2004)	14
<i>City of Fresno v. Mullin</i> , No. 26-CV-01535, 2026 WL 1998576 (N.D. Cal. July 9, 2026)	4, 7, 11, 12, 13

<i>City of Providence v. Barr</i> , 954 F.3d 23 (1st Cir. 2020)	18
<i>Cnty. of King v. Turner</i> , No. 25-3664, 2026 WL 2489361 (9th Cir. Aug. 25, 2026)	12, 13
<i>Cnty. of Santa Clara v. Noem</i> , 815 F.Supp.3d 979 (N.D. Cal. 2025)	2, 5, 15
<i>Commonwealth v. Trump</i> , No. 25-CV-12162, 2026 WL 1584837 (D. Mass. June 3, 2026)	18
<i>Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.</i> , 603 U.S. 799 (2024)	1, 20
<i>Cummings v. Premier Rehab Keller, P.L.L.C.</i> , 596 U.S. 212 (2022)	8
<i>Dep't of Com. v. New York</i> , 588 U.S. 752 (2019)	17, 18
<i>Dep't of Educ. v. California</i> , 604 U.S. 650 (2025)	4
<i>Diamond Alternative Energy, LLC v. EPA</i> , 606 U.S. 100 (2025)	15
<i>Dugan v. Rank</i> , 372 U.S. 609 (1963)	8
<i>Food & Drug Admin. v. R. J. Reynolds Vapor Co.</i> , 606 U.S. 226 (2025)	14
<i>Freedom Network v. Trump</i> , 830 F.Supp.3d 681 (N.D. Ill. 2026)	5, 7, 13, 14
<i>Harmon v. Thornburgh</i> , 878 F.2d 484 (D.C. Cir. 1989)	20
<i>Hous. Auth. of City & Cnty. of S.F. v. Turner</i> , No. 25-CV-08859, 2025 WL 3187761 (N.D. Cal. Nov. 14, 2025)	6, 11, 13
<i>Illinois v. Fed. Emergency Mgmt. Agency</i> , 801 F.Supp.3d 75 (D.R.I. 2025)	<i>passim</i>
<i>Illinois v. Noem</i> , 813 F.Supp.3d 282 (D.R.I. 2025)	7, 16, 19

<i>Jensen v. Rhode Island Cannabis Control Comm’n</i> , 160 F.4th 18 (1st Cir. 2025)	15, 16, 17
<i>Joshua v. United States</i> , 17 F.3d 378 (Fed. Cir. 1994)	8
<i>Kadel v. N.C. State Health Plan for Tchrs. & State Emps.</i> , 12 F.4th 422 (4th Cir. 2021)	8
<i>Larson v. Domestic & Foreign Com. Corp.</i> , 337 U.S. 682 (1949)	7
<i>Lincoln v. Vigil</i> , 508 U.S. 182 (1993)	19
<i>Martin Luther King, Jr. Cnty. v. Turner</i> , 785 F.Supp.3d 863 (W.D. Wash. 2025), <i>aff’d in part and remanded sub nom.</i> <i>Cnty. of King v. Turner</i> , 2026 WL 2489361 (9th Cir. Aug. 25, 2026)	13
<i>Massachusetts v. Nat’l Inst. of Health</i> , 164 F.4th 1 (1st Cir. 2026)	3, 4, 5, 6
<i>Massachusetts v. Trump</i> , 790 F.Supp.3d 8 (D. Mass. 2025)	7
<i>Massachusetts v. U.S. Dep’t of Agric.</i> , No. CV 26-11396, 2026 WL 1815807 (D. Mass. June 24, 2026)	13, 16, 18
<i>Megapulse, Inc. v. Lewis</i> , 672 F.2d 959 (D.C. Cir. 1982)	5
<i>Metro. Transportation Auth. v. Duffy</i> , No. 25-CV-01413, 2026 WL 588117 (S.D.N.Y. Mar. 3, 2026)	5, 7
<i>N.H. Indonesian Cmty. Support v. Trump</i> , 157 F.4th 29 (1st Cir. 2025), <i>cert. denied</i> , No. 25-899, 2026 WL 1871309 (U.S. June 30, 2026)	20
<i>Nat’l All. to End Homelessness v. Turner</i> , 827 F.Supp.3d 281 (D.R.I. 2026)	18
<i>Nat’l Inst. of Health v. Am. Pub. Health Ass’n</i> , 145 S.Ct. 2658 (2025)	3, 6
<i>Nat’l Park Hosp. Ass’n v. Dep’t of Interior</i> , 538 U.S. 803 (2003)	16, 17

<i>New Hampshire Lottery Comm’n v. Rosen</i> , 986 F.3d 38 (1st Cir. 2021)	15
<i>New York v. Admin. for Child. & Fams.</i> , 833 F.Supp.3d 361 (S.D.N.Y. 2026)	<i>passim</i>
<i>New York v. Kennedy</i> , 155 F.4th 67 (1st Cir. 2025)	4, 6
<i>New York v. Trump</i> , 171 F.4th 1 (1st Cir. 2026)	4, 6, 18, 19
<i>New York v. Trump</i> , 133 F.4th 51 (1st Cir. 2025)	9
<i>New York v. U.S. Dep’t of Health & Hum. Servs.</i> , 414 F.Supp.3d 475 (S.D.N.Y. 2019)	16
<i>Oregon Council for Humans. v. U.S. DOGE Serv.</i> , 794 F.Supp.3d 840 (D. Or. 2025)	20
<i>Oregon v. Kennedy</i> , 831 F.Supp.3d 1048 (D. Or. 2026)	15
<i>PFLAG, Inc. v. Trump</i> , 769 F.Supp.3d 405 (D. Md. 2025)	2, 16
<i>Planned Parenthood of New York City, Inc. v. U.S. Dep’t of Health & Hum. Servs.</i> , 337 F.Supp.3d 308 (S.D.N.Y. 2018)	13, 14
<i>Planned Parenthood of Wisconsin, Inc. v. Azar</i> , 316 F.Supp.3d 291 (D.D.C. 2018), <i>vacated and remanded</i> , 942 F.3d 512 (D.C. Cir. 2019)	13, 14
<i>Rattlesnake Coal. v. EPA</i> , 509 F.3d 1095 (9th Cir. 2007)	14
<i>Res. Conservation Grp., LLC v. United States</i> , 597 F.3d 1238 (Fed. Cir. 2010)	5
<i>Rhode Island Coal. Against Domestic Violence v. Bondi</i> , 794 F.Supp.3d 58 (D.R.I. 2025)	<i>passim</i>
<i>Rhode Island Coal. Against Domestic Violence v. Kennedy</i> , 812 F.Supp.3d 180 (D.R.I. 2025), <i>appeal dismissed</i> , No. 25-2229, 2026 WL 926474 (1st Cir. Jan. 5, 2026)	<i>passim</i>

<i>San Francisco A.I.D.S. Found. v. Trump</i> , 786 F.Supp.3d 1184 (N.D. Cal. 2025)	2, 8
<i>San Francisco Unified Sch. Dist. v. AmeriCorps</i> , 789 F.Supp.3d 716 (N.D. Cal. 2025)	11, 13
<i>Sierra Club v. Trump</i> , 929 F.3d 670 (9th Cir. 2019)	14
<i>Sindicato Puertorriqueño de Trabajadores v. Fortuño</i> , 699 F.3d 1 (1st Cir. 2012)	15
<i>Speech First, Inc. v. Whitten</i> , 145 S.Ct. 701 (2025)	2
<i>State ex rel. Becerra v. Sessions</i> , 284 F.Supp.3d 1015 (N.D. Cal. 2018)	11, 13
<i>Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.</i> , 600 U.S. 181 (2023)	2
<i>Susan B. Anthony List v. Driehaus</i> , 573 U.S. 149 (2014)	15
<i>Sustainability Inst. v. Trump</i> , 165 F.4th 817 (4th Cir. 2026)	4
<i>Tootle v. Sec’y of Navy</i> , 446 F.3d 167 (D.C. Cir. 2006)	5
<i>Trump v. Cook</i> , 146 S.Ct. 2234 (2026)	8
<i>U.S. Army Corps of Eng’rs v. Hawkes Co.</i> , 578 U.S. 590 (2016)	9
<i>United Food & Com. Workers Union Loc. 751 v. Brown Grp., Inc.</i> , 517 U.S. 544 (1996)	2
<i>Washington v. Trump</i> , 766 F.Supp.3d 1138 (W.D. Wash. 2025)	2, 17
<i>Washington v. Trump</i> , 768 F.Supp.3d 1239 (W.D. Wash. 2025)	10
<i>Washington v. U.S. Dep’t of Health & Hum. Servs.</i> , No. 25-CV-01748, 2025 WL 3002366 (D. Or. Oct. 27, 2025)	<i>passim</i>

<i>Washington v. U.S. Dep’t of Homeland Sec.</i> , No. 25-CV-1401, 2026 WL 1469538 (W.D. Wash. May 26, 2026).....	5, 7
<i>Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.</i> , 586 U.S. 9 (2018).....	17
<i>Woonasquatucket River Watershed Council v. U.S. Dep’t of Agric.</i> , No. 25-1428, 2026 WL 2279789 (1st Cir. Aug. 7, 2026)	2, 6, 20

STATUTES

20 U.S.C. §§ 1681, et seq.....	10
28 U.S.C. § 1491(a)(1).....	5
28 U.S.C. § 1491(b)(1)	5
28 U.S.C. § 1491(b)(4)	5
42 U.S.C. § 18114.....	18
42 U.S.C. § 18116.....	18
42 U.S.C. § 18116(a)	8
42 U.S.C. § 300ff-22(a)	18
42 U.S.C. § 300ff-22(b)(3)	18
42 U.S.C. §§ 300ff, et seq.....	19
5 U.S.C. § 701.....	3
5 U.S.C. § 701(a)(2).....	17, 19
5 U.S.C. § 704.....	9

REGULATIONS

45 C.F.R. § 92.4	8
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INTRODUCTION

This case challenges Defendants’ agency-wide policy implementing Executive Order 14168 (Dkt. 19-5, “Gender Order”) that prohibits healthcare providers participating in the Ryan White Program from acknowledging, affirming, documenting, or respecting their transgender patients’ identities, which, *a fortiori*, includes providing medical care for gender dysphoria (“gender-affirming medical care”). Defendants wrongly assert that Plaintiffs’ claims are not justiciable, while ignoring that “judicial review of ... administrative action is the rule, and [that] nonreviewability [is] an exception which must be demonstrated.” *Barlow v. Collins*, 397 U.S. 159, 166 (1970). Indeed, the Administrative Procedure Act (“APA”) establishes a “basic presumption that anyone injured by agency action should have access to judicial review.” *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 824 (2024) (cleaned up). As such, the Supreme Court has directed that the APA’s “generous review provisions must be given a hospitable interpretation.” *Bowen v. Massachusetts*, 487 U.S. 879, 904 (1988) (citation omitted).

For the reasons here, and those argued in other briefing (*see* Dkts. 10, 47, 69), the Court has subject-matter jurisdiction and Plaintiffs’ claims are justiciable. The Court should deny Defendants’ motion to dismiss (Dkt. 55) and reject like arguments in their Pretrial Brief (Dkt. 70).

ARGUMENT

I. Plaintiffs Have Standing.

Plaintiffs here respond only to the three arguments presented by Defendants’ motion.¹ To start, Defendants argue that Plaintiffs “cannot identify future grant awards that do not yet exist” such that their injury is speculative. Dkt. 55 at 9. Defendants are mistaken. “Plaintiffs are challenging the *policy* of applying the [Conditions] to all of Defendants’ [Ryan White funding],

¹ Plaintiffs have addressed at length why they have standing to challenge the Conditions and incorporate those arguments here. *See* Dkt. 69 at 9–11; *see also* Dkt. 10 at 10–13; Dkt. 47 at 6–8.

which is enough to establish standing.” *Cnty. of Santa Clara v. Noem*, 815 F.Supp.3d 979, 1019 (N.D. Cal. 2025). Their injury emanates from the *ineligibility* for Ryan White funding, whether as a grantee or sub-grantee, created by the Conditions. The imminent loss of funding, or loss of funding eligibility, because of the Conditions satisfies Article III’s standing requirement. *See PFLAG, Inc. v. Trump*, 769 F.Supp.3d 405, 423 (D. Md. 2025).² “[T]hat the loss of funds may have not yet materialized ... does not mean that there is no imminent injury or that Plaintiffs lack standing on this ground.” *Washington v. Trump*, 766 F.Supp.3d 1138, 1149 (W.D. Wash. 2025).

Defendants argue that Associational Plaintiffs’ individual members must participate here to adjudicate the claims. Dkt. 55 at 10. Not true. “Plaintiffs here have challenged sweeping agency actions ... and thus [] the participation of individual members ... is not required.” *Am. Pub. Health Ass’n v. Nat’l Inst. of Health*, 786 F.Supp.3d 237, 253 (D. Mass. 2025) (“*APHA*”). Plaintiffs’ legal questions can be resolved without individual members’ participation and “individual participation is not normally necessary when an association seeks prospective or injunctive relief for its members.” *United Food & Com. Workers Union Loc. 751 v. Brown Grp., Inc.*, 517 U.S. 544, 546 (1996); *see also Woonasquatucket River Watershed Council v. U.S. Dep’t of Agric.*, No. 25-1428, 2026 WL 2279789, at *7 (1st Cir. Aug. 7, 2026); *GLMA*, 795 F.Supp.3d at 694.

Finally, Defendants’ argument calling into question associational standing altogether, Dkt. 55 at 11, borders on frivolous. The Supreme Court recently reaffirmed the availability of associational standing in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 199–200 (2023). *See also Speech First, Inc. v. Whitten*, 145 S.Ct. 701, 703 n.1

² *See also San Francisco A.I.D.S. Found. v. Trump*, 786 F.Supp.3d 1184, 1209–10 (N.D. Cal. 2025) (“*SFAF*”) (a plaintiff’s allegation that they “will likely lose federal funding” is a cognizable injury-in-fact); *Ass’n of Am. Universities v. Nat’l Sci. Found.*, 788 F.Supp.3d 106, 123 (D. Mass. 2025) (“Qualifying for less federal funding is a future injury that is sufficient to confer standing where the threatened injury is certainly impending, or there is a substantial risk that the harm will occur.” (cleaned up)); *Am. Ass’n of Physicians for Hum. Rts., Inc. v. Nat’l Inst. of Health*, 795 F.Supp.3d 678, 693 (D. Md. 2025) (“*GLMA*”) (holding that plaintiffs had standing because they “suffered an injury in fact due to ... the inability to apply for new Grants, related to LGBTQI+ health”).

(2025) (Thomas, J., dissenting from denial of certiorari) (recognizing that “under our precedents, an association ... can establish standing to sue on behalf of its members”).

II. The Tucker Act Does Not Deprive the Court of Subject Matter Jurisdiction.

Defendants challenge this Court’s jurisdiction to entertain Plaintiffs’ claims simply because the Conditions relate to grant funding and thus, according to Defendants, the Tucker Act deprives this Court of jurisdiction. *See* Dkt. 55 at 15–18. Defendants are grossly mistaken.

First, this Court has jurisdiction over Plaintiffs’ APA claims (Claims I-IV) because “the Tucker Act does not cover challenges to grant funding conditions.” *Rhode Island Coal. Against Domestic Violence v. Bondi*, 794 F.Supp.3d 58, 67 (D.R.I. 2025) (“*Bondi*”). “APA challenges to [agency] guidance [relating to funding] belong in district court.” *Nat’l Inst. of Health v. Am. Pub. Health Ass’n*, 145 S.Ct. 2658, 2662 (2025) (Barrett, J., concurring); *see also id.* at 2662–63 (Roberts, C.J., concurring in part and dissenting in part, joined by Sotomayor, Kagan, and Jackson, J.J.) (“[T]he District Court’s vacatur of the challenged directives [relating to NIH research funding] ... —which has prospective and generally applicable implications ... —falls well within the scope of the District Court’s jurisdiction under the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*”); *Massachusetts v. Nat’l Inst. of Health*, 164 F.4th 1, 11 (1st Cir. 2026) (“[A] straightforward application of *APHA* resolves the jurisdictional inquiry. Justice Barrett’s concurrence in that case plainly distinguishes between challenges to agency-wide policies, which belong in district court, and challenges to the withholding of contractually awarded funds that result from those policies, which belong in the CFC.”).

Second, this Court has jurisdiction in any event over Plaintiffs’ separate constitutional and Affordable Care Act (“ACA”) claims (Claims V-VII), which do not depend on the APA’s sovereign immunity waiver and are therefore not subject to the Tucker Act.

A. The Court Has Jurisdiction Over Plaintiffs' APA Claims (Claims I-IV).

In challenging this Court's jurisdiction, Defendants rely on inapposite cases that "involved the termination of grant funding." *City of Fresno v. Mullin*, No. 26-CV-01535, 2026 WL 1998576, at *34 (N.D. Cal. July 9, 2026); *see* Dkt. 55 at 15–18 (citing *Dep't of Educ. v. California*, 604 U.S. 650 (2025) and *Sustainability Inst. v. Trump*, 165 F.4th 817 (4th Cir. 2026)). But the caselaw draws a clear distinction between cases based on specific contract terms and/or seeking monetary relief based on a contract, which belong in the Court of Federal Claims pursuant to the Tucker Act, and those challenging *agency policies* setting forth *eligibility* for federal funding and governing the conduct of federal funding recipients, which belong in district court. Defendants ignore this basic distinction, as well as the First Circuit's guidance on this matter, as set forth in *Massachusetts*, 164 F.4th 1; *New York v. Trump*, 171 F.4th 1 (1st Cir. 2026); and other cases.

As in other cases where jurisdiction lay with a district court, here, Plaintiffs "seek to vacate a policy that establishes purportedly unlawful additional conditions to their funding," *New York v. Admin. for Child. & Fams.*, 833 F.Supp.3d 361, 384 (S.D.N.Y. 2026) ("*New York v. ACF*"), and "to set aside unlawful conditions that Defendants have imposed as requirements to be eligible to receive an award," *Rhode Island Coal. Against Domestic Violence v. Kennedy*, 812 F.Supp.3d 180, 190 (D.R.I. 2025) ("*Kennedy*"), *appeal dismissed*, No. 25-2229, 2026 WL 926474 (1st Cir. Jan. 5, 2026). "Plaintiffs' claims do not revolve on any terminations of funding." *City of Fresno*, 2026 WL 1998576, at *34. And Plaintiffs "do not challenge any withholding of funds promised under grant agreements," *Massachusetts*, 164 F.4th at 12, or "the cancellation of grants." *New York v. Kennedy*, 155 F.4th 67, 75 n.4 (1st Cir. 2025). Rather, this case concerns the lawfulness of agency-wide policy to impose conditions on Ryan White funding that would render Plaintiffs *ineligible* for such funding or to participate in the Program, and unable to care for their patients living with

HIV. *See* Dkt. 69 at 1–2, 5; Compl. ¶¶ 164–187 (defining the Challenged Conditions).

“Because the APA only disclaims its waiver of sovereign immunity where there is a different remedy available at law, ‘a federal district court can[not] be deprived of jurisdiction by the Tucker Act when no jurisdiction lies in the Court of Federal Claims.’” *Metro. Transportation Auth. v. Duffy*, No. 25-CV-01413, 2026 WL 588117, at *27 (S.D.N.Y. Mar. 3, 2026) (“MTA”) (quoting *Tootle v. Sec’y of Navy*, 446 F.3d 167, 176 (D.C. Cir. 2006)) (alteration in original). The Tucker Act only grants the Court of Federal Claims “exclusive jurisdiction over, as relevant here, claims ‘founded ... upon any express or implied contract with the United States.’” *Massachusetts*, 164 F.4th at 10 (quoting 28 U.S.C. § 1491(a)(1)); *see also* *Cnty. of Santa Clara*, 815 F.Supp.3d at 1023 (noting that “the CFC ... focuses exclusively on monetary damages for contract actions”).³ “Plaintiffs here have not sued under any cause of action that would lead to the payment of money from the United States Treasury.” *MTA*, 2026 WL 588117, at *28. Their claims are not “implied or disguised breach-of-contract claims.” *Washington v. U.S. Dep’t of Health & Hum. Servs.*, No. 25-CV-01748, 2025 WL 3002366, at *7 (D. Or. Oct. 27, 2025).⁴ “[T]he question is whether [HRSA

³ The Tucker Act itself supports Plaintiffs. The statute provides: “Both the United States Court of Federal Claims and the district courts of the United States shall have jurisdiction to render judgment on an action by an interested party objecting to a solicitation by a Federal agency for bids or proposals for a proposed contract or to a proposed award or the award of a contract or any alleged violation of statute or regulation in connection with a procurement or a proposed procurement.” 28 U.S.C. § 1491(b)(1); *see also* *Res. Conservation Grp., LLC v. United States*, 597 F.3d 1238, 1246 n.12 (Fed. Cir. 2010) (noting that “a disappointed bidder in a nonprocurement case could [] theoretically bring its bid protest challenge in a federal district court”). And it specifies that in such bid protest cases, “the courts shall review the agency’s decision pursuant to the standards set forth in section 706 of title 5.” 28 U.S.C. § 1491(b)(4). That district courts have jurisdiction over such nonprocurement bid protests illustrates that APA claims challenging grant conditions and seeking only declaratory and injunctive relief are properly before this Court.

⁴ Given the case law set forth herein, the Court need not consider the test set forth in *Megapulse, Inc. v. Lewis*, 672 F.2d 959, 964–71 (D.C. Cir. 1982). *See* *Massachusetts*, 164 F.4th at 10–12. Nonetheless, “in examining the ‘source of the rights’ and the ‘type of relief sought,’ ... Plaintiffs’ APA claims do not arise out of contractual obligations.” *New York v. ACF*, 833 F.Supp.3d at 385 (quoting *Megapulse*, 672 F.2d at 968). For one, “the gravamen of Plaintiffs’ allegations does not turn on contract terms, but the federal statutes ... that Congress put in place,” *id.*, and the Constitution. For another, “Plaintiffs also do not seek to reinstate any contractual grants, nor do they request money damages.” *Id.* *See also* *Washington v. U.S. Dep’t of Homeland Sec.*, No. 25-CV-01401, 2026 WL 1469538, at *7 (W.D. Wash. May 26, 2026) (“The source of Washington’s asserted rights is federal law, not the SSP grant agreement, and the relief sought is directed to the legality of agency action, not payment of money damages.”); *Freedom Network v. Trump*, 830 F.Supp.3d 681, 700 (N.D. Ill. 2026) (“Freedom Network seeks to enjoin enforcement of the funding conditions to define its obligations going forward, not to recover money from the government. That is a claim for

and] HHS ha[ve] legal authority to condition ... grants that Congress authorized and funded.” *Id.* at *6. Plaintiffs “do not assert rights ... rooted in the grants’ underlying agreements” but “rights ... rooted in statutory and constitutional authorities ... *independent* of the ... agreements.” *Id.*⁵

As such, “an order prohibiting implementation of agency guidance” – which is what Plaintiffs seek – “does not create a problem based on the Tucker Act simply because the guidance ‘discusses internal policies related to grants.’” *New York*, 171 F.4th at 30 (quoting *APHA*, 145 S.Ct. at 2661 (Barrett, J., concurring)). Agency guidance setting forth funding conditions “is a separate agency action from the withholding of funds promised under the grant agreements,” where, as here, a suit challenges only that agency guidance and seeks no monetary relief, “jurisdiction is proper in the district court.” *Massachusetts*, 164 F.4th at 12; *accord New York*, 171 F.4th at 27 (noting that the Tucker Act “poses no bar” to injunctions prohibiting reissuance of, or reliance on, agency directives related to funding); *Woonasquatucket*, 2026 WL 2279789, at *18 (noting, while discussing the interplay of the Tucker Act and the APA, that “enjoining the defendants from relying on the challenged agency actions as the basis for the ongoing withholding of the funds in question” “poses no [] sovereign immunity problems”); *New York v. Kennedy*, 155 F.4th at 75 n.4 (no support in caselaw for Tucker Act bar to reviewing agency guidance).

This is consistent with the “near or total uniformity” among district courts since the Supreme Court’s instruction in *APHA*, which have held they “have jurisdiction over claims” “involving constitutional and APA claims seeking an injunction against the imposition of allegedly unlawful grant conditions.” *Hous. Auth. of City & Cnty. of S.F. v. Turner*, No. 25-CV-08859, 2025 WL 3187761, at *9 (N.D. Cal. Nov. 14, 2025) (collecting cases); *see also, e.g., Washington*, 2026

equitable relief that is appropriately filed before this Court, not the Court of Federal Claims.” (citation omitted)).

⁵ As a matter of preservation, Plaintiffs note that grants are not contracts for purposes of the Tucker Act. *See* Dkt. 47 at 4 n.3.

WL 1469538, at *7; *Freedom Network*, 830 F.Supp.3d at 700; *MTA*, 2026 WL 588117, at *28; *New York v. ACF*, 833 F.Supp.3d at 385–86; *Illinois v. Fed. Emergency Mgmt. Agency*, 801 F.Supp.3d 75, 90 (D.R.I. 2025) (where plaintiffs “challenge the validity of [an agency’s] promulgated conditions under the APA and the Constitution,” such “claims remain within the jurisdiction of the federal district courts”); *Illinois v. Noem*, 813 F.Supp.3d 282, 298 (D.R.I. 2025) (“the Tucker Act is clearly inapplicable” “because these are not challenges to the terms and conditions of an executed grant agreement, but rather to the imposition of an allegedly unlawful condition on prospective grant agreements”). The Court should “not accept defendants’ rehashed argument in light of this wall of authority.” *City of Fresno*, 2026 WL 1998576, at *34.

In sum, because Plaintiffs only “seek prospective reform of agency behavior,” “[t]he Court can thus exercise jurisdiction to evaluate the agency’s policies and priorities under the APA.” *Am. Ass’n of Physics Tchrs., Inc. v. Nat’l Sci. Found.*, 804 F.Supp.3d 45, 66, 67 (D.D.C. 2025).

B. The Court Has Jurisdiction Over Plaintiffs’ Non-APA Claims (Claims V-VII).⁶

The Tucker Act poses no jurisdictional barrier to Plaintiffs’ separate Section 1557, equal protection, and First Amendment claims. *Cf. GLMA*, 795 F.Supp.3d 678 (exercising jurisdiction to grant preliminary relief on plaintiffs’ equal protection and Section 1557 claims against HHS and NIH as to grant terminations, although declining to consider APA claims based on the Tucker Act).

As to the constitutional claims, “Plaintiffs do not need a waiver of sovereign immunity to bring claims against executive officers acting outside the bounds of the Constitution or their statutory authority.” *Am. Ass’n of Physics Tchrs.*, 804 F.Supp.3d at 67 (citing *Larson v. Domestic & Foreign Com. Corp.*, 337 U.S. 682, 689 (1949); *Dugan v. Rank*, 372 U.S. 609, 621-22 (1963));

⁶ Plaintiffs are mindful of this Court’s decision in *Massachusetts v. Trump*, 790 F.Supp.3d 8, 30–31 (D. Mass. 2025). Plaintiffs do not assert their ACA and constitutional claims as duplicative of their APA counterparts. Rather such claims are brought *in the alternative* to the extent the Court has concerns over jurisdiction of the APA claims or whether it can grant permanent injunctive relief under the APA claims.

see also Trump v. Cook, 146 S.Ct. 2234, 2251 n.2 (2026) (“We have often held that plaintiffs may sue in equity without a congressionally-provided cause of action to prevent an injurious act by a public officer.” (cleaned up)). Indeed, courts have routinely exercised jurisdiction over such constitutional claims in cases relating to new conditions on federal funding. *See, e.g., Kennedy*, 812 F.Supp.3d at 197. Of course, by their nature, such claims are not contractual claims within the jurisdiction of the CFC. *See SFAF*, 786 F.Supp.3d at 1212; *see also Joshua v. United States*, 17 F.3d 378, 379 (Fed. Cir. 1994).

Similarly, Plaintiffs’ Section 1557 claim is not dependent upon the APA’s waiver of sovereign immunity. It incorporates the “rights and remedies” of other civil rights statutes, including Title IX, which includes the right to sue in district court, *see Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 218 (2022), and has its own sovereign immunity waiver, *see* 42 U.S.C. § 18116(a); *cf. Kadel v. N.C. State Health Plan for Tchrs. & State Emps.*, 12 F.4th 422, 439 (4th Cir. 2021), *as amended* (Dec. 2, 2021). It also expressly applies to “any program or activity that is administered by an Executive Agency,” 42 U.S.C. § 18116(a), including HHS and HRSA, *see* 45 C.F.R. § 92.4 (defining “covered entity” to include HHS).

III. The Challenged Conditions Constitute Final Agency Action.

As noted, this case challenges Defendants’ agency-wide policy prohibiting healthcare providers participating in the Ryan White Program from acknowledging, affirming, documenting, or respecting their transgender patients’ identities, including through the provision of gender-affirming care. Defendants have implemented this policy within the Ryan White Program through various discrete agency actions, namely, agency policies, guidance documents, general terms and conditions, and Notices of Funding Opportunity (“NOFOs”).⁷ *See* Dkt. 69 at 1-2, 5; Compl. ¶¶

⁷ These include the FY 2026 HRSA General Terms and Conditions (Dkt. 1-1, “Updated FY2026 General Terms”), HHS Revision to Departmental Notice of Funding Opportunity Content and Clearance Guidance FY 2026

164–187.⁸

Each of the Conditions is reviewable as “final agency action” under 5 U.S.C. § 704. Under *Bennett v. Spear*, 520 U.S. 154 (1997), “two conditions must be satisfied for agency action to be ‘final.’” *Id.* at 177. “First, the action must mark the consummation of the agency’s decisionmaking process.” *Id.* at 177–78 (cleaned up). “And second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow.” *Id.* at 178 (cleaned up). Plaintiffs easily satisfy the *Bennett* test. Defendants argue that the Conditions merely “reflect the government’s interpretation of programmatic parameters under the Ryan White program” and do not “in and of themselves” terminate a grant, impose penalties, or determine legal rights or obligations. Dkt. 55 at 14; Dkt. 70 at 10. Not true. The adoption of the Conditions “satisfie[s] the pragmatic and flexibility standard used for evaluating final agency action.” *Kennedy*, 812 F.Supp.3d at 191. *See also U.S. Army Corps of Eng’rs v. Hawkes Co.*, 578 U.S. 590, 599 (2016).

First, the Conditions mark the consummation of Defendants’ decisionmaking process. They document Defendants’ final decision to incorporate the Gender Order into the Ryan White Program and to prohibit recipients of funding under the Ryan White Program from acknowledging, affirming, documenting, or respecting their transgender patients’ identities in relation to *any* care funded through the Program, including HIV-related healthcare, and from using Ryan White funds for gender-affirming care because such care, *a fortiori*, requires the acknowledgement, affirmation, and respect of a transgender patient’s identity. Take each in turn:

- The Updated FY2026 General Terms require Ryan White funding recipients to “apply[] sex-based definitions grounded in biological reality” and incorporate HRSA’s

(HRSA 0003–0025, “FY 2026 NOFO Guidance”), HHS’s *Defining Sex* guidance (Dkt. 59-8), HHS Grants Policy Statement (Dkt. 59-9), and Ryan White NOFOs. Dkt. 1-2 (Part B Suppl. NOFO); Dkt. 1-3 (Part C NOFO); Dkt. 1-4 (Part F NOFO); Dkt. 47-2 (Part D NOFO); *see also* Dkt. 19-4 (ADAP NOFO) (also at HRSA 0034–0072).

⁸ “The fact that the challenged conditions may represent several discrete agency actions does not change the Court’s analysis.” *Bondi*, 794 F.Supp.3d at 68; *see also New York v. Trump*, 133 F.4th 51, 68 (1st Cir. 2025) (“[W]e are not aware of any supporting authority for the proposition that the APA bars a plaintiff from challenging a number of discrete final agency actions all at once.”).

“strategic priorities,” Dkt. 1-1 at 5, which specify that “[i]t is a HRSA priority to recognize that a person’s sex as either male or female is unchangeable and determined by objective biology, and to ensure its programs accurately reflect science, including the biological reality of sex.” Dkt. 19-3 at 3.

- The NOFOs, which incorporate the Updated FY2026 General Terms, prohibit the use of funds for “sex-trait modification procedures” or “to fund, promote, encourage, subsidize, or facilitate ... denial by the recipient of the sex binary in humans, or the belief that sex is a chosen or mutable characteristic.” Dkts. 1-2, 1-3, 1-4, 47-2, 19-4.
- The FY 2026 NOFO Guidance notes that “all NOFOs must comply with Executive Orders signed by the President, to the extent permitted by law, including: ... *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government* (Jan. 20, 2025).” HRSA 0003; *see also* HRSA 0006 (requiring documentation of changes made to a NOFO “from the prior year’s version to align with the Administration’s priorities,” such as “Removed activities related to ... gender in alignment with Administration Priorities”); HRSA 0013–0014 (setting forth as finalized review criteria whether applications “demonstrably advance the President’s policy priorities” and “denial by the recipient of the sex binary in humans or the notion that sex is a chosen or mutable characteristic”).
- The HHS Grants Policy Statement, which is incorporated into the Updated FY2026 General Terms (*see* Dkt. 1-1 at 1), requires funding recipients to certify that they are “compliant with Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., including the requirements set forth in Presidential Executive Order 14168 titled *Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, ... and recipient will remain compliant for the duration of the Agreement.” Dkt. 59-9 at 21–22.
- The *Defining Sex* Guidance, which is incorporated into HRSA’s “strategic priorities,” Dkt. 19-3 at 3, defines sex and gender in terms set by the Gender Order and which erase transgender people’s identities. *See* Dkt. 59-8.

Each of these is a *finalized* document implementing the Gender Order, which deems having a transgender identity to be a “false claim,” Gender Order § 2, and “aims to erase [transgender people], precluding them from accessing care for gender dysphoria from federally funded providers and eviscerating from the federal vocabulary any recognition of gender identity.” *Washington v. Trump*, 768 F.Supp.3d 1239, 1277 (W.D. Wash. 2025). *See also* HRSA 0073 (noting finalized decision that all NOFOs must require that “[a]ll activities proposed in [an] application and budget narrative must align with ... executive orders” and that “awards shall not be used to

fund, promote, encourage, subsidize, or facilitate ... denial by the recipient of the sex binary in humans, or the belief that sex is a chosen or mutable characteristic”).

“[T]he adoption of the challenged conditions marks the consummation of [Defendants’] decisionmaking process.” *Bondi*, 794 F.Supp.3d at 68; *see also San Francisco Unified Sch. Dist. v. AmeriCorps*, 789 F.Supp.3d 716, 740 (N.D. Cal. 2025) (“Where an agency establishes conditions on grant eligibility, the agency has taken action that marks the consummation of the agency’s decisionmaking process.” (cleaned up)); *Kennedy*, 812 F.Supp.3d at 191; *cf. State ex rel. Becerra v. Sessions*, 284 F.Supp.3d 1015, 1031 (N.D. Cal. 2018) (“By imposing the certification condition, the federal government has articulated that certain funds ... will require adherence to the certification condition. It has rendered its final word, satisfying the first prong of the *Bennett* test.”).

Here, each Condition “puts into effect HHS’s [and HRSA’s] decision to impose the Gender Conditions.” *Washington*, 2025 WL 3002366, at *9. “They represent a definite statement of the agency’s position, placing certain requirements on organizations that receive [Ryan White funding].” *Turner*, 2025 WL 3187761, at *16. Defendants do not dispute that they have conditioned eligibility and participation in the Ryan White Program on compliance with the challenged policy implementing the Gender Order within the Ryan White Program. *See Bondi*, 794 F.Supp.3d at 68 (“Indeed, the Government does not argue otherwise.”). Nor do they contend that persons or entities may be eligible for funding even if they will not comply with the Conditions. Their decision therefore “was a final decision.” *Washington*, 2025 WL 3002366, at *9.

It is irrelevant that no awards or terminations have taken place yet. “[T]he decision to attach the conditions can be final even if the final decision to award the funds ... is still pending.” *FEMA*, 801 F.Supp.3d at 89 & n.6 (collecting cases); *see also City of Fresno*, 2026 WL 1998576, at *27.

Indeed, the Challenged Conditions, “as a whole, constitute final agency actions at the macro-level.” *Am. Pub. Health Ass’n v. Nat’l Inst. of Health*, 791 F.Supp.3d 119, 175 (D. Mass. 2025). These “pronouncements” by HRSA and HHS “are consistent” and represent “final agency action on their evolving ‘eradication’ of ... gender identity,” within the context of the Program, “as quickly as possible.” *Id.* at 176. Moreover, “the grants in question require adherence to the Challenged Conditions to receive funding, indicating a consummation of the [Defendants’] decision-making processes.” *City of Fresno*, 2026 WL 1998576, at *27. They “impose[] clear restrictions on Plaintiffs’ funding access.” *New York v. ACF*, 833 F.Supp.3d at 388. And the “imposition of th[ese] condition[s] is not hypothetical—it is real and a question of agency power.” *Cnty. of King v. Turner*, No. 25-3664, 2026 WL 2489361, at *8 (9th Cir. Aug. 25, 2026).

Second, “the imposition of federal grant funding conditions is the consummation of a final agency decision because it directly triggers legal consequences.” *Washington*, 2025 WL 3002366, at *10. “Plaintiffs are effectively prevented from participating in the application process and from receiving funding Congress has appropriated for supporting their missions if they decline to abide by the newly implemented Challenged Conditions.” *Kennedy*, 812 F.Supp.3d at 192. And “the Challenged Conditions will change the lawful scope of activities permitted with grant funds, may lead to the termination of grant awards, and will require the Plaintiffs to expose themselves to potential criminal and civil liability under the False Claims Act.” *Id.* (cleaned up). For example, if during a medical appointment, a Ryan White-funded provider uses a transgender patient’s chosen name or pronouns; discusses drug-to-drug interactions between their antiretroviral therapy and gender-affirming hormone therapy (even if the latter is not provided through Ryan White funds); and/or coordinates access to affirming counseling, “[t]his course of action would be permissible” under the Ryan White Statute because the statute mandates delivery of “core medical services” and

“support services” to all patients with no bar on recognizing a patient’s gender identity. *Cnty. of King*, 2026 WL 2489361, at *11. Nevertheless, “it might constitute ‘*promoting* gender ideology’” and thus violate the Conditions. *Id.* The Conditions are thus “binding conditions imposed on federal grant recipients, which meaningfully restrain recipients’ conduct and impose penalties under the FCA.” *Turner*, 2025 WL 3187761, at *17.

Defendants do not present any specific argument as to why finalized and published agency-wide terms and conditions (“T&Cs”), like the Updated FY2026 General Terms, FY 2026 NOFO Guidance, and HHS Grants Policy Statement, are not final agency actions under the APA. And indeed, multiple courts have held that they are.⁹ This includes prior versions of HRSA’s general terms and conditions. *E.g.*, *Kennedy*, 812 F.Supp.3d at 191–92 (2025 HRSA T&Cs).

Multiple courts have likewise found that NOFOs themselves are final agency actions for purposes of the APA.¹⁰ That is because NOFOs are issued “to govern the grant application process.” *Freedom Network*, 830 F.Supp.3d at 711. Not only does a NOFO shape the “response to the grant applications,” but “the inclusion of the conditions in the NOFO is a final agency action regardless of whether these conditions attach to the grants themselves.” *Id.* In other words, NOFOs govern *eligibility*, and “courts routinely hold that agency action is final where it affects grant eligibility criteria.” *Planned Parenthood of New York City, Inc. v. U.S. Dep’t of Health & Hum. Servs.*, 337 F.Supp.3d 308, 329 (S.D.N.Y. 2018).¹¹ Similarly here, “the government has presented

⁹ See, e.g., *City of Fresno*, 2026 WL 1998576, at *10–11, *27 (DHS T&Cs); *Massachusetts v. U.S. Dep’t of Agric.*, No. CV 26-11396, 2026 WL 1815807, at *8–9, *13 (D. Mass. June 24, 2026) (USDA T&Cs); *Turner*, 2025 WL 3187761, at *17 (HUD T&Cs); *Washington*, 2025 WL 3002366, at *10–11 (HHS T&Cs, and agency directive); *Bondi*, 794 F.Supp.3d at 65, 67–68 (DOJ T&Cs); *FEMA*, 801 F.Supp.3d at 82–83, 89 (DHS T&Cs); *Martin Luther King, Jr. Cnty. v. Turner*, 785 F.Supp.3d 863, 874–75, 884 n.18 (W.D. Wash. 2025) (HUD and DOT T&Cs and agreements); cf. *New York v. ACF*, 833 F.Supp.3d at 379–80, 387–88 (letters setting forth new conditions); *Becerra*, 284 F.Supp.3d at 1023–24 (same); *AmeriCorps*, 789 F.Supp.3d at 731 (guidance); *APHA*, 791 F.Supp.3d 119, 175 (D. Mass. 2025) (guidance).

¹⁰ See, e.g., *City of Fresno*, 2026 WL 1998576, at *11–12, *27 (DOJ NOFOs); *Bondi*, 794 F.Supp.3d at 63–64, 67–68 (VAWA NOFOs).

¹¹ This distinguishes this case from *Planned Parenthood of Wisconsin, Inc. v. Azar*, 316 F.Supp.3d 291, 304

nothing to indicate that [it] intends to remove the conditions from final awards, which seems unlikely given that these or similarly worded conditions have become commonplace” in this Administration. *Freedom Network*, 830 F.Supp.3d at 713.

In sum, the Challenged Conditions are final agency actions for purposes of the APA.¹²

IV. Plaintiffs’ Claims Are Ripe for Review.

Defendants’ cursory argument that “this case is not ripe,” Dkt. 55 at 7, has no merit.

Defendants ignore that the inquiry into whether a plaintiff is “adversely affected” by an agency action, and thus entitled to bring suit under the APA, “is not especially demanding.” *Food & Drug Admin. v. R. J. Reynolds Vapor Co.*, 606 U.S. 226, 233–34 (2025) (citation modified). “A plaintiff may sue under the APA unless her ‘interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit.’” *Id.* at 233. Here, Provider Plaintiffs and Associational Plaintiffs’ members are regulated by the Challenged Conditions. In the APA context, “if a plaintiff is an object of the action (or forgone action) at issue, then there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress

(D.D.C. 2018), *vacated and remanded*, 942 F.3d 512 (D.C. Cir. 2019). In *Planned Parenthood of Wisconsin*, “[t]he court acknowledged that the[] first two grounds [for its decision] were premised on the fact that the ‘case involves scoring criteria, *not eligibility*,’ which is not true here.” *Planned Parenthood of New York City*, 337 F.Supp.3d at 329 n.12. The same holds true for the third factor, which “is unique to the Title X context.” *Id.*

The other cases cited by Defendants are likewise inapposite and do not pertain to eligibility for funding. For example, *Rattlesnake Coal. v. EPA*, 509 F.3d 1095 (9th Cir. 2007), does not pertain to a NOFO at all. Rather, it involved a challenge under the National Environmental Policy Act arguing that the EPA should have prepared an environmental impact statement for a project for which Congress had specifically appropriated funds, but for which the agency had not taken any action. *Id.* at 1104. The same holds true for *Citizens Alert Regarding the Env’t v. EPA*, 102 F. App’x 167 (D.C. Cir. 2004), which is an unpublished, nonprecedential decision that did not involve a NOFO or any agency guidance pertaining to eligibility. As in *Rattlesnake*, in *CARE*, the plaintiffs’ “primary challenge related to EPA’s supposed failure to review the environmental impact of [a] sewer project,” for which “EPA [wa]s contemplating a direct grant” but was still “conducting the review required by NEPA in association with the proposed grant” and “ha[d] not yet made a final determination as to the environmental effects” or “whether to award the grant.” *Id.* at 168.

¹² Of course, the requirement that the Conditions be final agency action only applies to Plaintiffs’ APA claims (Claims I-IV) and not to Plaintiffs’ non-APA claims (Claims V-VII). See *Sierra Club v. Trump*, 929 F.3d 670, 699 (9th Cir. 2019) (“[F]inal agency action limitation does not apply to other types of claims (like constitutional claims).” (cleaned up)); *Am. Fed’n of Tchrs. v. Dep’t of Educ.*, 796 F.Supp.3d 66, 119 (D. Md. 2025).

it.” *Diamond Alternative Energy, LLC v. EPA*, 606 U.S. 100, 112 (2025).

Plaintiffs easily meet the constitutional and prudential aspects of the ripeness doctrine. “The determination of ripeness depends on two factors: the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.” *Sindicato Puertorriqueño de Trabajadores v. Fortuño*, 699 F.3d 1, 8 (1st Cir. 2012). “The fitness prong has both jurisdictional and prudential components, while the hardship prong is solely prudential.” *New Hampshire Lottery Comm’n v. Rosen*, 986 F.3d 38, 53 n.8 (1st Cir. 2021).¹³

As to fitness: “The constitutional component of the fitness prong asks whether the claim involves uncertain and contingent events that may not occur as anticipated or may not occur at all, thus rendering any opinion we might offer advisory.” *Jensen v. Rhode Island Cannabis Control Comm’n*, 160 F.4th 18, 24 (1st Cir. 2025) (cleaned up). Put differently, “[c]onstitutional ripeness is often treated under the rubric of standing and frequently coincides squarely with standing’s injury in fact prong.” *Oregon v. Kennedy*, 831 F.Supp.3d 1048, 1071 (D. Or. 2026) (quotation marks omitted). Here, Plaintiffs’ claims do not depend on any uncertain or contingent events. Plaintiffs challenge the adoption of the Conditions, which bar providers participating in the Ryan White Program from acknowledging, affirming, documenting, or respecting their transgender patients’ identities, including through the provision of gender-affirming care.

Moreover, Plaintiffs have standing to challenge the Conditions. *See* Dkt. 69 (Plaintiffs’ Pretrial Br.) at 9–11. Plaintiffs will lose access to Ryan White funding unless they comply with the Conditions. “This is a classic dilemma that establishes an injury-in-fact.” *Cnty. of Santa Clara*,

¹³ The Supreme Court and the First Circuit have questioned “the continuing vitality of the prudential ripeness doctrine” given that it “is in some tension with ... the principle that a federal court’s obligation to hear and decide cases within its jurisdiction is virtually unflagging.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 167 (2014) (cleaned up); *see also Aguasvivas v. Pompeo*, 984 F.3d 1047, 1053 (1st Cir. 2021) (noting “it is unclear whether prudential ripeness concerns in particular may still be entertained”). To the extent Defendants raise *prudential* ripeness concerns, the Court should decline to entertain them and decide the case and controversy that this case presents.

815 F.Supp.3d at 1020. “It is the text of the [Conditions] that restricts [Plaintiffs].” *Jensen*, 160 F.4th at 25. Because Plaintiffs are ineligible for Ryan White funding and “must be excluded” from the Program unless they accept and comply with the Conditions, “the parties clearly have adverse legal interests of sufficient immediacy and reality to find [Plaintiffs’] claim[s] ripe.” *Id.*

In any event, “[i]n the administrative law context, fitness for review requires that the action be ‘final agency action’ within the meaning of the APA.” *FEMA*, 801 F.Supp.3d at 88 (quoting *Nat’l Park Hosp. Ass’n v. Dep’t of Interior*, 538 U.S. 803, 812 (2003)). Here, for the reasons already outlined, the Conditions constitute final agency action. *See* Section III, *supra*.

The prudential component of the fitness prong is also satisfied here, as “resolution of [Plaintiffs’] claims ... turns on legal issues not likely to be significantly affected by further factual development.” *Jensen*, 160 F.4th at 25. Plaintiffs challenge Defendants’ adoption of the Conditions as being unlawful under the APA because they are arbitrary and capricious, are not in accordance with law, exceed statutory authority, are contrary to constitutional right or power, and are in violation of Section 1557 of the ACA, the Fifth Amendment’s equal protection component, and the First Amendment. These are purely legal questions that are “squarely presented for the Court’s review and do[] not depend on future uncertainties.” *PFLAG*, 769 F.Supp.3d at 422.

We turn next to hardship, which again is a prudential consideration. Here, “withholding review would result in hardship to Plaintiffs.” *Illinois*, 813 F.Supp.3d at 302. As noted herein and in Plaintiffs’ Pretrial Brief, Plaintiffs must either comply with the Conditions or lose access to any Ryan White funding. This suffices to satisfy this prong. *See id.* at 301–02; *Massachusetts*, 2026 WL 1815807, at *14; *FEMA*, 801 F.Supp.3d at 89; *New York v. U.S. Dep’t of Health & Hum. Servs.*, 414 F.Supp.3d 475, 565 (S.D.N.Y. 2019) (“A rule that requires an immediate and significant change in a party’s conduct of its affairs with serious penalties attached to noncompliance presents

a prototypical instance of hardship.” (cleaned up)). Compliance with the Conditions will also require Plaintiffs to make structural and programmatic changes in how they provide care to their transgender patients living with HIV who depend on the Ryan White Program; to discriminate against their transgender patients; and to withhold medically indicated care from these patients. Compl. ¶¶ 189–190, 193; *see also* Dkt. 69 at 7–8. Furthermore, compliance with the Conditions will also risk the health and wellbeing of Plaintiffs’ transgender patients, causing them hardship as well. Compl. ¶¶ 191–192, 196–200; *see also* Dkt. 69 at 8–9. This “harm is not speculative but imminent and concrete.” *New York v. ACF*, 833 F.Supp.3d at 389 n.8.

Defendants argue that Plaintiffs must wait for their Ryan White funding to be denied for their claims to be ripe. Dkt. 55 at 7–8. But under First Circuit precedent, “a litigant does not have to await the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending that is enough.” *Jensen*, 160 F.4th at 25; *see also FEMA*, 801 F.Supp.3d at 89; *Washington*, 766 F.Supp.3d at 1149 (“[T]hat the loss of funds may have not yet materialized ... does not mean that there is no imminent injury or that Plaintiffs lack standing on this ground.”).¹⁴

V. The Conditions Are Not Actions Committed to Agency Discretion.

Defendants argue that their decision to impose the Conditions is “committed to agency discretion” under 5 U.S.C. § 701(a)(2). *See* Dkt. 55 at 11–13; Dkt. 70 at 7–9. Not so. The exemption from judicial review provided in that subsection is “quite narrow[.]” *Dep’t of Com. v. New York*, 588 U.S. 752, 772 (2019) (quoting *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 586 U.S. 9, 23 (2018)). It applies only “when the agency action is of a kind ‘traditionally regarded as committed

¹⁴ *Nat’l Park Hosp. Ass’n v. Dep’t of the Interior*, 538 U.S. 803 (2003), does not require a different result. First, the case is inapposite. It concerned hardship as *prudential* consideration under the ripeness doctrine. *Id.* at 808. But, as explained, *supra*, the applicability of such doctrine has been called into question by the Supreme Court and the First Circuit. Second, it is distinguishable. There, the Court found that the challenged regulation was “nothing more than a general statement of policy” that “[d]id not command anyone to do anything or to refrain from doing anything.” *Id.* at 809. Here, by contrast, Defendants have adopted eligibility and compliance conditions governing Ryan White funding, which render Plaintiffs *ineligible* for funding and which even apply to *existing* awards.

to agency discretion,’ or when the relevant statute ‘is drawn so that a court would have no meaningful standard against which to judge the agency’s exercise of discretion.’” *Commonwealth v. Trump*, No. 25-CV-12162, 2026 WL 1584837, at *19 (D. Mass. June 3, 2026). Defendants fail to make either showing. *See New York*, 171 F.4th at 19 (placing burden on Government).

First, “the determination of grant terms and conditions is not a category of decisions traditionally committed to exclusive agency discretion.” *Bondi*, 794 F.Supp.3d at 69. “[C]ourts have consistently found the opposite to be true.” *Kennedy*, 812 F.Supp.3d at 192 (decision to “spring[] new conditions” onto federal grants was reviewable under APA); *see also, e.g., Biden v. Missouri*, 595 U.S. 87, 92–96 (2022) (reviewing imposition of new conditions on Medicare/Medicaid grant funds); *City of Providence v. Barr*, 954 F.3d 23, 32–36 (1st Cir. 2020); *Massachusetts*, 2026 WL 1815807, at *18–20; *FEMA*, 801 F.Supp.3d at 91 & n.7 (collecting APA cases “reviewing discretionary grant conditions”). Defendants do not contend otherwise.

Second, contrary to Defendants’ assertion (Dkt. 55 at 12–13; Dkt. 70 at 8–9), Congress *has* provided “meaningful standard[s]” to assess the legality of the Conditions. *See* Dkt. 69 at 14–20, 24–29. The Ryan White Act requires Defendants to provide “core medical services” for persons living with HIV. *E.g.*, 42 U.S.C. § 300ff-22(a). And goes on to define that term. *E.g.*, 42 U.S.C. § 300ff-22(b)(3); *see also* Dkt. 69 at 24–26. Moreover, the ACA bars Defendants from “creat[ing] any unreasonable barriers to the ability of individuals to obtain appropriate medical care” or “interfer[ing] with communications regarding ... treatment options between the patient and the provider,” 42 U.S.C. § 18114. It also prohibits sex discrimination. 42 U.S.C. § 18116; Dkt. 69 at 32–34. In short, “this is not a case in which there is ‘no law to apply.’” *Dep’t of Com.*, 588 U.S. at 772–73; *see also Nat’l All. to End Homelessness v. Turner*, 827 F.Supp.3d 281, 290 (D.R.I. 2026) (NOFO conditions reviewable when “statutory framework ... provide[s] meaningful standards”).

Defendants’ reliance on *Lincoln v. Vigil*, 508 U.S. 182 (1993), is therefore misplaced. In *Lincoln*, the Supreme Court held that § 701(a)(2) barred review of an agency’s decision to terminate a program, which was funded through an undifferentiated “lump-sum appropriation,” *id.* at 184–85, and “where the relevant statutes ... did ‘not so much as mention’ the program at issue,” *New York*, 171 F.4th at 19 (quoting *Lincoln*, 508 U.S. at 194). The Court explained that “where ‘Congress merely appropriates lump-sum amounts *without statutorily restricting* what can be done with those funds, a clear inference arises that it does not intend to impose legally binding restrictions” on the implementing agency’s discretion. *Id.* at 192 (emphasis added). But the Court also stressed that when Congress “circumscribe[s] agency discretion to allocate resources by putting restrictions in the operative statutes,” § 701(a)(2) does *not* bar judicial review. *Id.* at 193.

Here, Congress did not just allocate a lump sum for Defendants to spend as they wish. Congress specifically *created* and *funded* the Ryan White Program for the purpose of providing “comprehensive” health services to people living with HIV through coordinated “systems of care,” with a particular focus on “the special care and service needs” of populations and subpopulations most affected by HIV. *See* Dkt. 69 at 14–18.¹⁵ This includes transgender people living with HIV. *Cf.* Dkt. 13-4. Where Congress provides standards to guide spending in this fashion, agencies do not have carte blanche “to disregard [those] statutory responsibilities.” *Lincoln*, 508 U.S. at 193; *see also, e.g., Illinois*, 813 F.Supp.3d at 306–07 (holding *Lincoln* does not bar review of agency decision to impose condition on program grants because the relevant “statutory and regulatory frameworks” “provide[d] judicially manageable standards for review”). Accordingly, the Conditions are reviewable under § 701(a)(2).¹⁶

¹⁵ *See, e.g.*, 42 U.S.C. §§ 300ff, 300ff–12(b)(1), (b)(4)(A)–(D), 300ff–14(a)(1), (c)–(d), 300ff–22(b)–(c), 300ff–23(b)–(c), 300ff–27(b)(3), (5), 300ff–51(c)–(d), 300ff–52(a)(2), 300ff–71(b).

¹⁶ Like with the arguments pertaining to final agency action, Defendants’ arguments pertaining to agency discretion only apply to Plaintiffs’ APA claims (Claims I–IV) and not to Plaintiffs’ non-APA claims (Claims V–VII).

VI. The Scope of Relief Should Not Be Limited to Provider Plaintiffs.

Defendants argue that any relief should be “tailored to apply only to the grants of specific named provider Plaintiffs.” Dkt. 55 at 18. Defendants’ request is without merit.

First, “[g]iven the nature of the APA claims,” the relief under the APA to “set aside” and vacate is “universal.” *Woonasquatucket*, 2026 WL 2279789, at *7. “‘When a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated—not that their application to the individual petitioners is proscribed.’” *Corner Post*, 603 U.S. at 831 (Kavanaugh, J., concurring) (quoting *Harmon v. Thornburgh*, 878 F.2d 484, 495 n.21 (D.C. Cir. 1989)); *Ass’n of Am. Universities v. Dep’t of Def.*, 806 F.Supp.3d 79, 123 (D. Mass. 2025) (“The APA’s remedies are not party-restricted and allow a court to set aside an unlawful agency action.”).

Second, Defendants err in urging that relief, including *injunctive* relief,¹⁷ be limited to only Provider Plaintiffs, to the exclusion of Associational Plaintiffs’ members. Dkt. 55 at 18. When organizations establish standing on their members’ behalf, preliminary relief extends to those members who are likely to suffer irreparable harm. *See N.H. Indonesian Cmty. Support v. Trump*, 157 F.4th 29, 35 (1st Cir. 2025), *cert. denied*, No. 25-899, 2026 WL 1871309 (U.S. June 30, 2026). “[N]o additional showing is necessary to afford relief to all [] members of Organizational Plaintiffs.” *Ass’n of Am. Universities v. Dep’t of Def.*, 792 F.Supp.3d 143, 183 (D. Mass. 2025); *see also Oregon Council for Humans. v. U.S. DOGE Serv.*, 794 F.Supp.3d 840, 896 (D. Or. 2025).

CONCLUSION

The Court should deny Defendants’ motion to dismiss (Dkt. 55) and reject any similar arguments raised in Defendants’ Pretrial Brief (Dkt. 70).

¹⁷ For the reasons set forth in Plaintiffs’ Pretrial Brief, permanent injunctive relief enjoining Defendants from implementing, enforcing, effectuating, or giving effect to the Challenged Conditions *or any materially similar policy* against Provider Plaintiffs *and Associational Plaintiffs’ members* is appropriate here. *See* Dkt. 69 at 39-40.

Dated this 15th day of September 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on September 15, 2026, I filed the foregoing document electronically with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to the registered participants as identified in the Notice of Electronic Filing (NEF), including the following counsel:

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