

Dane County Contract Cover Sheet

Revised 03/2025

Res 172
significant

BAF # 25252
Acct: Bush/Seitz
Mgr: J Cervantes
Budget Y/N: N

Dept./Division	Human Services / HAA		
Vendor Name	US Dept. of Housing and Urban Development	MUNIS #	14304
Brief Contract Title/Description	2025 Grant agreement for HOME		
Contract Term	10/1/2024 - 9/30/2034		
Contract Amount	\$ 551,908.90		

Contract # Admin will assign	15955
Type of Contract	
☐	Dane County Contract
☐	Intergovernmental
☐	County Lessee
☐	County Lessor
☐	Purchase of Property
☐	Property Sale
☐	Grant
☒	Other

Department Contact Information		Vendor Contact Information	
Name	Contract Coordination Assistant	Name	Garry Werra
Phone #	608-242-6200	Phone #	
Email	dcdhscontracts@danecounty.gov	Email	milwaukeeCPD@hud.gov
Purchasing Officer			

Purchasing Authority	☐ \$13,000 or under – Best Judgment (1 quote required)		
	☐ Between \$13,001 – \$45,000 (\$0 – \$25,000 Public Works) (3 quotes required)		
	☐ Over \$45,000 (\$25,000 Public Works) (Formal RFB/RFP required)	RFB/RFP #	
	☐ Bid Waiver – \$45,000 or under (\$25,000 or under Public Works)		
	☐ Bid Waiver – Over \$45,000 (N/A to Public Works)		
	☒ N/A – Grants, Leases, Intergovernmental, Property Purchase/Sale, Other		

MUNIS Req.	Req #	Org:	Obj:	Proj:	
		Org:	Obj:	Proj:	
	Year	Org:	Obj:	Proj:	

Budget Amendment	
☐	A Budget Amendment has been requested via a Funds Transfer or Resolution. Upon addendum approval and budget amendment completion, the department shall update the requisition in MUNIS accordingly.

Resolution Required if contract exceeds \$100,000	☐ Contract does not exceed \$100,000		
	☒ Contract exceeds \$100,000 – resolution required.	Res #	172
	☒ A copy of the Resolution is attached to the contract cover sheet.	Year	2025

CONTRACT MODIFICATIONS – Standard Terms and Conditions		
☐ No modifications.	☐ Modifications and reviewed by:	☒ Non-standard Contract

APPROVAL
Dept. Head / Authorized Designee


APPROVAL – Contracts Exceeding \$100,000	
Director of Administration	Corporation Counsel
	SHR 9.24.25

APPROVAL – Internal Contract Review – Routed Electronically – Approvals Will Be Attached			
DOA:	Date In: 9/24/25	Date Out: _____	☒ Controller, Purchasing, Corp Counsel, Risk Management

Goldade, Michelle

From: Goldade, Michelle
Sent: Monday, September 29, 2025 11:02 AM
To: Hicklin, Charles; Rogan, Megan; Cotillier, Joshua
Cc: Oby, Joe
Subject: Contract #15955
Attachments: 15955.pdf

Tracking:	Recipient	Read	Response
	Hicklin, Charles	Read: 9/29/2025 11:20 AM	Approve: 9/29/2025 11:20 AM
	Rogan, Megan	Read: 9/29/2025 11:08 AM	Approve: 9/29/2025 11:08 AM
	Cotillier, Joshua	Read: 9/29/2025 11:03 AM	Approve: 9/29/2025 11:14 AM
	Oby, Joe		

Please review the contract and indicate using the vote button above if you approve or disapprove of this contract.

Contract #15955
Department: Human Services
Vendor: US Dept of Housing & Urban Development
Contract Description: 2025 HOME grant agreement (Res 172)
Contract Term: 10/1/24 – 9/30/2034
Contract Amount: \$551,908.90

Thanks much,
Michelle

Michelle Goldade

Administrative Manager
Dane County Department of Administration
Room 425, City-County Building
210 Martin Luther King, Jr. Boulevard
Madison, WI 53703
PH: 608/266-4941
Fax: 608/266-4425
TDD: Call WI Relay 711

Please note: I am currently working a modified schedule. I work in office Mondays and Wednesdays and work remotely Tuesday, Thursdays and Fridays.

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The Dane County Department of Human Services – Housing Access and Affordability Division (HAA) has been awarded \$1,640,810.90 from the federal U.S. Department of Housing and Urban Development (HUD) via the Community Development Block Grant (CDBG) and HOME Investment Partnerships Program (HOME) grant programs for fiscal year 2025.

2024 Resolution 154, awarding the FY 2025 CDBG and HOME funds, was approved by the Dane County Board of Supervisors in November of 2024.

NOW, THEREFORE, BE IT RESOLVED that the County Executive and County Clerk, when required, are hereby authorized and directed to sign the agreement on behalf of Dane County.



DANE COUNTY

15955

Melissa Agard
County Executive

Via email: MilwaukeeCPD@HUD.gov

U.S. Department of Housing and Urban Development
Office of Community Planning and Development
310 W Wisconsin Ave, Suite 950W
Milwaukee, WI 53203

RE: FY2025 CPD Formula Federal Award Grant Agreements

Dear Department of Housing and Urban Development,

Dane County writes to follow-up on the enclosed Initial Federal Award Agreements (Agreements) for the following:

- 14.239 HOME Investment Partnerships Program
- 14.218, Community Development Block Grant Program for Entitlement Communities
- 14.225, Community Development Block Grant Program for Insular Areas
- 14.228, Community Development Block Grant Program for States and Non-Entitlement Grants in Hawaii

King County Litigation

On August 12, 2025, Dane County and twenty-eight other Plaintiffs were added as parties to the *King County et al. v. Turner et al.*, 2:25-cv-00814-BJR (W.D. Wash.) case. That same day, a Preliminary Injunction Order ("8/12/25 PI") enjoined HUD from enforcing certain grant conditions. The enclosed and redlined Agreements seek to impose conditions enjoined by the 8/12/25 PI; these prohibited provisions remain in the enclosed Agreements.

Enjoined Terms – Pages 44-45 of the 8/12/25 Preliminary Injunction:

- *The recipient or applicant shall not use grant funds to promote "gender ideology," as defined in Executive Order 14168, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government;*
- *The recipient or applicant agrees that its compliance in all respects with all applicable Federal antidiscrimination laws is material to the U.S. Government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code;*
- *The recipient or applicant certifies that it does not operate any programs that violate any applicable Federal anti-discrimination laws, including Title VI of the Civil Rights Act of 1964;*
- *The recipient or applicant shall not use any Grant Funds to fund or promote elective abortions, as required by Executive Order 14182, Enforcing the Hyde Amendment;*
- *The recipient or applicant must administer its grant in accordance with all applicable immigration restrictions and requirements, including the eligibility and verification requirements that apply under title IV of the Personal Responsibility and Work*

Opportunity Reconciliation Act of 1996, as amended (8 U.S.C. 1601-1646) (“PRWORA”) and any applicable requirements that HUD, the Attorney General, or the U.S. Center for Immigration Services [sic] may establish from time to time to comply with PRWORA, Executive Order 14218, or other Executive Orders or immigration laws;

– No state or unit of general local government that receives funding under this grant may use that funding in a manner that by design or effect facilitates the subsidization or promotion of illegal immigration or abets policies that seek to shield illegal aliens from deportation;

– Subject to the exceptions provided by PRWORA, the recipient or applicant must use SAVE, or an equivalent verification system approved by the Federal government, to prevent any Federal public benefit from being provided to an ineligible alien who entered the United States illegally or is otherwise unlawfully present in the United States;

– The recipient or applicant agrees that use of Grant Funds and its operation of projects assisted with Grant Funds are governed by all Executive Orders.

San Francisco Litigation

These Agreements seek to impose conditions enjoined as to Dane County by the Preliminary Injunction entered on August 22, 2025 in *City and County of San Francisco, et al., v. Donald J. Trump, et al*, 3:25-cv-1350 (N.D. Cal.) (“8/22/25” PI), in which Dane County is a plaintiff. The enclosed and redlined Agreements seek to impose conditions enjoined by the 8/22/25 PI; the prohibited provisions remain in the enclosed Agreements.

Enjoined Terms – Pages 44-45 of the 8/12/25 Preliminary Injunction:

7. – No state or unit of general local government that receives funding under this grant may use that funding in a manner that by design or effect facilitates the subsidization or promotion of illegal immigration or shields illegal aliens from deportation, including by maintaining policies or practices that materially impede enforcement of federal immigration statutes and regulations.

Both Courts enjoined HUD from imposing or enforcing the above-referenced challenged conditions, and enjoin HUD from "rescinding, withholding, cancelling, or otherwise not processing any relevant HUD awards, or pausing, freezing, impeding, blocking, cancelling, terminating, delaying, withholding, or conditioning" or "failing or refusing to process and otherwise implement grants signed with changes or other objections to conditions enjoined by" the PIs or any "other Order or Government action that poses the same coercive threat to eliminate or suspend funding..." See 8/12/25 PI at 37-38 and 8/22/25 PI at 4.

Dane County's Objections

Dane County ***withholds consent to, and objects to***, the inclusion of the legally unenforceable terms subject to the 8/12/25 PI and the 8/22/25 PI. Accordingly, Dane County struck these terms from the enclosed redlined Agreements. Dane County's consent to execute and implement the Agreements is entirely contingent on HUD complying with the Court Orders.

In the event that the any of the PIs/TROs expire, the enjoined conditions will not be imposed or enforced against Dane County as to the period they were/are in effect. Dane County's acceptance, execution or implementation of the Agreements, in no way reflect acceptance of those prohibited terms.

Respectfully Submitted,

Melissa Agard Dane County Executive

Dated this _____ day of September, 2025

Encl:

8/22/25 PI, *King County et. al. v. Turner*

8/22/25 PI, *San Francisco et. al. v. Trump*

R05 B25UC550003 CDBG Grant Agreement Redline

R05 M2UC550210 HOME Grant Agreement Redline

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF COMMUNITY PLANNING AND DEVELOPMENT
FEDERAL AWARD AGREEMENT

A. General Federal Award Information

1. Recipient name (must match Unique Entity Identifier name) and address: Dane County 210 MARTIN LUTHER KING JR BLVD City-County Building, Room 421 MADISON, WI 53709	12. Assistance listing number and title: 14.239, HOME Investment Partnerships Program
2. Recipient's Unique Entity Identifier: M7DYJMKQ9MH7	13. Amount of federal funds obligated by this action: \$551,908.90
3. Tax identification number: 396005684	14. Total amount of federal funds obligated: \$551,908.90
4. Federal Award Identification Number (FAIN): M25UC550210	15. Total approved cost sharing (if applicable): See Addendum 2
5. Instrument type: Grant ☒ Cooperative agreement ☐ Loan Guarantee ☐	16. Total federal award amount, including approved cost sharing: \$551,908.90
6. Period of performance start and end date: - 09/30/2034	17. Budget approved by HUD:
7. Budget period start and end date: FY 2025 through FY 2033	18. Fiscal year: See Addendum 2
8. Initial Agreement ☒ Amendment ☐ #	19. Statutory authority: 42 U.S.C. 12701 et seq
9. Indirect cost rate (per § 200.414): Recipients must complete Addendum 3: Indirect Cost Rate Schedule	20. Applicable appropriations act(s): Public Law 118-158, Public Law 119-4
10. Is this award for research and development (per 2 C.F.R. § 200.1)? Yes ☐ No ☒	21. Notice/notice of funding opportunity this award is made under (if applicable): N/A
11. Awarding official name and contact information:	22. Program regulations (if applicable): 24 C.F.R. Part 92
23. Federal award description: Under the HOME Investment Partnerships Program, HUD allocates funds by formula among eligible State and local governments to strengthen public-private partnerships and to expand the supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing, for very low-income and low-income families. • Addendum 1. Policy Requirements • Addendum 2. Program-Specific Requirements • Addendum 3. Indirect Cost Rate Schedule	

Authority and Agreement. This agreement between the U.S. Department of Housing and Urban Development (HUD) and the Recipient is made pursuant to the statutory authority above (box 19) and is subject to the applicable appropriations act(s) (box 20). This agreement incorporates by reference the HOME Investment Partnerships program statute 42 U.S.C. 12701 et seq., the program regulations at 24 C.F.R. § 92 (as now in effect and as may be amended

U.S. Department of Housing and Urban Development — Federal Award Agreement

from time to time), Recipient's consolidated plan/action plan, the relevant funding notice (box 21), any attached Specific Terms and Conditions, and the attached addenda (box 23).

B. Terms and Conditions

1. *General terms and requirements.* The Recipient must comply with all applicable federal laws, regulations, and requirements unless otherwise provided through HUD's formal waiver authorities. This agreement, including any attachments and addenda, may only be amended in writing executed by parties to this agreement and any addenda.
2. *Administrative requirements.* The Recipient must comply with the following requirement(s) if checked below:
 - ☐ The administrative requirements in the HUD General Administrative, National, and Departmental Policy Requirements and Terms for HUD's Financial Assistance Programs 2025, as indicated in the relevant NOFO, apply to this agreement.
 - ☒ The grantee shall comply with requirements established by the Office of Management and Budget (OMB) concerning the Unique Entity Identifier (UEI); the System for Award Management (SAM.gov.); the Federal Funding Accountability and Transparency Act as provided in 2 C.F.R. part 25, Universal Identifier and General Contractor Registration; and 2 C.F.R. part 170, Reporting Subaward and Executive Compensation Information.
3. *Applicability of 2 C.F.R. part 200.*
 - ☒ The Recipient must comply with the applicable requirements at 2 C.F.R. part 200, as may be amended from time to time. If any previous or future amendments to 2 C.F.R. part 200 replace or renumber any part 200 section cited in HUD's regulations in Title 24 of the Code of Federal Regulations, the amended part 200 requirements will govern award activities carried out after the amendments' effective date.
 - ☐ The Recipient must comply with the applicable requirements at 2 C.F.R. part 200. If any previous amendments to 2 C.F.R. part 200 replace or renumber any part 200 section cited in HUD's regulations in Title 24 of the Code of Federal Regulations, the amended part 200 requirements will govern award activities carried out after the amendments' effective date.
4. *Future budget periods.* If the period of performance spans multiple budget periods, subsequent budget periods are subject to the availability of funds, program authority, satisfactory performance, and compliance with the terms and conditions of the Federal award.
5. *Indirect Cost Rate.* If the Recipient intends to use a negotiated or de minimis rate for indirect costs, the Recipient must submit an Indirect Cost Rate form to HUD, either with its application using HUD-426 (competitive grants) or with this agreement using "Addendum #3 "Indirect Cost Rate Schedule" (formula and congressional grants). The submitted form/addendum will be incorporated into and made part of this agreement, provided that the rate information is consistent with the applicable requirements under 2 C.F.R. § 200.414. If there is any change in the Recipient's indirect cost rate, it must immediately notify HUD and execute an amendment to this agreement to reflect the change if necessary.
6. *Recipient integrity and performance matters.* If the Federal share of this award is more than \$500,000 over the period of performance (box 6), the terms and conditions in 2 C.F.R. part 200 Appendix XII apply to this agreement.
7. *Recordkeeping and Access to Records.* The Recipient hereby agrees to maintain complete and accurate books of account for this award and award activities in such a manner as to permit the preparation of statements and reports in accordance with HUD requirements, and to permit timely and effective audit. The Recipient agrees to furnish HUD such financial and project reports, records, statements, subrecipient data, and documents at such times, in such form, and accompanied by such reporting data as required by HUD. HUD and its duly authorized representative shall have full and free access to all Recipient offices and facilities, and to all books, documents, and records of the Recipient relevant to the administration, receipt, and use of this award and award activities, including the right to audit and make copies. The Recipient agrees to maintain records that identify the source and application of funds, including relevant subrecipient data, in

U.S. Department of Housing and Urban Development — Federal Award Agreement

such a manner as to allow HUD to determine that all funds are and have been expended in accordance with program requirements and in a manner consistent with applicable law.

Further, the Recipient hereby acknowledges that HUD is in the process of implementing new grants management and reporting tools, which will be made available for the Recipient's use in the future. The Recipient agrees to report on grant performance and financial activities (including vendor and cash disbursement supporting details for the Recipient and its subrecipients) using these new tools when they are released. HUD will work with the Recipient to support the Recipient's transition to this new reporting environment. Once implemented, timely reporting in this new environment will be mandatory. HUD reserves the right to exercise all of its available rights and remedies for any noncompliance with these grants management and financial reporting requirements, to include, without limitation, requiring 100% review, suspension of disbursements, and all other legally available remedies, to the furthest extent permitted by law, as amended.

8. *Noncompliance.* If the Recipient fails to comply with the provisions of this agreement, HUD may take one or more of the actions provided in program statutes, regulations or 2 C.F.R. § 200.339, as applicable. Nothing in this agreement shall limit any remedies otherwise available to HUD in the case of noncompliance by the Recipient. No delay or omissions by HUD in exercising any right or remedy available to it under this agreement shall impair any such right or remedy or constitute a waiver of or acquiescence in any Recipient noncompliance.
9. *Termination provisions.* Unless superseded by program statutes, regulations or NOFOs, the termination provisions in 2 C.F.R. § 200.340 apply.
10. *Build America, Buy America.* The Recipient must comply with the requirements of the Build America, Buy America (BABA) Act, 41 U.S.C. § 8301 note, and all applicable rules and notices, as may be amended, if applicable. Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (88 Fed. Reg. 17001), BABA requirements apply to any infrastructure projects HUD has obligated funds for after the effective dates, unless excepted by a waiver.
11. *Waste, Fraud, Abuse, and Whistleblower Protections.* Any person who becomes aware of the existence or apparent existence of fraud, waste, or abuse of any HUD award must report such incidents to both the HUD official responsible for the award and to HUD's Office of Inspector General (OIG). Allegations of fraud, waste, and abuse related to HUD programs can be reported to the HUD OIG hotline via phone at 1-800-347-3735 or online hotline form. The Recipient must comply with 41 U.S.C. § 4712, which includes informing employees in writing of their rights and remedies, in the predominant native language of the workforce. Under 41 U.S.C. § 4712, employees of a government contractor, subcontractor, recipient, and subrecipient—as well as a personal services contractor—who make a protected disclosure about a Federal award or contract cannot be discharged, demoted, or otherwise discriminated against if they reasonably believe the information they disclose is evidence of (1) gross mismanagement of a Federal contract or award; (2) waste of Federal funds; (3) abuse of authority relating to a Federal contract or award; (4) substantial and specific danger to public health and safety; or (5) violations of law, rule, or regulation related to a Federal contract or award.
12. *Third-Party Claims.* Nothing in this agreement shall be construed as creating or justifying any claim against the federal government or the Recipient by any third party.
13. *Rule of Construction and No Construction Against Drafter.* Notwithstanding anything contained in this agreement, the terms and conditions hereof are to be construed to have full and expansive effect in both interpretation and application, and the parties agree that the principle of interpretation that holds that ambiguities in terms or conditions are construed against the drafter shall not apply in interpreting this agreement.

C. Federal Award Performance Goals

The Recipient must meet any applicable performance goals, indicators, targets, and baseline data as required by applicable program requirements.

U.S. Department of Housing and Urban Development — Federal Award Agreement

D. Specific Terms and Conditions

Not applicable ☒ Attached ☐

For the U.S. Department of HUD (name and title of authorized official)	Signature	Date
For the Recipient (name and title of authorized official)	Signature	Date

ADDENDUM 1. POLICY REQUIREMENTS

If applicable:

1. ~~The Recipient shall not use grant funds to promote “gender ideology,” as defined in Executive Order (E.O.) 14168, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government;~~
2. ~~The Recipient agrees that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the U.S. Government’s payment decisions for purposes of section 3729(b)(4) of title 31, United States Code;~~
3. ~~The Recipient certifies that it does not operate any programs that violate any applicable Federal anti-discrimination laws, including Title VI of the Civil Rights Act of 1964;~~
4. ~~The Recipient shall not use any grant funds to fund or promote elective abortions, as required by E.O. 14182, Enforcing the Hyde Amendment; and that,~~
5. Notwithstanding anything in the NOFO or Application, this Grant shall not be governed by Executive Orders revoked by E.O. 14154, including E.O. 14008, or NOFO requirements implementing Executive Orders that have been revoked.
6. ~~The Recipient must administer its grant in accordance with all applicable immigration restrictions and requirements, including the eligibility and verification requirements that apply under title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended (8 U.S.C. 1601-1646) (PRWORA) and any applicable requirements that HUD, the Attorney General, or the U.S. Citizenship and Immigration Services may establish from time to time to comply with PRWORA, Executive Order 14218, or other Executive Orders or immigration laws.~~
7. ~~No state or unit of general local government that receives funding under this grant may use that funding in a manner that by design or effect facilitates the subsidization or promotion of illegal immigration or shields illegal aliens from deportation, including by maintaining policies or practices that materially impede enforcement of federal immigration statutes and regulations.~~
8. ~~The Recipient must use SAVE, or an equivalent verification system approved by the Federal government, to prevent any Federal public benefit from being provided to an ineligible alien who entered the United States illegally or is otherwise unlawfully present in the United States.~~
9. Faith-based organizations may be subrecipients for funds on the same basis as any other organization. Recipients may not, in the selection of subrecipients, discriminate against an organization based on the organization’s religious character, affiliation, or exercise.

ADDENDUM 2. PROGRAM-SPECIFIC REQUIREMENTS

Assistance Listing 14.239, HOME Investment Partnerships Program

1. For the purposes of this Agreement and any applicable addenda, the term “recipient” shall have the meaning of “grantee”, “participating jurisdiction” as defined in 24 C.F.R. 92.2., or “insular area” as defined in 24 C.F.R. 92.2.
2. *Community Housing Development Organizations (CHDOs)*. When 42 U.S.C. 12771(b) is suspended by a given year’s appropriations, the Secretary shall not deduct funds set aside for CHDOs from the Recipient’s HOME Investment Trust Fund for failure to reserve those funds for projects owned, developed, or sponsored by CHDOs within 24 months after the last day of the month in which HUD notifies the Recipient of HUD's execution of this Agreement.
3. *Commitment*. When 42 U.S.C. 12749(g) is suspended by a given year’s appropriations, the Recipient’s ability to commit funds provided through this Agreement will not expire 24 months after the last day of the month in which such funds are deposited in the jurisdiction's HOME Investment Trust Fund.
4. *Deobligations*. To the extent authorized by HUD regulations at 24 C.F.R. Part 92, HUD may, by its execution of an amendment to this Agreement, deobligate funds previously awarded to the Recipient without the Recipient’s execution of the amendment or other consent.
5. *State Environmental Review*. If a Recipient is a State, as defined in 24 C.F.R. 92.2, and the Recipient provides HOME funds to a "State recipient", as that term is defined in 24 CFR 92.2, then the Recipient must require that the "State recipient" shall assume responsibility for the environmental review in accordance with 24 CFR 92.352 in the written agreement entered into pursuant to 24 CFR 92.504. Notwithstanding the foregoing, as per 24 CFR 92.504(c)(1)(vi), the "State recipient" shall not assume the Recipient's responsibilities for release of funds under 24 CFR 92.352.
6. *Reallocations*. All funds for the specified Fiscal Year provided by HUD by formula reallocation are covered by this Agreement upon execution of an amendment by HUD, without the Recipient’s execution of the amendment or other consent.
7. *Repayments*. The Recipient agrees that funds invested in affordable housing under 24 C.F.R. Part 92 are repayable when the housing no longer qualifies as affordable housing. Repayment shall be made as specified in 24 C.F.R. Part 92.
8. *Cost Sharing*. This award is subject to match provisions in 24 C.F.R. 92.64(a)(1) and 24 C.F.R. 92.218-222, as applicable. The amount of match that a recipient may be required to provide in a year is not based upon the amount of the recipient’s award. Under 24 C.F.R. 92.218, the amount of match that a recipient may be required to provide is determined by the type of eligible costs incurred by the recipient and the amount of funds drawn from the HOME Investment Trust Fund Treasury Account in that year. Since these factors are fact-sensitive, the amount of match is not included in either Box 15 or Box 16 of this Agreement.

U.S. Department of Housing and Urban Development — Federal Award Agreement

9. *Funding Information:*

Source of Funds	Appropriation Code	PAS Code	Amount
2023	86 3/6 0205	HMF (M)	\$2,742.11
2024	86 4/7 0205	HMF (N)	\$2,058.09
2025	86 5/8 0205	HMF (P)	\$547,108.70

ADDENDUM 3. INDIRECT COST RATE SCHEDULE

As the duly authorized representative of the Recipient, I certify that the Recipient:

- ☐ Will not use an indirect cost rate to calculate and charge indirect costs under the grant.
- ☐ Will calculate and charge indirect costs under the grant by applying a *de minimis* rate as provided by 2 C.F.R. § 200.414(f), as may be amended from time to time.
- ☐ Will calculate and charge indirect costs under the grant using the indirect cost rate(s) listed below, and each rate listed is included in an indirect cost rate proposal developed in accordance with the applicable appendix to 2 C.F.R. part 200 and, *if required*, was approved by the cognizant agency for indirect costs.

Agency/department/major function	Indirect cost rate	Type of Direct Cost Base
	%	
	%	
	%	

Instructions for the Recipient:

The Recipient must mark the one (and only one) checkbox above that best reflects how the Recipient's indirect costs will be calculated and charged under the grant. Do not include indirect cost rate information for subrecipients.

The table following the third box must be completed only if that box is checked. When listing a rate in the table, enter both the percentage amount (e.g., 10%) and the type of direct cost base to be used. For example, if the direct cost base used for calculating indirect costs is Modified Total Direct Costs, then enter "MTDC" in the "Type of Direct Cost Base" column.

If using the Simplified Allocation Method for indirect costs, enter the applicable indirect cost rate and type of direct cost base in the first row of the table.

If using the Multiple Allocation Base Method, enter each major function of the organization for which a rate was developed and will be used under the grant, the indirect cost rate applicable to that major function, and the type of direct cost base to which the rate will be applied.

If the Recipient is a government and more than one agency or department will carry out activities under the grant, enter each agency or department that will carry out activities under the grant, the indirect cost rate(s) for that agency or department, and the type of direct cost base to which each rate will be applied.

To learn more about the indirect cost requirements, see 2 C.F.R. part 200, subpart E and Appendix VII to Part 200 (for state and local governments).

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NO. 2:25-cv-814

MARTIN LUTHER KING, JR. COUNTY, *et al.*

Plaintiffs,

vs.

SCOTT TURNER in his official capacity as
Secretary of the U.S. Department of Housing
and Urban Development, *et al.*,

Defendants.

**ORDER GRANTING PLAINTIFFS'
THIRD MOTION FOR
PRELIMINARY INJUNCTION**

I. INTRODUCTION

Congress, as the branch of government constitutionally entrusted with the power of the purse, has long made critical investments in programs to end homelessness, strengthen communities, and improve local infrastructure. These budget decisions are not mere technical exercises, they reflect difficult judgments (and compromises) about how best to allocate our nation's resources. Every dollar allocated is a deliberate decision on how to serve the public good. And under the constitution, it is Congress—not the President—that has the authority to

ORDER GRANTING PLAINTIFFS' THIRD
MOTION FOR PRELIMINARY INJUNCTION

1 make those judgments. Yet that is precisely what the Plaintiffs in this case allege the current
2 administration has attempted to override. They contend that the Trump Administration
3 unlawfully seeks to impose hotly contested political conditions on funds that Congress has
4 already appropriated—substituting the Executive’s preferences for the will of Congress, in clear
5 defiance of constitutional limits.

6 On June 3, 2025, this Court enjoined Defendants U.S. Department of Housing and Urban
7 Development (“HUD”) and U.S. Department of Transportation (“DOT”) from imposing
8 unlawful funding conditions on an estimated \$4 billion in HUD Continuum of Care Program
9 (“CoC”) and DOT grants that had been awarded to the then Plaintiffs—at the time 31 local
10 governments and agencies—to support vital programs across the country, including
11 homelessness prevention and transportation infrastructure. This Court determined that those
12 Plaintiffs are likely to succeed on the merits of their claims that Defendants’ actions violated the
13 Administrative Procedure Act (“APA”), 5 U.S.C. § 551 *et seq.*, as contrary to the constitution
14 and in excess of statutory authority, and arbitrary and capricious.

15 On July 10, 2025, Plaintiffs filed an amended complaint in which they added
16 approximately 30 additional local governments and agencies as plaintiffs and the U.S.
17 Department of Health and Human Services (“HHS”) as a defendant. Currently before the Court is
18 Plaintiffs’ Third Motion for Preliminary Injunction. Dkt. No. 186. Plaintiffs allege that not only is
19 HUD attempting to impose the same unlawful funding conditions that this Court previously
20 enjoined on CoC grants awarded to some of the newly added Plaintiffs, but it is attempting to
21 impose the funding conditions on all HUD grants, regardless of whether they are CoC grants.
22 Plaintiffs further claim that DOT is also attempting to impose the same previously enjoined

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1 funding conditions on grants awarded to some of the newly added Plaintiffs. Lastly, Plaintiffs
 2 allege that HHS has begun imposing substantially similar unlawful funding conditions on its
 3 grants. Plaintiffs assert that Defendants’ actions threaten more than \$12 billion in funding that is
 4 needed to support essential and life-sustaining programs in their communities and seek a
 5 preliminary injunction extending the relief that this Court previously granted in June 2025 to the
 6 newly added Plaintiffs that have CoC and/or DOT grants, barring HHS from applying the
 7 unlawful funding conditions on its grants, and barring HUD from doing the same as to all of its
 8 grant programs.

9 Having reviewed the briefs and exhibits filed in support of and in opposition to the motion, the
 10 record of the case, and the relevant legal authority, the Court will grant the motion. The reasoning for
 11 the Court’s decision follows.

12 II. PROCEDURAL HISTORY

13 This case started on May 2, 2025 when Martin Luther King, Jr. County (“King County”),
 14 Pierce County, Snohomish County, City and County of San Francisco (“San Francisco”), Santa
 15 Clara County, Boston, Columbus, and New York City (collectively, “the Original Plaintiffs”)
 16 sued HUD, DOT, and the Federal Transit Administration (“FTA”), as well as the agencies’ heads
 17 in their official capacities, challenging the imposition of new funding conditions on grants that the
 18 Original Plaintiffs had been conditionally awarded for fiscal year 2024.¹ Dkt. 1. Seven of the
 19 Original Plaintiffs (excluding Columbus) then moved for a temporary restraining order (“TRO”)
 20 on May 5, 2025. The Court held a hearing and granted their motion two days later. Dkt. Nos. 5,

21
 22 ¹The original Defendants were HUD, DOT, Scott Turner in his official capacity as Secretary of HUD, Sean Duffy in
 his official capacity as Secretary of DOT, FTA, and Matthew Welbes as the acting Director of FTA. Dkt. No. 1 at ¶¶
 16-21.

51–52. At the conclusion of the TRO hearing, the Original Plaintiffs stated their intent to move for a preliminary injunction on the same issues subject to the TRO, which was set to expire fourteen days later. Dkt. No. 53. The Court ordered briefing and on May 21, 2025, held a hearing on the motion for a preliminary injunction. *Id.*; Dkt. No. 73. At the conclusion of that hearing, the Court determined that good cause existed to extend the TRO by another fourteen days, to June 4, 2025, and stated that it would issue a written decision on the motion for preliminary injunction by that date. Dkt. No. 73.

Later that day the Original Plaintiffs filed an amended complaint adding 23 local governments and agencies as Plaintiffs, as well as the Federal Highway Administration (“FHWA”), the Federal Aviation Administration (“FAA”), the Federal Railroad Administration (“FRA”), and the component heads in their official capacities, as Defendants.² Dkt. No. 71. The 23 newly added Plaintiffs brought the same claims and challenged the same funding conditions as the Original Plaintiffs. Dkt. 71. They also sought a TRO and preliminary injunction, which the Court granted. Dkt. Nos. 72, 152. Defendants appealed the preliminary injunction order to the U.S. Court of Appeals for the Ninth Circuit, where the appeal remains pending.³ Dkt. No. 173.

² The 23 newly added Plaintiffs were the City and County of Denver, Colorado (“Denver”), the Metropolitan government of Nashville and Davidson County, Tennessee (“Nashville”), Pima County, Arizona (“Pima County”), County of Sonoma, California (“Sonoma”), City of Bend, Oregon (“Bend”), City of Cambridge, Massachusetts (“Cambridge”), City of Chicago, Illinois (“Chicago”), City of Culver City, California, (“Culver City”), City of Minneapolis, Minnesota (“Minneapolis”), City of Pittsburgh, Pennsylvania (“Pittsburgh”), City of Portland, Oregon (“Portland”), City of San Jose, California (“San Jose”), City of Santa Monica, California (“Santa Monica”), City of Pasadena, California (“Pasadena”), City of Tucson, Arizona (“Tucson”), City of Wilsonville, Oregon (“Wilsonville”), Central Puget Sound Regional Transit Authority located in King, Pierce, and Snohomish Counties, Washington (“CPSRTA”), Intercity Transit located in Thurston County, Washington (“Intercity Transit”), Port of Seattle, Washington (“Port of Seattle”), King County Regional Homelessness Authority located in King County, Washington (“King County RHA”), Santa Monica Housing Authority, California (“Santa Monica HA”), San Francisco County Transportation Authority, located in the City and County of San Francisco, California (“SFCTA”), and Treasure Island Mobility Management Agency located in Treasure Island and Yerba Buena Island, California (“TIMMA”). Dkt. No. 71 at ¶¶ 8-38. The newly added Defendants were FHWA, Gloria M. Shepard as the acting Director of FHWA, FAA, Chris Rocheleau as acting Administrator of FAA, FRA, and Drew Feeley as acting Administrator of FRA. *Id.* at ¶¶ 39-50.

³ In moving for leave to file the second amended complaint, Plaintiffs asserted that the “claims in the [second amended complaint] challenging new grant conditions are indistinguishable on the facts and law [from] the existing

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On July 10, 2025, Plaintiffs filed a second amended complaint adding another 29 local governments and agencies as plaintiffs.⁴ Dkt. No. 184. Plaintiffs continue to challenge the HUD and DOT funding conditions as before, but now have added HUD grants outside the CoC program, and have brought new claims against HHS and its agencies, including the Administration for Children and Families (“ACF”), Health Resources and Services Administration (“HRSA”), National Institutes of Health (“NIH”), Substance Abuse and Mental Health Services Administration (“SAMHSA”), and the Centers for Disease Control and Prevention (“CDC”). As before, Plaintiffs seek a preliminary injunction enjoining the imposition of the new funding conditions on their federal grants.

The new Plaintiffs challenging the imposition of the new funding conditions on HUD CoC grants are Alameda County, Albuquerque, Baltimore, Columbus, Dane County, Hennepin

claims.” Dkt. No. 181 at 4. Defendants did not oppose the motion. While the Ninth Circuit has not ruled directly on the issue of whether a district court retains jurisdiction to allow amendment of pleadings pending appeal of a preliminary injunction, district courts within this circuit have recognized that pending interlocutory appeal they retain jurisdiction over matters that would not change the issues before the appellate court. *See e.g. Center for Food Safety v. Vilsack*, 2011 WL 672802 at *2 (N.D. Cal. 2011). In light of this, the Court concluded that it retained jurisdiction to allow the requested amendment because a significant portion of the second amended complaint simply adds new Plaintiffs challenging Defendants’ imposition of the previously enjoined unlawful funding conditions on CoC HUD and DOT grants. And while the second amended complaint does also challenge Defendants’ imposition of funding conditions on non-COC HUD and HHS grants, the challenged conditions are either identical or substantially similar to the previously imposed conditions, and the claims implicate identical legal issues. In addition, several of the newly added Plaintiffs face a fast-approaching deadline of August 16, 2025 to submit consolidated/action plans to HUD or forfeit the formula grant funding. Dkt. No. 186 at 1; Dkt. No. 184 at ¶ 623. Nevertheless, if it is determined that this Court lacked jurisdiction because an appeal is pending, then this Court issues this order as an indicative ruling pursuant to Fed. Rule of Civ. P. 62.1(3).

⁴ The 29 newly added Plaintiffs are County of Alameda (“Alameda County”), City of Albuquerque (“Albuquerque”), Mayor and City Council of Baltimore (“Baltimore”), City of Bellevue (“Bellevue”), City of Bellingham (“Bellingham”), City of Bremerton (“Bremerton”), County of Dane (“Dane County”), City of Eugene (“Eugene”), City of Healdsburg (“Healdsburg”), County of Hennepin (“Hennepin County”), Kitsap County, City of Los Angeles (“Los Angeles”), City of Milwaukee (“Milwaukee”), Milwaukee County, Multnomah County, City of Oakland (“Oakland”), City of Pacifica (“Pacifica”), City of Petaluma (“Petaluma”), Ramsey County, City of Rochester (“Rochester”), City of Rohnert Park (“Rohnert Park”), City of San Diego (“San Diego”), County of San Mateo (“San Mateo County”), City of Santa Rosa (“Santa Rosa”), City of Watsonville (“Watsonville”), Culver City Housing Authority (“CCHA”), Puget Sound Regional Council (“PSRC”), Sonoma County Transportation Authority (“SCTA”), and Sonoma County Community Development Commission (SCCDC”). Dkt. No. 184 at ¶¶ 136-253.

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County, Milwaukee, Multnomah County, Oakland, Petaluma, Ramsey County, San Mateo County, and Sonoma County (collectively, “the New CoC Plaintiffs”).

The new Plaintiffs challenging the imposition of the new funding conditions on DOT grants are Alameda County, Albuquerque, Baltimore, Bellevue, Bellingham, Bremerton, Cambridge, Dane County, Eugene, Healdsburg, Hennepin County, Kitsap County, Los Angeles, Milwaukee, Milwaukee County, Multnomah County, Oakland, Pacifica, Pasadena, Petaluma, PSRC, Ramsey County, Rochester, Rohnert Park, San Diego, San Mateo County, Santa Rosa, SCTA, and Watsonville (collectively, “the New DOT Plaintiffs”).

The Plaintiffs challenging the new funding conditions on non-CoC HUD grants are King County, Pierce County, Snohomish County, Boston, Columbus, San Francisco, Santa Clara, NYC, Bend Cambridge, Chicago, Culver City, Minneapolis, Nashville, Pasadena, Pima County, Pittsburgh, Portland, San Jose, Santa Monica, Tucson, King County RHA, Santa Monica HA, Alameda County, Albuquerque, Baltimore, Bellevue, Bellingham, Bremerton, Dane County, Eugene, Hennepin County, Kitsap County, Los Angeles, Milwaukee, Multnomah County, Oakland, Petaluma, Ramsey County, Rochester, San Diego, San Mateo County, Santa Rosa, Sonoma County, Watsonville, CCHA, and SCCDC (collectively, “the Non-CoC HUD Plaintiffs”).

Lastly, the Plaintiffs challenging the HHS grants are Alameda County, Baltimore, Boston, Cambridge, Chicago, Columbus, Dane County, Denver, Eugene, Hennepin County, King County, Milwaukee, Minneapolis, Multnomah County, NYC, Oakland, Pacifica, Pierce

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County, Pima County, Ramsey County, Rochester, San Francisco, Santa Clara, San Mateo County, Snohomish County, and Wilsonville (collectively, “the HHS Plaintiffs”).⁵

III. FACTUAL BACKGROUND⁶

As stated above, initially this lawsuit concerned the allocation of congressionally appropriated federal funds through HUD and DOT grant programs, and several DOT operating administrations. Originally the lawsuit concerned only HUD grants through its CoC program, but with the second amended complaint, while Plaintiffs still challenge the funding conditions on the CoC grants (as well as DOT grants), they now object to funding conditions that HUD seeks to impose on all of its grants. In addition, the lawsuit has expanded to include grants administered by HHS and several of its operating administrations, including ACF, HRSA, NIH, SAMHSA, and the CDC.

A. HUD CoC and DOT Grants

HUD administers the CoC program with funds appropriated by Congress through the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11301(b)(2)–(3). The CoC program is designed to assist individuals and families experiencing homelessness by providing services to help such individuals move into transitional and permanent housing, with the goal of long-term stability. Congress established DOT in 1966 “to assure the coordinated, effective administration of the transportation programs of the Federal Government” and has established by statute a wide variety of grant programs that provide federal funds to state and local governments for public transit services. *See* Department of Transportation Act, Pub. L. No. 89-670, 80 Stat. 931 (1966).

⁵ Note, several Plaintiffs fall into more than one Plaintiff group.

⁶ This Court assumes familiarity with the detailed fact section set forth in its June 3, 2025 order granting Plaintiffs’ motions for a preliminary injunction. Dkt. No. 169.

1 **1. The Funding Conditions on HUD CoC and DOT Grants**

2 In the first two motions for a preliminary injunction, Plaintiffs charged HUD and DOT
3 with imposing funding conditions that are not authorized by statute on HUD CoC and DOT grants
4 and are therefore unlawful. Plaintiffs argued that the new funding conditions sought to coerce
5 grant recipients dependent on federal funding into implementing the Trump Administration's
6 policy agenda. Specifically, Plaintiffs objected to the following six conditions with respect to the
7 CoC grants:

- 8 A. The recipient "shall not use grant funds to promote 'gender ideology,' as
9 defined in E.O. 14168 Defending Women from Gender Ideology
Extremism and Restoring Biological Truth to the Federal Government";
- 10 B. The recipient "agrees that its compliance in all respects with all applicable
11 Federal anti-discrimination laws is material to the U.S. Government's
payment decisions for purposes of [the False Claims Act, 31 U.S.C. §
12 3729(b)(4)]";
- 13 C. The recipient "certifies that it does not operate any programs that violate
any applicable Federal anti-discrimination laws, including Title VI of the
14 Civil Rights Act of 1964";
- 15 D. The recipient "shall not use any Grant Funds to fund or promote elective
abortions, as required by E.O. 14182, Enforcing the Hyde Amendment";
- 16 E. "No state or unit of general local government that receives funding under
17 this grant may use that funding in a manner that by design or effect
facilitates the subsidization or promotion of illegal immigration or abets
18 policies that seek to shield illegal aliens from deportation"; and
- 19 F. "Subject to the exceptions provided by [the Personal Responsibility and
20 Work Opportunity Reconciliation Act of 1996 ("PRWORA")], the recipient
must use SAVE, or an equivalent verification system approved by the
21 Federal government, to prevent any Federal public benefit from being
provided to an ineligible alien who entered the United States illegally or is
otherwise unlawfully present in the United States."

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Dkt. No. 11 (“McSpadden Decl.”), Ex. A at 3. And Plaintiffs objected to the following three conditions with respect to the DOT grants:

- A. “Pursuant to section (3)(b)(iv)(A), Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, the Recipient agrees that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government’s payment decisions for purposes of [the False Claims Act, 31 U.S.C. § 3729(b)(4)]”;
- B. “Pursuant to section (3)(b)(iv)(B), Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, by entering into this Agreement, Recipient certifies that it does not operate any programs promoting diversity, equity, and inclusion (DEI) initiatives that violate any applicable Federal anti-discrimination laws”; and
- C. “[T]he Recipient will cooperate with Federal officials in the enforcement of Federal law, including cooperating with and not impeding U.S. Immigration and Customs Enforcement (ICE) and other Federal offices and components of the Department of Homeland Security in the enforcement of Federal immigration law.”

Dkt. No. 71 at ¶¶ 164, 172. In addition, the new funding conditions also required recipients to comply with all executive orders. McSpadden Decl., Ex. A at 1, ¶ 5; Dkt. No. 71 at ¶¶ 168, 170.

Plaintiffs challenged Defendants’ imposition of the foregoing conditions on the grants, arguing that the conditions are unconstitutional, violate the APA, and exceed statutory authority. They further argued that they would be irreparably harmed if the conditions were imposed on the grants and sought injunctive relief from this Court.

2. This Court Grants Injunctive Relief to Plaintiffs

This Court determined that Plaintiffs were entitled to a preliminary injunction because they satisfied the *Winter* factors. Dkt. No. 169 at 30 (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)). Plaintiffs established that they are likely to succeed on the merits of their APA claim because Defendants’ actions are contrary to the constitution, in excess of statutory

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authority, and arbitrary and capricious. *Id.* at 30-38. Plaintiffs also demonstrated that they were likely to suffer irreparable harm in the absence of preliminary injunctive relief and that the balance of equities weighed in favor of Plaintiffs. *Id.* at 39-45. Therefore, among other relief, the Court enjoined Defendants from:

(1) imposing or enforcing the new funding conditions, as defined in Plaintiffs’ motions for preliminary injunction, or any materially similar terms or conditions with respect to any HUD CoC or DOT funds awarded to Plaintiffs;

(2) with respect to Plaintiffs, rescinding, withholding, cancelling, or otherwise not processing any HUD CoC and/or DOT Agreements, or pausing, freezing, impeding, blocking, cancelling, terminating, delaying, withholding, or conditioning HUD CoC and/or DOT funds, based on such terms or conditions, including without limitation failing or refusing to process and otherwise implement grants signed with changes or other objection to conditions enjoined by this preliminary injunction;

(3) requiring Plaintiffs to make any “certification” or other representation related to compliance with such terms or conditions; or

(4) refusing to issue, process, or sign HUD CoC and/or DOT Agreements based on Plaintiffs’ participation in this lawsuit.

Id. at 46-48.

3. New HUD CoC and DOT Plaintiffs

Plaintiffs allege that despite this Court enjoining Defendants from imposing the unlawful funding conditions on the Original Plaintiffs’ HUD CoC grants, Defendants are attempting to impose the conditions on CoC grants awarded to Alameda County, Albuquerque, Baltimore, Dane County, Hennepin County, Milwaukee, Multnomah County, Oakland, Petaluma, Ramsey County, San Mateo County, and Sonoma County—the New CoC Plaintiffs. Dkt. No. 184 at ¶¶ 292-293. According to Plaintiffs, the CoC grants will allow the New CoC Plaintiffs “to continue homelessness assistance programs, ensuring [their] ability to serve their residents so they [will] not experience a sudden drop off in the availability of housing services, permanent and

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1 transitional housing, and other assistance.” *Id.* at ¶ 300. Plaintiffs further allege that in reliance
2 on the awards, many of the New CoC Plaintiffs “already notified service providers of
3 forthcoming funding and/or contracted with service providers for homelessness assistance
4 services.” *Id.* at ¶ 301.

5 In addition, Plaintiffs allege that Defendants also continue to impose the funding
6 conditions on DOT grants awarded to Alameda County, Albuquerque, Baltimore, Bellevue,
7 Bellingham, Bremerton, Cambridge, Dane County, Eugene, Healdsburg, Hennepin County,
8 Kitsap County, Los Angeles, Milwaukee, Milwaukee County, Multnomah County, Oakland,
9 Pacifica, Pasadena, Petaluma, PSRC, Ramsey County, Rochester, Rohnert Park, San Diego, San
10 Mateo County, Santa Rosa, SCTA, and Watsonville—the New DOT Plaintiffs. According to
11 Plaintiffs, each of the New DOT Plaintiffs “previously received, currently receive, or are
12 otherwise eligible to receive DOT grants, directly and/or on a pass-through basis. *Id.* at ¶ 391.
13 Plaintiffs further allege that each of the New DOT Plaintiffs rely on the DOT grants to undertake
14 transportation-related projects for the benefit of their communities.

15 Plaintiffs claim that “[t]he grant conditions that Defendants seek to impose leave [the
16 New CoC and DOT] Plaintiffs with the Hobson’s choice of accepting illegal conditions that are
17 without authority, contrary to the Constitution, and accompanied by the poison pill of heightened
18 risk of FCA claims or forgoing the benefit of grant funds—paid for (at least partially) through
19 local federal taxes—that are necessary for crucial local services.” *Id.* at ¶ 623. Finally, Plaintiffs
20 assert that loss of these grant funds would result in loss of billions of dollars in funding for
21 critical services and projects for the New CoC and DOT Plaintiffs, destabilizing their

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1 communities. *Id.* at ¶¶ 625-627. Plaintiffs request that this Court extend its injunction against
2 Defendants to the New CoC and DOT Plaintiffs’ grants.

3 **B. Non-CoC HUD Grants**

4 Plaintiffs allege that in addition to CoC grants, many of them receive or are otherwise
5 eligible to receive non-CoC HUD grants—the Non-CoC HUD Plaintiffs. These grants include
6 congressionally appropriated funding for homelessness assistance, affordable housing,
7 community development programs, and other services that benefit the Non-CoC HUD Plaintiffs’
8 communities, including the Community Development Block Grant (“CDBG”) program, 42
9 U.S.C. §§ 5303–06; the Emergency Solutions Grant (“ESG”) program, which funds emergency
10 shelters and homelessness services, *id.* §§ 11371–78; the Home Investment Partnerships
11 (“HOME”) program, which supports affordable housing, *id.* §§ 12741–56; and the Housing
12 Opportunities for Persons with AIDS (“HOPWA”) program, *id.* §§ 12901–12. Dkt. No. 184 at ¶¶
13 302-358.

14 Plaintiffs allege, and Defendants do not dispute, that HUD seeks to impose on *all* HUD
15 grants substantially similar funding conditions to those that this Court previously enjoined. As
16 evidence of this, Plaintiffs point to the fact that in April 2025, HUD amended its General
17 Administrative, National, and Departmental Policy Requirements and Terms (the “HUD Policy
18 Terms”) that sets forth the “various laws and policies that may apply to recipients of” HUD grant
19 awards. Dkt. No. 184 at ¶ 516. The amended HUD Policy Terms list President Trump’s
20 executive orders among the “laws and policies that may apply” to HUD grants as well as
21 language materially the same as the previously enjoined funding conditions. *Id.* at ¶ 520.

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1 In addition, Plaintiffs note that in May 2025, HUD amended its standard Applicant and
2 Recipient Assurances and Certifications (“the HUD Certifications”) to require applicants to
3 certify that they “[w]ill not use Federal funding to promote diversity, equity, and inclusion (DEI)
4 mandates, policies, programs, or activities that violate any applicable Federal antidiscrimination
5 laws.” Dkt. No. 271, Amaral Decl., Ex. B; Dkt. No. 184 at ¶ 522. Local governments and
6 agencies must submit the HUD Certifications with certain consolidated plans and/or action plans
7 annually as a condition to receiving CDBG, ESG, HOME, and HOPWA formula funding.

8 Lastly, on June 5, 2025, HUD’s Office of Community Planning and Development
9 (“CPD”), which administers the CoC, CDBG, ESG, HOME, and HOPWA programs, issued a
10 letter announcing HUD’s decision to impose on all CPD formula grants funding conditions
11 substantially similar to the previously enjoined funding conditions. Dkt. No. 184 at ¶¶ 524-525.
12 These funding conditions include requiring recipients to certify that they: (1) “shall not use grant
13 funds to promote ‘gender ideology,’” (2) will not “use any grant funds to fund or promote
14 elective abortions,” (3) will “use SAVE, or an equivalent verification system approved by the
15 Federal government, to prevent any Federal public benefit from being provided to an ineligible
16 alien who entered the United States illegally or is otherwise unlawfully present in the United
17 States,” and (4) agree that they will not use funding to “subsidiz[e] or promot[e] ... illegal
18 immigration or [to] seek to shield illegal aliens from deportation.” *Id.* at ¶¶ 527-533.

19 Plaintiffs claim that HUD has already notified at least three Non-CoC HUD Plaintiffs that
20 their consolidated/action plans violate the newly imposed funding conditions. For instance, HUD
21 threatened to disapprove Petaluma’s 2025 Consolidated Action Plan for CDBG funds because it
22 allegedly violated the DEI, gender ideology, and immigration funding conditions by including

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1 references to “equity,” “environmental justice,” “transgender or gender non-conforming,” and
2 “undocumented individuals.” Dkt. No. 244, Cochran Decl., Ex. B. Bellevue and King County
3 received similar notices. Dkt. No. 195, Esparza Decl., Ex. A; Dkt. No. 222, Third Supp. Marshall
4 Decl., Ex. B. HUD gave Petaluma, Bellevue, and King County less than 48 hours to remedy the
5 purported violations by scrubbing their plans of the offending language. *Id.*; Cochran Decl. at ¶
6 12. King County’s plan was subsequently disapproved. Dkt. No. 223, Holcomb Decl., Ex. A.

7 Plaintiffs further allege that the Non-CoC HUD Plaintiffs face immediate and irreparable
8 harm from imposition of the funding conditions. Several Non-CoC HUD Plaintiffs face a
9 deadline of Saturday, August 16, 2025 to submit consolidated/action plans to HUD or forfeit the
10 formula grant funding. Dkt. No. 186 at 1; Dkt. No. 184 at ¶ 623. Plaintiffs assert that loss of this
11 funding would disrupt the lives of the Non-CoC HUD Plaintiffs’ most vulnerable residents,
12 likely leading to evictions and increased homelessness and further straining local resources.
13 According to Plaintiffs, even a temporary loss of funding would set back efforts to create and
14 preserve affordable housing, ameliorate homelessness, and house low-income individuals living
15 with HIV/AIDS. Dkt. No. 184 at ¶ 625. Plaintiffs request that this Court enjoin Defendants from
16 imposing the new funding conditions on the Non-CoC HUD Plaintiffs’ grants.

17 C. HHS Grants

18 HHS administers both competitive grant programs and formula and block grant programs
19 that provide funds to local governments to enhance the health and well-being of their
20 communities. In administering grant programs, HHS often acts through its operating divisions
21 and agencies. For instance, ACF administers discretionary and formula grants to support
22 programs that serve children and families. HRSA awards a variety of competitive and formula

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1 grants including Primary Care/Health Centers, Health Workforce Training, HIV/AIDS, Organ
2 Donation, Maternal and Child Health, Rural Health, the Health Center Program, and the Ryan
3 White HIV/AIDS program. SAMHSA administers both competitive, discretionary grant
4 programs and noncompetitive formula grant programs to fund substance use and mental health
5 services to advance the behavioral health and improve the lives of those living with mental and
6 substance use disorders. The CDC provides funding to support public health systems and
7 activities by local and state governments. It supports programs such as HIV/AIDS, Viral
8 Hepatitis, STI, and TB Prevention; Chronic Disease Prevention and Health Promotion; Public
9 Health Preparedness and Response; and Injury Prevention and Control.

10 Congress annually appropriates funding for these HHS grant programs, setting forth
11 priorities and directives to the Secretary of HHS with respect to the funding. Examples of such
12 appropriation legislation are: Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134 Stat.
13 1523–28, 1567–98; Consolidated Appropriations Act, 2022, Pub. L. 117-103, 136 Stat. 397–
14 402, 441–74; Consolidated Appropriations Act, 2023, Pub. L. 117-328, 136 Stat. 4808–13,
15 4854–87; Consolidated Appropriations Act, 2024, Pub. L. 118-42, 138 Stat. 272–77, 397–419.

16 Plaintiffs allege that the HHS Plaintiffs have received, currently receive, or are otherwise
17 eligible to receive federal grants administered by ACF, HRSA, SAMHSA, and CDC, among
18 others. Collectively, HHS Plaintiffs rely on over \$2 billion in appropriated federal funds from
19 HHS grant programs which support essential health programs and services in the HHS Plaintiffs'
20 communities, such as child welfare assistance, adoption and foster care services, and healthcare
21 for low-income individuals and those living with HIV/AIDS. Dkt. No. 184 at ¶¶ 475.

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1 Plaintiffs claim that like HUD and DOT, HHS has begun attaching unlawful funding
 2 conditions to HHS grants that are substantially similar to those that this Court previously
 3 enjoined, including by updating HHS's Grants Policy Statement in April 2025 ("the 2025 HHS
 4 GPS") to provide:

5 [R]ecipients must comply with all applicable Federal anti-discrimination laws
 6 material to the government's payment decisions for purposes of 31 U.S.C. §
 372(b)(4).

7 (1) Definitions. As used in this clause –

8 (a) DEI means "diversity, equity, and inclusion."

(b) DEIA means "diversity, equity, inclusion, and accessibility."

9 (c) Discriminatory equity ideology has the meaning set forth in Section 2(b) of
 10 Executive Order 14190 of January 29, 2025.

11

12 By accepting the grant award, recipients are certifying that . . . [t]hey do not, and
 13 will not during the term of this financial assistance award, operate any programs
 14 that advance or promote DEI, DEIA, or discriminatory equity ideology in violation
 15 of Federal anti-discrimination laws.

16 Dkt. No. 184 at ¶ 606.⁷

17 Plaintiffs further alleged that in addition to these agency-wide changes, several HHS
 18 operating divisions and agencies have issued their own general terms and conditions
 19 incorporating the 2025 HHS GPS. For instance, ACF updated its Standard Terms and Conditions
 20 that apply to both discretionary and non-discretionary awards, to add a certification that states:

21 ⁷ On July 24, 2025, after Plaintiffs filed the instant motion, HHS updated the 2025 HHS GPS, removing express
 22 references to DEI but stating: "By applying for or accepting federal funds from HHS, recipients certify compliance
 23 with all federal antidiscrimination laws and these requirements and that complying with those laws is a material
 24 condition of receiving federal funding streams." 2025 HHS GPS at 18, <https://www.hhs.gov/sites/default/files/hhs-grants-policy-statement-july-2025.pdf>. Thus, the foregoing certification is required even to just "apply[]" for federal
 25 funds from HHS. The 2025 HHS GPS also states that "[r]ecipients are responsible for ensuring subrecipients,
 contractors, and partners also comply." *Id.*

1 *For new awards made on or after May 8, 2025, the following is effective*
 2 *immediately:*

3 Recipients must comply with all applicable Federal anti-discrimination laws
 4 material to the government's payment decisions for purposes of [the FCA].

5 (1) Definitions. As used in this clause –

6 (a) DEI means “diversity, equity, and inclusion.”

7 (b) DEIA means “diversity, equity, inclusion, and
 8 accessibility.”

9 (c) Discriminatory equity ideology has the meaning
 10 set forth in Section 2(b) of Executive Order 14190 of
 11 January 29, 2025.

12 (e) Federal anti-discrimination laws means Federal
 13 civil rights law that protect individual Americans
 14 from discrimination on the basis of race, color, sex,
 15 religion, and national origin.

16 (2) Grant award certification.

17 (a) By accepting the grant award, recipients are
 18 certifying that:

19 (i) They do not, and will not during the term of this
 20 financial assistance award, operate any programs that
 21 advance or promote the following in violation of
 22 Federal anti-discrimination laws: DEI, DEIA, or
 23 discriminatory equity ideology.

24 *Id.* at ¶ 609.⁸

25 Likewise, HRSA issued updated general terms and conditions applicable to all active
 awards. The revised HRSA terms and conditions incorporate the 2025 HHS GPS and also
 contain the following new provision:

⁸ On July 29, 2025, ACF updated its Standard Terms and Conditions again to remove express references to DEI.

By accepting this award, including the obligation, expenditure, or drawdown of award funds, recipients, whose programs, are covered by Title IX certify as follows:

- Recipient is 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 Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq., and Recipient will remain compliant for the duration of the Agreement.
- The above requirements are conditions of payment that go to the essence of the Agreement and are therefore material terms of the Agreement.
- Payments under the Agreement are predicated on compliance with the above requirements, and therefore Recipient is not eligible for funding under the Agreement or to retain any funding under the Agreement absent compliance with the above requirements.
- Recipient acknowledges that this certification reflects a change in the government's position regarding the materiality of the foregoing requirements and therefore any prior payment of similar claims does not reflect the materiality of the foregoing requirements to this Agreement.
- Recipient acknowledges that a knowing false statement relating to Recipient's compliance with the above requirements and/or eligibility for the Agreement may subject Recipient to liability under the False Claims Act, 31 U.S.C. § 3729, and/or criminal liability, including under 18 U.S.C. §§ 287 and 1001.

Dkt. No. 184 at ¶ 611. Plaintiffs allege that SAMHSA and the CDC have also updated their terms to contain funding conditions that require recipients not to promote gender ideology. *Id.* at ¶¶ 607-08.

Plaintiffs argue that foregoing funding conditions are unconstitutional, violate the APA, exceed statutory authority, and are President Trump's attempt to coerce grant recipients that rely on federal funds into implementing his political agenda. According to Plaintiffs, withholding "HHS grants from the HHS Plaintiffs would threaten or eliminate critical individual and public health services for millions of residents. Loss of funding could decimate public health budgets

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1 and cause residents, including those most vulnerable, to lose access to meals, medical care,
2 housing and lifesaving social safety net services. Loss of funding could also devastate local
3 public health and child welfare agencies, who may be forced to conduct significant layoffs and
4 operational reductions.” *Id.* at ¶ 628. Therefore, Plaintiffs request that this Court enjoin HHS
5 and/or its operating agencies from imposing the new funding conditions on the HHS Plaintiffs’
6 grants.

7 IV. DISCUSSION

8 A. Legal Standard

9 A preliminary injunction is a matter of equitable discretion and is “an extraordinary
10 remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such
11 relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). “A plaintiff seeking
12 preliminary injunctive relief must establish that [it] is likely to succeed on the merits, that [it] is
13 likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities
14 tips in [its] favor, and that an injunction is in the public interest.” *Id.* at 20. Alternatively, an
15 injunction may issue where “the likelihood of success is such that serious questions going to the
16 merits were raised and the balance of hardships tips sharply in [the plaintiff’s] favor,” provided
17 that the plaintiff can also demonstrate the other two *Winter* factors. *All. for the Wild Rockies v.*
18 *Cottrell*, 632 F.3d 1127, 1131–32 (9th Cir. 2011) (citation and internal quotation marks omitted).
19 Under either standard, Plaintiffs bear the burden of making a clear showing that they are entitled
20 to this extraordinary remedy. *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010). The
21 most important *Winter* factor is likelihood of success on the merits. *See Disney Enters., Inc. v.*
22 *VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

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B. Plaintiffs' Claims Are Reviewable under the APA

As they did when they opposed Plaintiffs' first two motions for a preliminary injunction, Defendants argue that Plaintiffs' claims are not reviewable by this Court because the actions at issue are committed to the agencies' discretion. While "the APA establishes a basic presumption of judicial review for one suffering legal wrong because of agency action, that presumption can be rebutted by a showing that . . . the agency action is committed to agency discretion by law." *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1905 (2020) (cleaned up); 5 U.S.C. § 701(a)(2). Where that is the case, courts have no authority to review or set aside the agency's action.

However, as this Court previously concluded, this exception to the "basic presumption of judicial review" does not apply in this case. Agency action is committed to agency discretion only in those "rare instances where statutes are drawn in such broad terms that in a given case there is no law to apply, thereby leaving the court with no meaningful standard against which to judge the agency's exercise of discretion." *ASSE Int'l, Inc. v. Kerry*, 803 F.3d 1059, 1068 (9th Cir. 2015); *Texas v. United States*, 809 F.3d 134, 168 (5th Cir. 2015), as revised (Nov. 25, 2015). Once again, Defendants have failed to demonstrate that the contested conditions fall within "[t]his limited category of unreviewable actions." *Regents*, 140 S. Ct. at 1905 (citing *Weyerhaeuser Co. v. United States Fish and Wildlife Serv.*, 139 S. Ct. 361, 370 (2018)). As before, Defendants rely on *Lincoln v. Vigil*, 508 U.S. 182 (1993) for the principle that an agency's decision to cancel a program is unreviewable because how to allocate funds "'from a lump-sum appropriation' is an 'administrative decision traditionally regarded as committed to agency discretion.'" Dkt. No. 334 at 11 (citing 508 U.S. at 192). This Court previously concluded that the agency action in *Lincoln*

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1 differed materially from the actions at issue in this case, namely that the funds at issue in this case
2 are not appropriate in undifferentiated “lump sums” as they were in *Lincoln*. Dkt. No. 169 at 28.
3 Rather, the grants at issue here “abound with specific directives” that provide substantial guidance
4 as to how the agencies’ discretion should be exercised in implementing these programs. *Id.* at 28-
5 29. Defendants ignore entirely this Court’s previous conclusion, and the Court once again
6 concludes that Plaintiffs’ claims do not involve the “narrow category” of agency actions that are
7 unreviewable under the APA.

8 **C. Plaintiffs Are Likely to Succeed on the Merits of Their APA Claims**

9 The Court has already determined that Defendants’ attempt to impose the challenged
10 funding conditions on the CoC and DOT grants violated the APA. *See generally* Dkt. No. 169.
11 Defendants present no argument as to why this conclusion should not apply equally to the New
12 CoC and DOT Plaintiffs; thus, the Court concludes that the New CoC and DOT Plaintiffs are also
13 likely to succeed on the merits of their APA claim and focuses the remainder of its analysis on the
14 Defendants’ actions with respect to the non-CoC HUD and HHS grants.

15 The APA broadly “sets forth the procedures by which federal agencies are accountable to
16 the public and their actions subject to review by the courts.” *Regents*, 140 S. Ct. at 1905 (quoting
17 *Franklin v. Massachusetts*, 505 U.S. 788, 796 (1992)). Under the APA, agencies must “engage in
18 reasoned decisionmaking,” and courts are empowered to “hold unlawful and set aside agency
19 action . . . found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in
20 accord with law; (B) contrary to constitutional right; [or] (C) in excess of statutory
21 jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2). As stated
22 above, Plaintiffs challenge Defendants’ actions as “contrary to constitutional right” and “in excess

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of statutory authority,” and as arbitrary and capricious. *See* Dkt. No. 184, Counts 5, 6, and 7, ¶¶ 670-703.

1. Defendants’ Actions Violate the APA as Contrary to the Constitution and in Excess of Statutory Authority (Counts 6 & 7)

(a) Separation of Powers Doctrine

Under the APA, a court may set aside an agency action that is “contrary to constitutional right, power, privilege, or immunity” or “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(B), (C). Plaintiffs challenge Defendants’ conditions as both contrary to the Constitution’s Separation of Powers doctrine and in excess of any authority conferred by Congress. Dkt. No. 184 at ¶¶ 690-703. As with this Court’s prior order enjoining Defendants’ actions, because the Separation of Powers doctrine and the APA’s “in excess of statutory authority” standard both turn on the same essential question—whether the agency acted within the bounds of its authority, either as conferred by the Constitution or delegated by Congress—the Court addresses the claims in a single analysis.

The Separation of Powers doctrine recognizes that the “United States Constitution exclusively grants the power of the purse to Congress, not the President.” *City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1231 (9th Cir. 2018) (citing the Appropriations Clause, U.S. Const. art. I, § 9, cl. 7 (“No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.”)). “The [Appropriations] Clause has a ‘fundamental and comprehensive purpose . . . to assure that public funds will be spent according to the letter of the difficult judgments reached by Congress as to the common good and not according to the individual favor of Government agents.’” *United States v. McIntosh*, 833 F.3d 1163, 1175 (9th Cir. 2016) (quoting *Office of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 427–28, 2473 (1990)).

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1 In contrast, “[t]here is no provision in the Constitution that authorizes the President to
 2 enact, to amend, or to repeal statutes.” *Clinton v. City of New York*, 524 U.S. 417, 438 (1998).
 3 “Aside from the power of veto, the President is without authority to thwart congressional will by
 4 canceling appropriations passed by Congress.” *San Francisco*, 897 F.3d at 1231. Quite the
 5 contrary, it is well-established that an executive agency “literally has no power to act . . . unless
 6 and until Congress confers power upon it.” *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374
 7 (1986); *see California v. Trump*, 379 F. Supp. 3d 928, 941 (N.D. Cal. 2019), *aff’d*, 963 F.3d 926
 8 (9th Cir. 2020). When an agency is charged with administering a statute, “both [its] power to act
 9 and how [it is] to act [are] authoritatively prescribed by Congress.” *City of Arlington v. FCC*, 569
 10 U.S. 290, 297 (2013). “Absent congressional authorization, the Administration may not
 11 redistribute or withhold properly appropriated funds in order to effectuate its own policy goals.”
 12 *San Francisco*, 897 F.3d at 1235.

13 Plaintiffs argue that in attempting to condition disbursement of funds in part on grounds
 14 not authorized by Congress, but rather on Executive Branch policy, Defendants are acting in
 15 violation of the Separation of Powers principle and “in excess of statutory jurisdiction, authority,
 16 or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(B), (C). Plaintiffs argue that the
 17 statutes authorizing the grants at issue do not confer on Defendants the kind of authority they are
 18 attempting to assert. For the reasons explained below, and in its June 3, 2025 order, the Court
 19 agrees.

20 (b) The Non-CoC HUD Funding Conditions

21 Plaintiffs contend that the contested conditions must be set aside because the statute’s
 22 underlying the non-CoC HUD grants do not give HUD the authority to impose “conditions that

1 prohibit DEI or promotion of ‘gender ideology’ or ‘elective abortion’ or require participation in
2 federal immigration enforcement, immigration status verification, or adherence to EOs unrelated
3 to the grant’s purpose.” Dkt. No. 186 at 9. Defendants counter that they do have the authority to
4 impose the challenged conditions, citing to HUD regulations that require “federal agencies [to]
5 incorporate ‘statutory, executive order, other Presidential directive, or regulatory requirements’
6 into the terms and conditions” of HUD grants. Dkt. No. 334 at 8 citing 2 C.F.R. §
7 200.211(c)(1)(ii). However, as this Court noted in rejecting this argument the first time
8 Defendants raised it, “an agency *regulation* cannot create *statutory* authority; only Congress can
9 do that.” Dkt. No. 169 at 33 (emphasis in original). Defendants must point to a *statutory* source
10 that confers the authority. Without such a source, the agency action violates the separation of
11 powers principle.

12 Next Defendants argue that the challenged conditions “merely require grant recipients to
13 agree to comply with existing federal laws, like federal antidiscrimination laws” and “Congress
14 has expressly authorized HUD to require that grantees comply with federal laws.” Dkt. No. 334 at
15 8 (citing 42 U.S.C. § 5304(b)(6) (“Any [CDBG] grant ... shall be made only if the grantee
16 certifies to the satisfaction of the Secretary that ... the grantee will comply with the other
17 provisions of this chapter and with other applicable laws.”)). The problem with Defendants’
18 argument is that they fail to acknowledge the evidence in the record that demonstrates that
19 Defendants interpret federal antidiscrimination laws in a manner that is inconsistent with well-
20 established legal precedent. For example, on April 4, 2025, DOT Secretary Duffy issued a letter
21 “To All Recipients of U.S. Department of Transportation Funding” in which he stated that “*any*
22 policy, program, or activity” that is “designed to achieve so called “diversity, equity, and
23

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inclusion,’ or ‘DEI[]’ goals[] presumptively violates Federal law” even if the policy, program, or activity is “described in neutral terms.” Dkt. No. 6 at 346 (emphasis added). Secretary Duffy’s statement can easily be interpreted to mean that a federal grant recipient that has a “policy” to accommodate individuals with disabilities so that those individuals can participate in an “activity” has “presumptively violate[d] Federal law.” This, of course, is inconsistent with well-established federal precedent that requires entities that receive federal funds to provide reasonable accommodations for qualified individuals with disabilities so that they can participate in their programs. *See e.g., U.S. Dept. of Transp. v. Paralyzed Veterans of America*, 477 U.S. 597, 604 (1986) (“Section 504 prohibits discrimination against any qualified handicapped individual under ‘any program or activity receiving Federal financial assistance.’”); *Muir v. United States Dept. of Homeland Security*, 2025 WL 2088450, *6 (D.C. Cir. July 25, 2025) (“Section 504 of the Rehabilitation Act prohibits discrimination against disabled persons by recipients of federal funds.”); *Ward v. McDonald*, 762 F.3d 24, 28 (D.C. Cir. 2014) (It is a basic tenet of the Rehabilitation Act of 1973 “that the government must take reasonable affirmative steps to accommodate the handicapped, except where undue hardship would result”).

Likewise, on May 19, 2025, U.S. Deputy Attorney General Todd Blanche sent a memorandum to all United States Attorneys, among others, in which he stated that federal fund recipients may run afoul of the False Claims Act if they allow transgender individuals to use bathrooms consistent with their gender identities (*i.e.*, “allow[] men to intrude into women’s bathrooms”). Dkt. No. 65 at 5. Deputy Attorney General Blanche’s statement contradicts the decisions of multiple appellate courts that have held that federal law forbids discrimination based on transgender status. *See e.g., Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616–17 (4th

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1 Cir. 2020) (transgender student’s exclusion from bathroom constituted Title IX discrimination);
2 *A.C. by M.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th 760, 769 (7th Cir. 2023)
3 (“[D]iscrimination against transgender persons is sex discrimination for Title IX purposes . . .”).

4 And as recently as July 29, 2025, U.S. Attorney General Pam Bondi issued a
5 memorandum titled “Guidance for Recipients of Federal Funds regarding Unlawful
6 Discrimination” in which she purports to “clarif[y] the application of federal antidiscrimination
7 laws to programs or initiatives that may involve discriminatory practices, including those labeled
8 as Diversity, Equity, and Inclusion (“DEI”) programs.” Dkt. No. 331, Ex. A at 1. Among other
9 “clarifications”, Attorney General Bondi states that the use of “[f]acially neutral criteria (e.g.,
10 ‘cultural competence,’ ‘lived experience,’ geographic targeting) that function as proxies for
11 protected characteristics violate federal law if designed or applied with the intention of
12 advantaging or disadvantaging individuals based on protected characteristics.” *Id.* at 2. This
13 “clarification,” however, is inconsistent with Supreme Court precedent that has “consistently
14 declined to find constitutionally suspect” the adoption of race-neutral criteria “out of a desire . . .
15 to improve racial diversity and inclusion”—even where the decision-maker was “well aware” the
16 race-neutral criteria “correlated with race.” *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, 68 F.4th 864,
17 885–86 (4th Cir. 2023) (internal quotation marks and citation omitted) (citing, *inter alia*, *Tex.*
18 *Dep’t of Hous. & Cmty. Affs. v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 545 (2015). Nor
19 does Supreme Court precedent prohibit the use of diversity statements for the purpose of
20 advancing racial diversity goals; to the contrary, in *Students for Fair Admissions, Inc. v.*
21 *President & Fellows of Harvard College*, the Court described these goals as “commendable” and
22 “worthy” (though insufficient to justify race-based admissions). 600 U.S. 181, 214-15, 230

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(2023) (“[N]othing in this opinion should be construed as prohibiting universities from considering an applicant’s discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise.”); *United States v. Skrametti*, 145 S. Ct. 1816, 1854 (2025) (Thomas, J., concurring) (suggesting strict scrutiny does not apply to “a university’s decision to credit ‘an applicant’s discussion of how race affected his or her life’” simply because it is “inextricably bound up with” the applicant’s race) (cleaned up).

The above demonstrates that Plaintiffs are at the mercy of Defendants’ interpretation of federal antidiscrimination laws, regardless of how those laws are interpreted by the courts. Indeed, this has already played out in this case where HUD recently informed King County that it was rejecting King County’s CDBG Consolidated Plan submission for Program Year 2025 because HUD “is questioning the accuracy of King County’s ... certification that the [CDBG] funds described in [the plan] will be administered in conformity with applicable laws, including Executive Orders.” Dkt. No. 223 at 5-6. Among other reasons HUD expressed concern was King County’s use of words such as “equity,” “migrant,” and “immigrant” throughout the plan. *Id.* at 6-8. In order to assuage HUD’s concerns, King County was instructed to replace “all ‘equity’ references” throughout the plan with “activities and actions that do not violate any applicable Federal anti-discrimination laws, including Title VI of the Civil Rights Act of 1964” and to replace all references to “migrant” and “immigrant” with “legal/documental migrant/immigrant.” *Id.* at 8. However, as Plaintiffs aptly point out, “[n]o case law ... suggests that using words like ‘equity’ or ‘migrant’ violates *any* law.” dkt. no. 335 at 3, thus refuting Defendants’ claim that the challenged funding requirements “merely require grant recipients to

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agree to comply with existing federal laws, like federal antidiscrimination laws,” dkt. no. 334 at 8.⁹

Moreover, Defendants’ ability to impose the challenged conditions on the non-CoC HUD grants is further constrained by 42 U.S.C. § 12711, which prohibits HUD from “denying funds made available under [HUD] programs . . . based on the adoption, continuation, or discontinuation” of any lawful local policies. Stated differently, “HUD may not . . . *condition* funding on changes to local policies.” *Cnty. of Westchester v. U.S. Dep’t of Housing and Urban Dev.*, 802 F.3d 413, 433 (2d Cir. 2015) (emphasis in original). Yet that is exactly what Defendants attempt to do here; they are leveraging the Non-CoC HUD Plaintiffs’ dependence on federal funding to coerce them into replacing their own local policies with the Trump Administration’s political agenda.

⁹ Nor are the new funding conditions authorized by PRWORA or the Hyde Amendment as Defendants claim. The challenged funding conditions purport to require non-CoC HUD Plaintiffs to “use SAVE, or an equivalent verification system approved by the Federal government, to prevent any Federal public benefit from being provided to an ineligible alien who entered the United States illegally or is otherwise unlawfully present in the United States.” Dkt. No. 184 at ¶¶ 492, 517. While PRWORA does provide that noncitizens without qualifying immigration status are ineligible for certain “Federal public benefit[s],” 8 U.S.C. § 1611(a), it does not require grant recipients to verify eligibility *until* the U.S. Attorney General has promulgated regulations implementing a verification requirement. *See id.* § 1642(a); § 1642(b) (“Not later than 24 months after the date the regulations described in subsection (a) are adopted, a State that administers a program that provides a Federal public benefit shall have in effect a verification system that complies with the regulations.”). The Attorney General is yet to promulgate a final regulation implementing a verification requirement. *See* Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61344 (Nov. 17, 1997); Verification of Eligibility for Public Benefits, 63 Fed. Reg. 41662 (Aug. 4, 1998) (proposed rule). By requiring grant recipients to verify eligibility by using SAVE (or an equivalent system) without the benefit of implementing regulations and/or the two-year ramp-up period, Defendants are attempting to rewrite PRWORA, not implement it.

The Hyde Amendment also does not authorize the challenged funding condition that requires the Non-CoC HUD Plaintiffs to certify that no grant funds will be used “to promote elective abortions.” Dkt. No. 1854 at ¶¶ 494, 520. The Hyde Amendment bars use of federal funds to pay for or to require a person to facilitate an abortion; it does not prohibit federally funded programs from promoting elective abortions, which could be read to include providing program participants with information about lawful abortions. Pub. L. 118-42, §§ 202–03, 138 Stat. 153.

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1 Lastly, the challenged funding conditions conflict with statutory provisions authorizing
2 the HUD grant programs. Far from barring diversity-related “inclusion,” Congress *requires*
3 consideration of diversity when allocating HUD funds. For instance, the HUD Secretary is
4 required to set aside CDBG funds for “[s]pecial purpose grants,” including grants to “historically
5 Black colleges.” 42 U.S.C. § 5307(b)(2); *see also id.* § 5307(c) (requiring CDBG funds be
6 allocated to provide “assistance to economically disadvantaged and minority students”). And in
7 authorizing the HOME and HOPWA programs, Congress acted to “improve housing
8 opportunities for all residents of the United States, particularly members of disadvantaged
9 minorities, on a nondiscriminatory basis.” 42 U.S.C. § 12702(3). Congress also requires HOME
10 recipients “to establish and oversee a minority outreach program . . . to ensure the inclusion, to
11 the maximum extent possible, of minorities and women, and entities owned by minorities and
12 women . . . in all contracts[] entered into by the participating jurisdiction.” 42 U.S.C. § 12831(a).

13 Based on the foregoing, the Court concludes that the Non-CoC HUD Plaintiffs are likely
14 to prevail on their claim that in attempting to impose the challenged funding conditions on the
15 recipients of non-CoC funds, Defendants have run afoul of the Separation of Powers doctrine, and
16 are acting in excess of statutory authority, and that under the APA, those conditions must be set
17 aside.

18 (c) The HHS Grants Funding Conditions

19 Defendants’ attempts to identify statutory authority for imposing the contested conditions
20 on the HHS grants suffer from similar deficiencies. As an initial matter, Defendants once again
21 rely on agency regulations for the authority to impose the conditions, but as noted above, agency
22 regulations are not the equivalent of statutory authority, and HHS’ attempt to rely on them also

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1 fails. Nor does Defendants’ reliance on generic statutory provisions authorizing the HHS
2 Secretary to prescribe the “form and manner” for grant applications and the “information” it
3 must “contain” fair any better. Dkt. No. 335 at 6 (citing 42 U.S.C. §§ 254b(k)(1), 300ff-15(a),
4 (b), 290ee-1(b)(1)(B)). These provisions only encompass prescriptions as to form, manner, and
5 information, and Defendants’ claim that such ministerial provision authorize wide-ranging
6 substantive conditions on hotly debated policy choices runs afoul of the well-established
7 principle that “Congress ... does not alter the fundamental details of a regulatory scheme in
8 vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.”
9 *Whitman v. Am. Trucking Ass’n*, 531 U.S. 457, 468 (2001).

10 Defendants also invoke Title IX of the Education Amendments Act of 1972, which
11 prohibits sex discrimination by federal education funding recipients, as authority for requiring
12 HHS grant recipients to comply with Presidential Executive Order 14168 “Defending Women
13 From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.”
14 This Executive Order mandates that “[f]ederal funds shall not be used to promote gender
15 ideology” and requires grant recipients to “recognize two sexes, male and female” and that
16 “[t]hese sexes are not changeable and are grounded in fundamental and incontrovertible reality.”
17 But nothing in Title IX mandates such understandings. To the contrary, as cited above courts
18 have concluded that failure to recognize an individual’s transgender status constituted
19 discrimination under Title IX. *See e.g., Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616–
20 17 (4th Cir. 2020) (transgender student’s exclusion from bathroom constituted Title IX
21 discrimination); *A.C. by M.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th 760, 769 (7th Cir.
22 2023) (“[D]iscrimination against transgender persons is sex discrimination for Title IX purposes

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...”). As such, far from enforcing Title IX, Defendants seek to graft new requirements into the statute.

Accordingly, the Court concludes that the HHS Plaintiffs are likely to prevail on their claim that in attempting to impose the conditions in the 2025 HHS GPS and the various operating agencies and divisions’ terms and conditions, Defendants have acted in a manner that violates the Separation of Powers doctrine and exceeds statutory authority, and that under the APA those conditions must be set aside.

2. Defendants’ Actions Were “Arbitrary and Capricious,” 5 U.S.C. § 702(2)(A) (Count 5)

Plaintiffs also assert that the challenged conditions must be set aside as “arbitrary” and “capricious.” 5 U.S.C. § 706(2)(A); Dkt. No. 184 at ¶¶ 671-688. The APA requires agencies to engage in “reasoned decisionmaking,” and their actions must be “reasonable and reasonably explained.” *Michigan v. EPA*, 576 U.S. 743, 750 (2015); *Ohio v. EPA*, 603 U.S. 279, 292 (2024) (cleaned up). An agency must offer “a satisfactory explanation for its action,” and cannot rely on “factors which Congress has not intended it to consider.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Plaintiffs maintain that Defendants have not followed these prescriptions and have failed to provide reasonable explanations for any of the challenged funding conditions.

Defendants do not dispute that they have not offered contemporary, reasoned explanations for the imposition of the challenged funding conditions; rather, they argue that they are not required to do so because the conditions are not subject to notice-and-comment rulemaking. Defendants are mistaken. “The APA, by its terms, provides a right to judicial review of all ‘final agency action for which there is no other adequate remedy in a court,’” *Bennett v.*

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Spear, 520 U.S. 154, 175 (1997) (quoting 5 U.S.C. § 704), whether or not that action is subject to notice-and-comment rulemaking. *See Cal. Communities Against Toxics v. EPA*, 934 F.3d 627, 635–36 (D.C. Cir. 2019). Defendants do not contest that the challenged funding conditions are final agency actions. As such, each agency must have “reasonably considered the relevant issues and reasonably explained its decision” to impose the challenged conditions. *Barton v. Off. of Navajo*, 125 F.4th 978, 982 (9th Cir. 2025) (cleaned up).

At most, the Defendants rely on reference to the Trump Administration’s executive orders to justify the imposition of the challenged funding conditions, but as this Court previously stated “rote incorporation of executive orders—especially ones involving politically charged policy matters that are the subject of intense disagreement and bear no substantive relations to the agency’s underlying action—does not constitute ‘reasoned decisionmaking.’” Dkt. No. 169 at 38. Thus, the Court concludes that Plaintiffs are likely to succeed on the merit of their claim that Defendants’ imposition of the challenged funding conditions is arbitrary and capricious, which is an independent ground for setting aside those conditions.¹⁰

¹⁰ Plaintiffs have asserted several other claims both under the APA and under the Constitution. See Dkt. No. 184 at ¶¶ 630-669, 704-724. The Court does not reach these claims at this stage, in part because “[t]he Court need only find that Plaintiffs are likely to succeed on one of [their] claims for [the likelihood-of-success] factor to weigh in favor of a preliminary injunction,” and a ruling on Plaintiffs’ additional claims would not affect the relief afforded. *Aids Vaccine Advoc. Coal. v. United States Dep’t of State*, No. CV 25-00400 (AHA), 2025 WL 752378, at *7 (D.D.C. Mar. 10, 2025). Furthermore, the Court adheres to the “fundamental and longstanding principle of judicial restraint” that requires courts to “avoid reaching constitutional questions in advance of the necessity of deciding them.” *Al Otro Lado v. Exec. Off. for Immigr. Rev.*, No. 22-55988, 2024 WL 5692756, at *14 (9th Cir. May 14, 2025) (vacating district court’s “entry of judgment for Plaintiffs on the constitutional due process claim” where judgment was granted in Plaintiffs’ favor on APA claim) (citing *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 445 (1988)); *see also Washington v. Trump*, 441 F. Supp. 3d 1101, 1125 (W.D. Wash. 2020) (“[A] court should not reach a constitutional question if there is some other ground upon which to dispose of the case. Given that this Court has already determined that Defendants’ [action] violates the APA and, therefore, can dispose of the case on that basis, the Court exercises restraint and declines to reach the constitutional claims raised by Washington.”) (cleaned up, citing *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 205 (2009); *Harmon v. Brucker*, 355 U.S. 579, 581 (1958)). Because Plaintiffs are likely to prevail on Counts 5, 6 and 7 of their Second Amended Complaint—that the challenged actions were arbitrary and capricious, contrary to the constitutional Separation of

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D. Irreparable Injury

A plaintiff seeking a preliminary injunction must establish that it is likely to suffer irreparable harm in the absence of preliminary relief. *Winter*, 555 U.S. at 20. Such harm “is traditionally defined as harm for which there is no adequate legal remedy, such as an award of damages.” *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014) (citing *Rent-A-Ctr., Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir.1991)).

The Court addressed this issue when previously granting preliminary relief, stating:

Plaintiffs allege several forms of irreparable harm that are either presently occurring, or are likely to occur, in the absence of injunctive relief. They are facing a choice between two untenable options; as this Court has already determined, ‘Defendants have put Plaintiffs in the position of having to choose between accepting conditions that they believe are unconstitutional and risking the loss of hundreds of millions of dollars in federal grant funding, including funding that they have already budgeted and are committed to spending.’ On the one hand, being forced to accept conditions that are contrary either to statute or to the Constitution (or both) is a constitutional injury, and constitutional injuries are ‘unquestionably’ irreparable. *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017).

On the other hand, avoiding the constitutional offense by refusing to agree to the new funding conditions may very well result in the loss of access to promised grant funds. And indeed, Defendants have not denied that Plaintiffs would be assuming this risk by not signing the agreements. They merely complain that Plaintiffs have not provided details as to when exactly that loss will occur. But this argument misses the point. It is this looming risk itself that is the injury, and one that Plaintiffs are already suffering. Courts evaluating similar circumstances have recognized that this injury of acute budgetary uncertainty is irreparable; ‘[w]ithout clarification regarding the Order’s scope or legality, the Counties will be obligated to take steps to mitigate the risk of losing millions of dollars in federal funding, which will include placing funds in reserve and making cuts to services. These mitigating steps will cause the Counties irreparable harm.’ *Santa Clara v. Trump*, 250 F. Supp. 3d 497, 537 (N.D. Cal. 2017). While a preliminary injunction will not eliminate these risks entirely, Plaintiffs have demonstrated it will at least mitigate them pending

Powers doctrine, and in excess of Defendants’ statutory authority, and must therefore be set aside under the APA—the Court’s inquiry into the likelihood-of-success factor is at an end.

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1 resolution of this case on its merits.

2 Furthermore, Plaintiffs have submitted substantive and detailed evidence
3 illustrating the ways in which a loss of grant funds would be devastating and
4 irreparable if these risks in fact materialize. . . . The administration's attempt to
5 compel Plaintiffs' compliance with unrelated policy objectives by leveraging the
6 needs of our most vulnerable fellow human beings is breathtaking in its callousness.
7 Defendants' argument that these harms are not irreparable is simply wrong.

8 Dkt. No. 169 at 39-42 (some internal citations omitted).

9 Plaintiffs have once again provided comprehensive evidence (in the form of nearly 100
10 declarations from local government and agency administrators, *see* dkt. nos. 187-282)
11 demonstrating that should the loss of the grant funds come to pass, the resulting harm would be
12 severe and irreparable. In addition, Plaintiffs have provided substantial evidence demonstrating
13 that this harm is not, as Defendants suggest, merely monetary in nature. Adequate financial
14 compensation for the destabilization of immediate and future budgets, reductions in workforce,
15 hundreds of shelter-unstable families losing access to housing, loss of access to health care
16 services to vulnerable populations, and the termination of transportation projects simply does not
17 exist. Therefore, the Court concludes that the harms Plaintiffs have alleged are quintessentially
18 irreparable in nature and can be avoided only by entry of the requested injunction.

19 **E. The Balance of Equities and Public Interest Favor Plaintiffs**

20 In deciding whether to grant an injunction, "courts must balance the competing claims of
21 injury and must consider the effect on each party of the granting or withholding of the requested
22 relief." *Disney Enters*, 869 F.3d at 866 (quoting *Winter*, 555 U.S. at 24). Courts "explore the
23 relative harms to applicant and respondent, as well as the interests of the public at large." *Barnes*
24 *v. E-Sys., Inc. Grp. Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1305 (1991) (internal
25 quotation marks and citation omitted). Where the government is a party, the balance of equities

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1 and public interest factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir.
2 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

3 Defendants once again argue that the balance of equities and the public interest favor
4 Defendants because “[en]suring compliance with federal laws is assuredly in the public interest.”
5 Dkt. No. 334 at 14. But as discussed *supra*, the contested funding conditions are not
6 congressionally authorized, nor do they merely seek compliance with federal law. Defendants do
7 not have a legitimate interest in ensuring that funds are spent pursuant to conditions that were
8 likely imposed in violation of the APA and/or the Constitution. *See Valle del Sol Inc. v. Whiting*,
9 732 F.3d 1006, 1029 (9th Cir. 2013) (there is no legitimate government interest in violating
10 federal law). Defendants also contend that “Plaintiffs could be compensated for any lost money
11 after a ruling on the merits” in this case. Dkt. No. 334 at 14. The Court has already rejected the
12 notion that Plaintiffs could be adequately compensated for the devastation that would result from
13 the loss of the federal funding. Thus, for the reasons outlined above, the irreparable harms
14 Plaintiffs face in the absence of an injunction tip the balance of equities sharply in their favor.

15 **F. The Court Denies Defendants’ Request for a Bond and Request to Stay**

16 Defendants request that if this Court issues an injunction, it be stayed pending any appeal
17 and further requests that this Court require Plaintiffs to post a bond for the value of the specific
18 grants subject to the injunction pursuant to Fed. R. Civ. P. 65(c). The Court denies both requests.
19 Defendants have not met the standard for a stay. *See, e.g., Maryland v. Dep’t of Agriculture*, JKB-
20 25-0748, 2025 WL 800216, at *26 (D. Md. Mar. 13, 2025) (“It is generally logically inconsistent
21 for a court to issue a TRO or preliminary injunction and then stay that order, as the findings on
22 which those decisions are premised are almost perfect opposites.”). Nor have Defendants argued,

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1 let alone demonstrated, that they will suffer any material harm from the injunction the Court
2 issues today. “Despite the seemingly mandatory language, Rule 65(c) invests the district court
3 with discretion as to the amount of security required, if any.” *Johnson v. Couturier*, 572 F.3d
4 1067, 1086 (9th Cir. 2009) (citations and internal quotation marks omitted). “In particular, the
5 district court may dispense with the filing of a bond when it concludes there is no realistic
6 likelihood of harm to the defendant from enjoining his or her conduct.” *Id.* (cleaned up).

7 V. CONCLUSION

8 For the foregoing reasons,

9 1. Plaintiffs’ Third Motion for Preliminary Injunction is GRANTED;

10 2. HUD and its officers, agents, servants, employees, and attorneys, and any other
11 persons who are in active concert or participation with them (collectively “Enjoined HUD CoC
12 Parties”), are enjoined from (1) imposing or enforcing the CoC Grant Conditions, as defined in
13 the Appendix II to this Order, or any materially similar terms or conditions at any stage of the
14 grantmaking process, including but not limited to in new grant applications, notices of funding
15 availability or opportunity, certifications, grant agreements, or post-award submissions, with
16 respect to any CoC funds awarded to the New CoC Plaintiffs or members of their Continuums;
17 (2) as to the New CoC Plaintiffs or members of their Continuums, rescinding, withholding,
18 cancelling, or otherwise not processing any CoC Agreements, or pausing, freezing, impeding,
19 blocking, cancelling, terminating, delaying, withholding, or conditioning CoC funds, based on
20 such terms or conditions, including without limitation failing or refusing to process and
21 otherwise implement grants signed with changes or other objections to conditions enjoined by
22 this preliminary injunction; (3) requiring the New CoC Plaintiffs or members of their

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Continuums to make any “certification” or other representation related to compliance with such terms or conditions; or (4) refusing to issue, process, or sign CoC Agreements based on New CoC Plaintiffs’ participation in this lawsuit;

3. The Enjoined HUD CoC Parties shall immediately treat any actions taken to implement or enforce the CoC Grant Conditions or any materially similar terms or conditions as to the New CoC Plaintiffs or their Continuums, including but not limited to any delays or withholding of funds based on such conditions, as null, void, and rescinded; while this preliminary injunction is in effect, shall treat as null and void any such conditions included in any grant agreement executed by any New CoC Plaintiff or member of a New CoC Plaintiff’s Continuum; and may not retroactively apply such conditions to grant agreements during the effective period of this preliminary injunction. The Enjoined HUD CoC Parties shall immediately take every step necessary to effectuate this order, including without limitation clearing any administrative, operational, or technical hurdles to implementation;

4. HUD, all of the HUD program offices, and their officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with them (collectively “Enjoined HUD Parties”), are enjoined from (1) imposing or enforcing the Non-CoC HUD Grant Conditions, as defined in the Appendix II to this Order, or any materially similar terms or conditions at any stage of the grant-making process, including but not limited to in new grant applications, notices of funding availability or opportunity, certifications, grant agreements, or post-award submissions, with respect to any non-CoC HUD funds awarded to the Non-CoC HUD Plaintiffs, their consortia, or their subrecipients; (2) as to the Non-CoC HUD Plaintiffs, their consortia, or their subrecipients, rescinding, withholding, cancelling, or otherwise

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1 not processing any non-CoC HUD awards, or pausing, freezing, impeding, blocking, cancelling,
2 terminating, delaying, withholding, or conditioning non-CoC HUD funds, based on such terms or
3 conditions, including without limitation failing or refusing to process and otherwise implement
4 grants signed with changes or other objections to conditions enjoined by this preliminary
5 injunction; (3) requiring the Non-CoC HUD Plaintiffs, their consortia, or their subrecipients to
6 make any “certification” or other representation related to compliance with such terms or
7 conditions; or (4) refusing to issue, process, or sign grant agreements based on the Non-CoC
8 HUD Plaintiffs’ participation in this lawsuit;

9 5. The Enjoined HUD Parties shall immediately treat any actions taken to implement
10 or enforce the Non-CoC HUD Grant Conditions or any materially similar terms or conditions as
11 to the Non-CoC HUD Plaintiffs, their consortia, or their subrecipients, including but not limited
12 to any delays or withholding of funds based on such conditions, as null, void, and rescinded;
13 while this preliminary injunction is in effect, shall treat as null and void any such conditions
14 included in any grant agreement executed by any Non-CoC HUD Plaintiff, a member of its
15 consortium, or its subrecipient; and may not retroactively apply such conditions to grant
16 agreements during the effective period of this preliminary injunction. The Enjoined HUD Parties
17 shall immediately take every step necessary to effectuate this order, including without limitation
18 clearing any administrative, operational, or technical hurdles to implementation;

19 6. DOT, all of the DOT operating agencies, and their officers, agents, servants,
20 employees, and attorneys, and any other persons who are in active concert or participation with
21 them (collectively “Enjoined DOT Parties”), are enjoined from (1) imposing or enforcing the
22 DOT Grant Conditions, as defined in the Appendix II to this Order, or any materially similar

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1 terms or conditions at any stage of the grant-making process, including but not limited to in new
2 grant applications, notices of funding availability or opportunity, certifications, grant agreements,
3 or post-award submissions, as to any DOT funds awarded, directly or indirectly, to the New
4 DOT Plaintiffs or their subrecipients; (2) as to the New DOT Plaintiffs or their subrecipients,
5 rescinding, withholding, cancelling, or otherwise not processing the DOT grant awards, or
6 pausing, freezing, impeding, blocking, canceling, terminating, delaying, withholding, or
7 conditioning DOT funds, based on such terms or conditions, including without limitation failing
8 or refusing to process and otherwise implement grants signed with changes or other objections to
9 conditions enjoined by this preliminary injunction; (3) requiring the New DOT Plaintiffs or their
10 subrecipients to make any “certification” or other representation related to compliance with such
11 terms or conditions; or (4) refusing to issue, process, or sign grant agreements based on New
12 DOT Plaintiffs’ participation in this lawsuit;

13 7. The Enjoined DOT Parties shall immediately treat any actions taken to implement
14 or enforce the DOT Grant Conditions or any materially similar terms or conditions as to DOT
15 funds awarded, directly or indirectly, to the New DOT Plaintiffs or their subrecipients, including
16 but not limited to any delays or withholding of funds based on such conditions, as null, void, and
17 rescinded; while this preliminary injunction is in effect, shall treat as null and void any such
18 conditions included in any grant agreement executed by any New DOT Plaintiff or its
19 subrecipient; and may not retroactively apply such conditions to grant agreements during the
20 effective period of this preliminary injunction. The Enjoined DOT Parties shall immediately take
21 every step necessary to effectuate this order, including without limitation clearing any
22 administrative, operational, or technical hurdles to implementation;

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1 8. HHS, all of the HHS operating divisions and agencies, and their officers, agents,
2 servants, employees, and attorneys, and any other persons who are in active concert or
3 participation with them (collectively “Enjoined HHS Parties”), are enjoined from (1) imposing or
4 enforcing the HHS Grant Conditions, as defined in the Appendix II to this Order, or any
5 materially similar terms or conditions at any stage of the grant-making process, including but not
6 limited to in new grant applications, notices of funding availability or opportunity, certifications,
7 grant agreements, or post-award submissions, as to any HHS funds awarded, directly or
8 indirectly, to the HHS Plaintiffs or their subrecipients; (2) as to the HHS Plaintiffs or their
9 subrecipients, rescinding, withholding, cancelling, or otherwise not processing HHS grant
10 awards, or pausing, freezing, impeding, blocking, canceling, terminating, delaying, withholding,
11 or conditioning HHS funds, based on such terms or conditions, including without limitation
12 failing or refusing to process and otherwise implement grants signed with changes or other
13 objections to conditions enjoined by this preliminary injunction; (3) requiring the HHS Plaintiffs
14 or their subrecipients to make any “certification” or other representation related to compliance
15 with such terms or conditions; or (4) refusing to issue, process, or sign grant agreements based
16 on HHS Plaintiffs’ participation in this lawsuit;

17 9. The Enjoined HHS Parties shall immediately treat any actions taken to implement
18 or enforce the HHS Grant Conditions or any materially similar terms or conditions as to HHS
19 funds awarded, directly or indirectly, to the HHS Plaintiffs or their subrecipients, including but
20 not limited to any delays or withholding of funds based on such conditions, as null, void, and
21 rescinded; while this preliminary injunction is in effect, shall treat as null and void any such
22 conditions included in any grant agreement executed by any HHS Plaintiff or its subrecipient;

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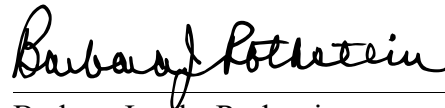
1 and may not retroactively apply such conditions to grant agreements during the effective period
2 of this preliminary injunction. The Enjoined HHS Parties shall immediately take every step
3 necessary to effectuate this order, including without limitation clearing any administrative,
4 operational, or technical hurdles to implementation;

5 10. Defendants' counsel shall provide written notice of this Order to all Defendants
6 and their employees by the end of business on the second day after issuance of this Order;

7 11. By the end of business on the second day after issuance of this Order, the
8 Defendants SHALL FILE on the Court's electronic docket and serve upon Plaintiffs a Status
9 Report documenting the actions that they have taken to comply with this Order, including a copy
10 of the foregoing notice (paragraph 10 above) and an explanation as to whom the notice was sent;

11 12. This order shall remain in effect pending further orders from this Court.

12 Dated this 12th day of August 2025.

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14 

15 Barbara Jacobs Rothstein
16 U.S. District Court Judge
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APPENDIX I

A. Complaint filed May 2, 2025

1. Plaintiffs

a. CoC Plaintiffs¹¹

King County, Pierce County, Snohomish County, City and County of San Francisco, Santa Clara County, Boston, Columbus, and New York City.

b. DOT Plaintiff

King County

2. Defendants

United States Department of Housing and Urban Development (“HUD”), Department of Transportation (“DOT”), and the Federal Transit Administration (“FTA”), as well as the agencies’ heads in their official capacities (Scott Turner in his official capacity as Secretary of HUD, Sean Duffy in his official capacity as Secretary of DOT, and Matthew Welbes in his official capacity as acting Director of the FTA).

B. First Amended Complaint filed May 21, 2025

1. Plaintiffs added:

a. Added CoC Plaintiffs

Metropolitan Government of Nashville & Davidson County (“Nashville”), Pima County, Cambridge, San Jose, Pasadena, Tucson, King County Regional Homelessness Authority located in King County, Washington (“King County RHA”), Santa Monica Housing Authority, California (“Santa Monica HA”)

b. Added DOT Plaintiffs

Denver, Nashville, Pima County, Sonoma County, Bend, Chicago, Culver City, Minneapolis, Pittsburgh, San Jose, Santa Monica, Tucson, Wilsonville, Central Puget Sound Regional Transit Authority located in King, Pierce, and Snohomish Counties, Washington (“CPSRTA”), Intercity Transit located in Thurston County, Washington (“Intercity Transit”), Port

¹¹ A Plaintiff may be included in more than one Plaintiff Group.

of Seattle, San Francisco County Transportation Authority, located in the City and County of San Francisco, California (“SFCTA”), and Treasure Island Mobility Management Agency located in Treasure Island and Yerba Buena Island, California (“TIMMA”)

2. Defendants added

Federal Highway Administration (“FHWA”), the Federal Aviation Administration (“FAA”), the Federal Railroad Administration (“FRA”), and component heads in their official capacities (Tariq Bokhari as the acting Administrator of FTA,¹² Gloria M. Shepard as the acting Director of FHWA, Chris Rocheleau as acting Administrator of FAA, and Drew Feeley as acting Administrator of FRA).

C. Second Amended Complaint filed July 10, 2025

1. Plaintiffs Added¹³

a. CoC Plaintiffs

Alameda County, Albuquerque, Baltimore, Columbus, Dane County, Hennepin County, Milwaukee, Multnomah County, Oakland, Petaluma, Ramsey County, San Mateo County, and Sonoma County.

b. DOT Plaintiffs

Alameda County, Albuquerque, Baltimore, Bellevue, Bellingham, Bremerton, Cambridge, Dane County, Eugene, Healdsburg, Hennepin County, Kitsap County, Los Angeles, Milwaukee, Milwaukee County, Multnomah County, Oakland, Pacifica, Pasadena, Petaluma, PSRC, Ramsey County, Rochester, Rohnert Park, San Diego, San Mateo County, Santa Rosa, SCTA, and Watsonville.

c. Non-CoC HUD Plaintiffs

King County, Pierce County, Snohomish County, Boston, Columbus, San Francisco, Santa Clara, NYC, Bend Cambridge, Chicago, Culver City, Minneapolis, Nashville, Pasadena, Pima County, Pittsburgh, Portland, San Jose, Santa Monica, Tucson, King County RHA, Santa Monica HA, Alameda County, Albuquerque, Baltimore, Bellevue, Bellingham, Bremerton, Dane County, Eugene, Hennepin County, Kitsap County, Los Angeles, Milwaukee, Multnomah County, Oakland,

¹² Replacing Matthew Welbes in his official capacity as acting Director of the FTA.

¹³ Some of these are new Plaintiffs; some are previous Plaintiffs but with new claims.

Petaluma, Ramsey County, Rochester, San Diego, San Mateo County, Santa Rosa, Sonoma County, Watsonville, CCHA, and SCCDC

d. HHS Plaintiffs

Alameda County, Baltimore, Boston, Cambridge, Chicago, Columbus, Dane County, Denver, Eugene, Hennepin County, King County, Milwaukee, Minneapolis, Multnomah County, NYC, Oakland, Pacifica, Pierce County, Pima County, Ramsey County, Rochester, San Francisco, Santa Clara, San Mateo County, Snohomish County, and Wilsonville.

2. Defendants added

HHS and its agencies, including the Administration for Children and Families (“ACF”), Health Resources and Services Administration (“HRSA”), National Institutes of Health (“NIH”), Substance Abuse and Mental Health Services Administration (“SAMHSA”), and the Centers for Disease Control and Prevention (“CDC”), as well as Robert F. Kennedy in his official capacity as the Secretary of HHS.

APPENDIX II

The “CoC Grant Conditions” enjoined by this Order are the following terms and conditions:

- The recipient or applicant shall not use grant funds to promote “gender ideology,” as defined in Executive Order 14168, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government;
- The recipient or applicant agrees that its compliance in all respects with all applicable Federal antidiscrimination laws is material to the U.S. Government’s payment decisions for purposes of section 3729(b)(4) of title 31, United States Code;
- The recipient or applicant certifies that it does not operate any programs that violate any applicable Federal anti-discrimination laws, including Title VI of the Civil Rights Act of 1964;
- The recipient or applicant shall not use any Grant Funds to fund or promote elective abortions, as required by Executive Order 14182, Enforcing the Hyde Amendment;

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- 1 – The recipient or applicant must administer its grant in accordance
2 with all applicable immigration restrictions and requirements,
3 including the eligibility and verification requirements that apply
4 under title IV of the Personal Responsibility and Work Opportunity
5 Reconciliation Act of 1996, as amended (8 U.S.C. 1601-1646)
6 (“PRWORA”) and any applicable requirements that HUD, the
7 Attorney General, or the U.S. Center for Immigration Services [sic]
8 may establish from time to time to comply with PRWORA,
9 Executive Order 14218, or other Executive Orders or immigration
10 laws;
11 – No state or unit of general local government that receives funding
12 under this grant may use that funding in a manner that by design or
13 effect facilitates the subsidization or promotion of illegal
14 immigration or abets policies that seek to shield illegal aliens from
15 deportation;
16 – Subject to the exceptions provided by PRWORA, the recipient or
17 applicant must use SAVE, or an equivalent verification system
18 approved by the Federal government, to prevent any Federal public
19 benefit from being provided to an ineligible alien who entered the
20 United States illegally or is otherwise unlawfully present in the
21 United States;
22 – The recipient or applicant agrees that use of Grant Funds and its
23 operation of projects assisted with Grant Funds are governed by all
24 Executive Orders.

15 The “**Non-CoC HUD Grant Conditions**” enjoined by this Order are the following terms
16 and conditions:

- 17 – The recipient or applicant will not use Federal funding to promote
18 diversity, equity, and inclusion (“DEI”) mandates, policies,
19 programs, or activities that violate any applicable Federal
20 antidiscrimination laws;
21 – The recipient or applicant shall not use grant funds to promote
22 “gender ideology,” as defined in Executive Order 14168, Defending
23 Women from Gender Ideology Extremism and Restoring Biological
24 Truth to the Federal Government;
25 – The recipient or applicant agrees that its compliance in all respects
 with all applicable Federal anti-discrimination laws is material to the

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U.S. Government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code;

- The recipient or applicant certifies that it does not operate any programs that violate any applicable Federal antidiscrimination laws, including Title VI of the Civil Rights Act of 1964;
- The recipient or applicant shall not use any grant funds to fund or promote elective abortions, as required by Executive Order 14182, Enforcing the Hyde Amendment;
- The recipient or applicant must administer its grant in accordance with all applicable immigration restrictions and requirements, including the eligibility and verification requirements that apply under title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended (8 U.S.C. 1601-1646) ("PRWORA") and any applicable requirements that HUD, the Attorney General, or the U.S. Citizenship and Immigration Services may establish from time to time to comply with PRWORA, Executive Order 14218, or other Executive Orders or immigration laws;
- If applicable, no state or unit of general local government that receives or applies for funding under this grant may use that funding in a manner that by design or effect facilitates the subsidization or promotion of illegal immigration or abets policies that seek to shield illegal aliens from deportation;
- Unless excepted by PRWORA, the recipient or applicant must use SAVE, or an equivalent verification system approved by the Federal government, to prevent any Federal public benefit from being provided to an ineligible alien who entered the United States illegally or is otherwise unlawfully present in the United States.
- The recipient or applicant must comply with applicable existing and future Executive Orders, as advised by the Department, including but not limited to E.O. 14182, Enforcing the Hyde Amendment; Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity; Executive Order 14168, Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government; and Executive Order 14151, Ending Radical and Wasteful Government DEI Programs and Preferencing.

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1 The “DOT Grant Conditions” enjoined by this Order are the following terms and
2 conditions:

- 3 – Pursuant to section (3)(b)(iv)(A), Executive Order 14173, *Ending*
4 *Illegal Discrimination and Restoring Merit-Based Opportunity*, the
5 recipient or applicant agrees that its compliance in all respects with
6 all applicable Federal antidiscrimination laws is material to the
7 government’s payment decisions for purposes of section 3729(b)(4)
8 of title 31, United States Code;
- 9 – Pursuant to section (3)(b)(iv)(B), Executive Order 14173, *Ending*
10 *Illegal Discrimination and Restoring Merit-Based Opportunity*, by
11 entering into this Agreement, the recipient or applicant certifies that
12 it does not operate any programs promoting diversity, equity, and
13 inclusion (“DEI”) initiatives that violate any applicable Federal anti-
14 discrimination laws;
- 15 – The recipient or applicant agrees to comply with executive orders,
16 including but not limited to Executive Order 14168 titled Defending
17 Women From Gender Ideology Extremism and Restoring
18 Biological Truth to the Federal Government, as they relate to the
19 application, acceptance, and use of Federal funds for this project or
20 grant;
- 21 – The recipient or applicant will cooperate with Federal officials in
22 the enforcement of Federal law, including cooperating with and not
23 impeding U.S. Immigration and Customs Enforcement (“ICE”) and
24 other Federal offices and components of the Department of
25 Homeland Security in the enforcement of Federal immigration law;
- The recipient or applicant will follow applicable federal laws
pertaining to Subchapter 12, and be subject to the penalties set forth
in 8 U.S.C. § 1324, Bringing in and harboring certain aliens, and 8
U.S.C. § 1327, Aiding or assisting certain aliens to enter.
- The recipient or applicant must comply with other applicable federal
nondiscrimination laws, regulations, and requirements, and follow
federal guidance prohibiting discrimination;
- The recipient or applicant must comply with all applicable executive
orders as they relate to the application, acceptance, and use of
Federal funds for this Project;

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- Performance under this agreement or application shall be governed by and in compliance with the following requirements, as applicable, to the type of organization of the recipient or applicant and any applicable sub-recipients. The applicable provisions to this agreement or application include, but are not limited to, the following: Bringing in and harboring certain aliens – 8 U.S.C. 1324; Aiding or assisting certain aliens to enter – 8 U.S.C. 1327; Executive Order 14151, Ending Radical and Wasteful Government DEI Programs and Preferencing; Executive Order 14168 Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government; and Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity.

The “**HHS Grant Conditions**” enjoined by this Order are the following terms and conditions:

- The recipient or applicant must comply with all applicable Federal anti-discrimination laws material to the government’s payment decisions for purposes of 31 U.S.C. § 372(b)(4).

(1) Definitions. As used in this clause –

(a) DEI means “diversity, equity, and inclusion.”

(b) DEIA means “diversity, equity, inclusion, and accessibility.”

(c) Discriminatory equity ideology has the meaning set forth in Section 2(b) of Executive Order 14190 of January 29, 2025.

....

(e) Federal anti-discrimination laws means Federal civil rights law that protect individual Americans from discrimination on the basis of race, color, sex, religion, and national origin.

(2) Grant award certification.

(a) By accepting the grant award, recipients are certifying that:

(i) They do not, and will not during the term of this financial assistance award, operate any programs that advance or promote DEI, DEIA, or discriminatory equity ideology in violation of Federal anti-discrimination laws;

- 1 – By applying for or accepting federal funds from HHS, recipients
2 certify compliance with all federal antidiscrimination laws and these
3 requirements and that complying with those laws is a material
4 condition of receiving federal funding streams. Recipients are
5 responsible for ensuring subrecipients, contractors, and partners also
6 comply.
- 7 – All activities proposed in your application and budget narrative must
8 be in alignment with the current Executive Orders;
- 9 – Recipients are required to comply with all applicable Executive Orders;
- 10 – Funds cannot be used to support or provide services, either directly
11 or indirectly, to removable or illegal aliens;
- 12 – By accepting this award, including the obligation, expenditure, or
13 drawdown of award funds, recipients or applicants, whose
14 programs, are covered by Title IX certify as follows:

15 The recipient or applicant is compliant with Title IX of the
16 Education Amendments of 1972, as amended, 20 U.S.C. §§
17 1681 et seq., including the requirements set forth in Presidential
18 Executive Order 14168 titled Defending Women From Gender
19 Ideology Extremism and Restoring Biological Truth to the
20 Federal Government, and Title VI of the Civil Rights Act of
21 1964, 42 U.S.C. §§ 2000d et seq., and Recipient will remain
22 compliant for the duration of the Agreement.

23 The above requirements are conditions of payment that go the
24 essence of the Agreement and are therefore material terms of the
25 Agreement.

 Payments under the Agreement are predicated on compliance
with the above requirements, and therefore the recipient or
applicant is not eligible for funding under the Agreement or to
retain any funding under the Agreement absent compliance with
the above requirements.

 The recipient or applicant acknowledges that this certification
reflects a change in the government's position regarding the
materiality of the foregoing requirements and therefore any prior
payment of similar claims does not reflect the materiality of the
foregoing requirements to this Agreement.

1 The recipient or applicant acknowledges that a knowing false
2 statement relating to recipient's or applicant's compliance with
3 the above requirements and/or eligibility for the Agreement may
4 subject the recipient or applicant to liability under the False
5 Claims Act, 31 U.S.C. § 3729, and/or criminal liability,
6 including under 18 U.S.C. §§ 287 and 1001.
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