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CITY OF ALAMEDA; CITY OF REDWOOD  
CITY; CITY OF ATLANTA; CITY OF  
BEAVERTON; CITY OF CORVALLIS; CITY OF  
HILLSBORO; CITY OF MOUNTAIN VIEW; CITY  
OF SALEM; CITY OF SAN MATEO; CITY OF  
SANTA CLARA; CITY OF SANTA CRUZ; CITY  
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8  
9 IN THE UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 CITY OF FRESNO; CITY OF EUREKA; CITY  
12 OF SOUTH LAKE TAHOE; CITY OF SAINT  
PAUL; COUNTY OF SACRAMENTO; COUNTY  
13 OF MONROE; MONROE COUNTY AIRPORT  
AUTHORITY; COUNTY OF SAN DIEGO,  
14 COUNTY OF MARIN; CITY OF ALAMEDA;  
CITY OF REDWOOD CITY; CITY OF  
15 ATLANTA; CITY OF BEAVERTON; CITY OF  
CORVALLIS; CITY OF HILLSBORO; CITY OF  
16 MOUNTAIN VIEW; CITY OF SALEM; CITY OF  
SAN MATEO; CITY OF SANTA CLARA; CITY  
17 OF SANTA CRUZ; CITY OF STOCKTON; CITY  
OF SUNNYVALE; CITY OF VACAVILLE;  
18 COUNTY OF LOS ANGELES; COUNTY OF  
SANTA BARBARA,

19 Plaintiffs,

20 v.

21 SCOTT TURNER in his official capacity as  
Secretary of the U.S. Department of Housing and  
22 Urban Development; the U.S. DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT;  
23 SEAN DUFFY in his official capacity as Secretary  
of the U.S. Department of Transportation; the U.S.  
24 DEPARTMENT OF TRANSPORTATION;  
MARCUS J. MOLINARO in his official capacity  
25 as the Administrator of the Federal Transit  
Administration ; the FEDERAL TRANSIT  
26 ADMINISTRATION; GLORIA M. SHEPHERD in  
her official capacity as the Executive Director of  
27 the Federal Highway Administration; the  
FEDERAL HIGHWAY ADMINISTRATION;  
28 BRYAN BEDFORD in his official capacity as the

Case No.: 3:25-cv-07070-RS

**SECOND AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

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1 Administrator of the Federal Aviation  
Administration; the FEDERAL AVIATION  
2 ADMINISTRATION; DAVID FINK in his official  
capacity as the Administrator of the Federal  
3 Railroad Administration; the FEDERAL  
RAILROAD ADMINISTRATION; JONATHAN  
4 MORRISON in his official capacity as the  
Administrator of the National Highway Traffic  
5 Safety Administration; the NATIONAL  
HIGHWAY TRAFFIC SAFETY  
6 ADMINISTRATION; ROBERT F. KENNEDY,  
JR. in his official capacity as Secretary of the U.S.  
7 Department of Health and Human Services; U.S.  
DEPARTMENT OF HEALTH AND HUMAN  
8 SERVICES; LEE ZELDIN in his official capacity  
as Administrator of the Environmental Protection  
9 Agency; and the U.S. ENVIRONMENTAL  
PROTECTION AGENCY,

10 Defendants.

1 **I. INTRODUCTION**

2 Plaintiffs bring this action reluctantly, only after the current Administration’s actions have left  
3 them no other means of protecting the federal funding essential to their communities. For years,  
4 Plaintiffs have relied on congressionally authorized grant programs to deliver core public services that  
5 safeguard public safety and health, connect residents to opportunity, and sustain local economies. They  
6 have endeavored to work cooperatively with federal agencies to administer these programs, but the  
7 lawful and predictable administration of these grants has now been upended.

8 The Constitution vests Congress—not the Executive—with the authority to make laws and  
9 appropriate federal funds. *See* U.S. Const. art. I, § 8; *Cunningham v. Neagle*, 135 U.S. 1, 83–84 (1890).  
10 While the Executive Branch is charged with faithfully executing the laws enacted by Congress, that duty  
11 does not include the power to unilaterally rewrite or expand the statutory terms under which federal  
12 funds are awarded. *City of Los Angeles v. Barr*, 941 F.3d 931, 945 (9th Cir. 2019); *City & Cnty. of San*  
13 *Francisco v. Barr*, 965 F.3d 753, 766 (9th Cir. 2020).

14 Here, the U.S. Department of Housing and Urban Development (HUD), the U.S. Department of  
15 Health and Human Services (HHS), the U.S. Environmental Protection Agency (EPA), and the U.S.  
16 Department of Transportation (DOT)—including its operating administrations<sup>1</sup> such as the Federal  
17 Transit Administration (FTA), the Federal Highway Administration (FHWA), and the Federal Aviation  
18 Administration (FAA), the Federal Railroad Administration (FRA), and the National Highway Traffic  
19 Safety Administration (NHTSA) (collectively, the “Defendants”)—have imposed vague and  
20 unauthorized conditions on federal grants to coerce compliance with executive policy preferences. These  
21 actions exceed Defendants’ constitutional and statutory authority, erode the separation of powers, and  
22 disregard core constitutional and statutory protections, including the Tenth Amendment’s anti-  
23 commandeering principle, the Fifth Amendment’s void-for-vagueness doctrine, and the Administrative  
24 Procedure Act’s (APA) procedural safeguards.

25 Defendants’ overbroad interpretation and enforcement of these conditions are not hypothetical.

26 \_\_\_\_\_  
27 <sup>1</sup> The FAA, FTA, FHWA, FRA, NHTSA and similar modal agencies within the DOT are officially  
28 known as “Operating Administrations.” *See* 49 C.F.R. § 9.3 (defining ‘operating administrations’ to  
include FAA, FTA, FHWA, and others within the Department of Transportation); 49 C.F.R. pt. 1, subpt.  
D (delegating authority to Operating Administrations).

1 On or around August 18, 2025, the City of Fresno received an email from HUD notifying it that HUD “is  
 2 questioning the accuracy of the City of Fresno’s certification that the Community Development Block  
 3 Grant (CDBG) funds described in its Fiscal Year 2025 Consolidated Plan/Action Plan (the Plan) will be  
 4 administered in conformity with applicable laws, including Executive Orders.” HUD has directed Fresno  
 5 to remove all references to the words “equity,” “environmental justice,” and all transgender references,  
 6 and provide assurances that “[t]he City of Fresno shall not use grant funds to promote ‘gender ideology,’  
 7 as defined in Executive Order (E.O.) 14168, Defending Women from Gender Ideology Extremism and  
 8 Restoring Biological Truth to the Federal Government.” HUD directed Fresno to take these actions no  
 9 later than 12:00 pm EDT Thursday, August 21, 2025, and provided that “failure to address HUD’s  
 10 concerns regarding the certification may result in HUD determining that the certification is inaccurate or  
 11 unsatisfactory, which will result in disapproval of the Plan.” Defendants’ unlawful attempts to repurpose  
 12 congressionally established grant programs to serve unilateral policy goals have placed at risk hundreds  
 13 of millions of dollars in funding already awarded or soon to be awarded to Plaintiffs. If allowed to stand,  
 14 these unauthorized and unlawful conditions will severely compromise Plaintiffs’ ability to maintain safe  
 15 and reliable transportation infrastructure, ensure aviation safety, public health, and sustain essential  
 16 transit services. These consequences would ripple across the economy, leaving Plaintiffs more  
 17 vulnerable to accidents, service failures, and disinvestment. Plaintiffs, therefore, have been forced to file  
 18 this suit not out of preference, but out of necessity, seeking declaratory and injunctive relief to prevent  
 19 the enforcement of these unlawful conditions and to preserve their ability to carry out the federally  
 20 funded programs their residents depend on.

## 21 **II. JURISDICTION**

22 1. The Court has jurisdiction under 28 U.S.C. § 1331. This Court has further remedial  
 23 authority under the Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) and 2202 et seq.

24 2. Venue properly lies within the Northern District of California because this is an action  
 25 against an officer or employee of the United States and an agency of the United States, Plaintiffs County  
 26 of Marin, City of Eureka, City of Alameda, the City of Redwood City, the City of Santa Clara, the City  
 27 of Santa Cruz, the City of Sunnyvale, and the City of San Mateo reside in this judicial district, and a  
 28 substantial part of the events or omissions giving rise to this action occurred in this district. 28 U.S.C.

1 § 1391(e)(1).

2 3. Divisional Assignment: Pursuant to Civil Local Rule 3-2(d), except as provided in Civil  
3 L.R. 3-2(c), all civil actions that arise in the counties of Alameda, Contra Costa, Marin, Napa, San  
4 Francisco, San Mateo or Sonoma shall be assigned to the San Francisco Division or the Oakland  
5 Division. This action arises in various counties, including the counties of Alameda, Marin, San Mateo,  
6 Santa Clara, and Santa Cruz.

7 **III. PARTIES**

8 4. Plaintiff City of Fresno is a municipal corporation and charter city organized and existing  
9 under and by virtue of the laws of the State of California.

10 5. Fresno’s city-operated airports have been allocated approximately \$50 million in FAA  
11 grants for capital improvement projects and anticipate approximately \$100 million in additional grant  
12 funding to complete planned airport infrastructure improvements, including the construction of a new air  
13 traffic control tower. For FY 2026, Fresno received a Supplemental and Discretionary Runway  
14 Reconstruction grant for approximately \$60-70 million. Fresno also expects to receive approximately  
15 \$20 million in Airport Terminal Program funding for FY26, and approximately \$50 million in funding  
16 for FY 2027. If Fresno does not accept the FAA’s newly imposed conditions and submit its  
17 reimbursement request by the end of September, more than \$13 million in already allocated and  
18 expended grant funds will lapse, leaving Fresno unable to recover those funds.

19 6. Fresno has also been awarded or allocated, on average, approximately \$11.7 million over  
20 the last three years in HUD grants administered through various programs under HUD’s Office of  
21 Community Planning and Development (CPD), and over \$100 million in DOT grants, described further  
22 below, to fund a broad range of transportation and infrastructure projects. In addition, as a Designated  
23 Subrecipient of Caltrans, Fresno was approved for a \$600,000 grant from DOT for the construction of a  
24 pedestrian bridge over Highway 99. Fresno was also awarded a 5339a grant for \$1,264,735 this June for  
25 Fresno’s ongoing Facility Improvement project for the Fresno Area Express (FAX yard), which houses  
26 Fresno’s public transit buses.

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1 7. Fresno has also been awarded several EPA grants, including \$2.2 million in Brownfields  
2 grants. Fresno has also received a \$3,791,044 Drinking Water System Infrastructure Resilience and  
3 Sustainability grant, which will be used to replace failing polyethylene water services throughout the City  
4 of Fresno.

5 8. Plaintiff County of Sacramento is a political subdivision of the State of California and a  
6 home rule charter county.

7 9. County of Sacramento owns and operates the County’s Airport System, consisting of four  
8 airports: Sacramento International (SMF), Mather (MHR), Sacramento Executive (SAC), and Franklin  
9 Field (F72)—through its Department of Airports, except for SAC, which is leased from the City of  
10 Sacramento. The Airport System operates as a self-supporting enterprise fund, relying solely on airport  
11 revenues and federal funding, with no local tax dollars.

12 10. County of Sacramento depends heavily on FAA grants, including Airport Improvement  
13 Program (AIP) entitlement and discretionary grants, and Airport Infrastructure Grants (AIG) and Airport  
14 Terminal Program (ATP) grants. From 2021 through 2023, the County received a total of \$22,498,822 in  
15 AIP grants. In 2024, the FAA awarded the Airport System \$14,573,636 in AIP grants. To date, the FAA  
16 has also awarded \$45,166,763 in Infrastructure Investment and Jobs Act (IIJA) grants to the Airport  
17 System. In addition to these grants, the FAA has set aside approximately \$70 million to relocate and  
18 construct a new air traffic control tower at SMF. The County expects to receive approximately \$9.5  
19 million in grant funding for additional rehabilitation work on Runway 4R/22L at MHR. To continue  
20 meeting the needs of the Airport System’s rapidly growing catchment area, the Department also will  
21 apply for, and anticipates receiving, an additional \$167.5 million in combined AIP and IIJA grants to  
22 finance various capital projects.

23 11. In 2024, County of Sacramento secured a Transportation Infrastructure Finance and  
24 Innovation Act (TIFIA) loan from DOT’s Build America Bureau, which provides low-cost loans to  
25 eligible large-scale infrastructure projects. The \$36.1 million TIFIA loan is also financing the Pedestrian  
26 Walkway Project, which is scheduled to open in the summer of 2026.

27 12. County of Sacramento’s Department of Health Services encompasses Behavioral Health  
28 Services, Public Health, Primary Care Services, and Correctional Health Services. The County also

1 owns and operates a federally qualified health center (FQHC), known as the County of Sacramento  
2 Health Center. The County's Health budget relies on many millions of dollars in federal funding,  
3 including sizeable grants from HHS and its divisions. Currently, the County holds direct and sub-  
4 recipient federal grant allocations from HHS, including HRSA, CDC, SAMHSA, and other DHHS  
5 Administrative agencies, totaling nearly \$148 million.

6 13. County of Sacramento receives HUD funding for the support of critical and essential  
7 homeless services and housing programs and projects as a passthrough subrecipient entity from  
8 Sacramento Housing and Redevelopment Agency (SHRA) and Sacramento Steps Forward (SSF), the  
9 lead agency for Sacramento's Continuum of Care (CoC). Currently, about \$277,500 of Emergency  
10 Solutions Grant (ESG) and \$363,000 Community Development Block Grant Programs (CDBG) Public  
11 Service funds are used to operate the Mather Community Campus Singles Shelter, which provides  
12 shelter, supportive services, and re-housing for up to 150 adults.

13 14. County of Sacramento relies on federal funding from the DOT, FHWA, and FTA to  
14 provide critical transportation planning and improvements. For FY2025, the County was allocated  
15 \$463,882 in Section 5311 grant funds and has received the updated FTA Certifications and Assurances  
16 that must be executed within the next few weeks to maintain eligibility for continued FTA formula  
17 grants. In FYs 2023–2024 and 2024–2025, the County received approximately \$47,991,689 in FHWA  
18 funds to support bridge replacement, street rehabilitation, bicycle and pedestrian improvements, and  
19 other critical projects, and for FY 2025–2026 it has budgeted an additional \$33 million in FHWA  
20 funding for similar work. The County has also been awarded two discretionary FHWA grants: \$800,000  
21 from the Bridge Investment Program and \$1,859,680 from the Advanced Transportation Technology and  
22 Innovation Program for its County of Sacramento Complete Pedestrian Trips project. In total, these  
23 federal transportation funds amount to approximately \$84 million.

24 15. Plaintiff City of South Lake Tahoe is a municipal corporation organized under the existing  
25 laws of the State of California.

26 16. The City of South Lake Tahoe owns and operates the Lake Tahoe Airport (TVL) as a  
27 division of its Public Works Department and serves as the airport sponsor for purposes of federal grant  
28 funding. TVL is a general aviation airport and is the only airport within the Lake Tahoe Basin, thereby

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1 serving an important role in the area’s economy and a critical role in public safety for aircraft access and  
2 emergency response staging during large-scale emergencies such as wildfires.

3 17. The City of South Lake Tahoe depends on FAA grants to support critical capital projects  
4 and maintenance to comply with federally imposed safety requirements, including AIP entitlement and  
5 discretionary grants, and AIG grants. Annually, the City of South Lake Tahoe receives approximately  
6 \$150,000 in AIP entitlement funds and was allocated \$556,000 in AIG grants for Fiscal Years 2022–  
7 2025. The City currently holds FAA grant allocations totaling approximately \$1,050,000 for critical  
8 capital projects, including its Pavement Maintenance and Management Program and Airport Master Plan.  
9 The City of South Lake Tahoe anticipates needing approximately \$20 million in FAA funding over the  
10 next three years for Taxiway Alpha Reconstruction, a project necessary to maintain compliance with  
11 federal safety standards and ensure safe aircraft operations.

12 18. Plaintiff City of Eureka is a municipal corporation and charter city organized and existing  
13 under and by virtue of the laws of the State of California.

14 19. Eureka is a recipient of substantial federal funding administered by both HUD and the  
15 DOT. The City will be seeking \$5,000,000 in Safe Streets and Roads for All (SS4A) grants for future  
16 implementation projects and \$1,030,111 in Emergency Solutions Grant (ESG) funding. Eureka also  
17 frequently utilizes other HUD programs, including Community Development Block Grants (CDBG) and  
18 Continuum of Care (CoC) grants, and intends to pursue additional grant opportunities in upcoming  
19 funding cycles.

20 20. Plaintiff City of Saint Paul is a municipal corporation organized and existing under and by  
21 virtue of the laws of the State of Minnesota. It is a charter city.

22 21. Saint Paul is a recipient of substantial federal funding administered by both HUD and the  
23 DOT. Through HUD, Saint Paul receives entitlement grants allocated by statutory formula, including  
24 CDBG, HOME, ESG, as well as congressionally directed earmark funding. At present, Saint Paul has  
25 \$45.1 million in HUD funds under contract, consisting of \$27.1 million in CDBG funds, \$7.2 million  
26 through the HOME program, \$5.7 million in HOME–American Rescue Plan funds, \$1.1 million in ESG  
27 funds, and \$2.6 million in Congressionally Directed Spending.

28 22. Saint Paul also receives entitlement and discretionary funding through DOT, including

1 SS4A funds and awards under the Innovative Finance and Asset Concession (IFAC) program. Currently,  
 2 the City has \$36.3 million in DOT funds under contract. The City has additionally been awarded \$62.8  
 3 million in DOT grants not yet under contract—including \$15.7 million through SS4A, and \$805,000 in  
 4 IFAC funds—and has a pending \$44.3 million application under the Bridge Investment Program (BIP).  
 5 In total, Saint Paul currently has \$197.3 million in federal funding under contract, with approximately  
 6 \$144.6 million dedicated to one-time capital projects and \$52.6 million allocated to operational funding.  
 7 Beyond these amounts, the City has been awarded \$64.6 million in federal funds that remain in the post-  
 8 award contracting phase and has pending applications for an additional \$64.2 million.

9 23. Plaintiff County of Monroe is a municipal corporation duly incorporated and existing  
 10 under the laws of the State of New York.

11 24. Plaintiff Monroe County Airport Authority (the “Monroe Airport Authority”) is a public  
 12 benefit corporation that was created to finance, construct, develop, operate, and maintain aviation and  
 13 other related facilities and services with the County of Monroe.

14 25. Monroe Airport Authority leases the Frederick Douglass Greater Rochester International  
 15 Airport (ROC) from the County of Monroe and operates under the terms of a lease and operating  
 16 agreement dated September 15, 1989, as amended.

17 26. In FY 2025, the County of Monroe and Monroe Airport Authority expect to receive over  
 18 \$13 million in DOT grants administered by the FAA to improve safety, security, and infrastructure at  
 19 ROC. For example, the County of Monroe and Monroe Airport Authority are relying on over \$9 million  
 20 in IJA grants to carry out a critically important Terminal rehabilitation project for the airport, which  
 21 includes replacing the existing fire alarm system for the Terminal, rehabilitating the Terminal viaduct and  
 22 bridge, and replacing vestibule doors and elevators throughout the Terminal. They also expect to receive  
 23 several millions of dollars in AIP grants to acquire Aircraft Rescue & Firefighting (ARFF) safety  
 24 vehicles and equipment, to rehabilitate the Airport’s ARFF building, to develop an FAA-required  
 25 pavement management program, to ensure that airfield taxiways meet current FAA design standards, and  
 26 to remove runway obstructions.

27 27. Plaintiff Monroe County relies on federal funding from HUD to fund the County’s Annual  
 28 Action Plan. Monroe County utilizes CDBG, HOME, and ESG grants to fund development of affordable

1 and accessible housing and homeownership opportunities for all low-to-moderate income residents.  
 2 Annually, the County receives an allocation of approximately \$3.1 million in HUD funds. For the City  
 3 Program Year 2025, Monroe anticipates expending over \$1.8 million of its CDBG allocation on public  
 4 infrastructure projects, public services, micro-enterprise assistance, fair housing, Section 108 loan  
 5 payments, and administration and compliance. For the same Program Year, Monroe County anticipates  
 6 expending over \$1.1 million in its HOME program allocation for affordable housing, CHDO housing  
 7 development, Tenant-Based Rental Assistance, and administration and compliance. In addition, Monroe  
 8 anticipates expending approximately \$164,000 in its ESG allocation for rapid rehousing projects,  
 9 emergency shelter/street outreach, homelessness prevention, and administration and compliance.

10 28. Monroe County also depends on federal funding from DOT through the SS4A grant to  
 11 conduct supplemental planning and demonstration activities to identify and mitigate hazardous  
 12 conditions at intersections and address safety concerns in high-risk corridors. The County expects to  
 13 receive \$955,476 in SS4A Grants throughout its two-year planning program, in 2025 and 2026.

14 29. Plaintiff County of Marin is a political subdivision of the State of California and a  
 15 governmental entity that serves the Marin County geographic region.

16 30. The Marin County Department of Public Works manages the Marin County Airport at  
 17 Gness Field which provides a facility for local aviation, flight training, air charter operations, airplane  
 18 and helicopter medical flights, and air-to-ground ambulance transfers for the Marin County area. The  
 19 County of Marin currently has an open \$900,000 FAA AIP grant that was awarded in August 2022, with  
 20 a four-year budget period to fund preliminary designs, environmental mitigation, and permit applications  
 21 associated with its runway extension project. The County of Marin relies on FAA funding to complete  
 22 the runway extension project and to maintain FAA's safety, security, and infrastructure requirements.

23 31. In addition, the County of Marin relies significantly on DOT and FHWA funding to  
 24 provide infrastructure projects, including emergency road repairs, bridge replacements, and safety  
 25 improvements. For fiscal year 2023-2024, Marin's Department of Public Works received approximately  
 26 \$4 million in FHWA funding for highway maintenance, roadwork, and traffic safety measures. For fiscal  
 27 year 2024-2025, Marin's Department of Public Works has received approximately \$6 million in federal  
 28 funding to date. The County of Marin anticipates it will receive approximately \$43 million in additional

1 FHWA funding over the next five years to complete existing projects or for similar projects.

2 32. The County of Marin's Department of Health and Human Services relies on  
3 approximately \$57 million in HHS federal funding, including over \$10 million in discretionary grants  
4 annually. For example, the County of Marin receives over \$2.8 million annually from the CDC to  
5 strengthen the County's overall ability to respond to public health emergencies, support the County's  
6 access to infectious disease laboratories, and support the County's public health.

7 33. Plaintiff County of Marin also depends on federal funding from CDBG and HOME HUD  
8 programs to fund housing and community development programs that assist low- and moderate-income  
9 households by providing decent, affordable housing, creating suitable living environments, and  
10 expanding economic opportunities. Annually, the County receives an allocation of approximately \$2.2  
11 million in federal funding for housing and community development projects. For Program Year 2025,  
12 Marin anticipates expending over \$1.5 million in its CDBG allocation for affordable housing  
13 development and rehabilitation, public services, fair housing, and administration and compliance. For  
14 the same Program Year, Marin anticipates expending approximately \$700,000 in HOME program  
15 allocation for affordable housing development and rehabilitation. Marin County's Continuum of Care  
16 also receives over \$5 million annually in HUD CoC grants to fund programs and efforts addressing  
17 homelessness. The majority of these funds are granted directly from HUD to the County's partner  
18 agencies. For fiscal years 2024 and 2025, Marin was awarded approximately \$5.7 million in CoC grants,  
19 with the County receiving approximately \$400,000 directly.

20 34. Plaintiff City of Alameda is a municipal corporation and incorporated city in California.  
21 The City of Alameda provides a full range of municipal services to its residents, including police, fire,  
22 and emergency response services, a library system, a public park system, its own public electric utility  
23 company, land use and transportation planning and public works.

24 35. The City of Alameda relies on federal funding from DOT, FHWA, and FTA to provide  
25 critical transportation planning and improvements. For FY 2024, the City of Alameda was allocated  
26 approximately \$16 million in SS4A grants for the City's Lincoln Avenue/Marshall Way/Pacific Avenue  
27 Corridor Improvement Project. In addition, the City of Alameda was awarded \$1,236,715 in  
28 DOT/FHWA funds for transportation emissions reduction projects. For FY 2026, the City of Alameda

1 will apply for \$10 million DOT grant to address failures on seaplane ramps and bulkhead.

2 36. Plaintiff City of Alameda also relies on funding from HUD. The City of Alameda  
3 receives over \$2 million in CDBG funds annually to support affordable housing projects and related  
4 public improvements, social services, and to provide administrative oversight of those social services and  
5 capital projects. In addition, the City of Alameda receives approximately \$547,060 annually in HOME  
6 grants to fund inclusionary housing projects. The City of Alameda has also applied for a \$2,497,000  
7 EPA grant to fund local partnerships to build a system for advancing sustainable development at  
8 Alameda Point, the former Naval Air Station Alameda, with meaningful community engagement.

9 37. Plaintiff City of Redwood City is a municipal corporation and incorporated city under the  
10 laws of the State of California. Redwood City provides municipal services to a community of about  
11 82,423. Forty-one percent of all households in Redwood City are considered lower income with 15%  
12 considered extremely low-income, 11% considered very low-income, and 15% considered low-income.

13 38. Redwood City relies on HUD funding including CDBG and HOME grants. Redwood  
14 City has been awarded approximately \$6.2 million in HUD funding, including over \$2 million in CDBG  
15 grants and over \$3 million in HOME grants. In addition, Redwood City has \$4.2 million in CDBG  
16 program income and has committed those funds to make major improvements to Hoover Park. The park  
17 is larger than ten acres in a primarily low-to-moderate income area.

18 39. Redwood City receives funding from DOT and FHWA as a subrecipient. Redwood City  
19 has received an award of \$855,500 in funding from DOT and FHWA for the Bridge Parkway over  
20 Marine World Lagoon project. Redwood City has also received an \$8 million grant from the State of  
21 California Department of Transportation, which includes DOT and FHWA funding for the U.S. Highway  
22 101/ SR 84 Interchange Reimagined project. In addition, Redwood City has been awarded \$3.8 million  
23 in One Bay Area Grant 3 funding from the State of California Department of Transportation, which  
24 includes FHWA funding, for the Bay Road Complete Streets Rehabilitation Project, \$3.4 million in One  
25 Bay Area Grant 3 funding from the State of California Department of Transportation, which includes  
26 FHWA funding, for the Roosevelt Traffic Calming-Permanent Project, \$1,321,000 in One Bay Area  
27 Grant 3 funding from the State of California Department of Transportation, which includes FHWA  
28 funding, for HIP Program Allocation, and \$350,000 in Transit-Oriented Communities Planning and

1 Implementation Grant funding from the State of California Department of Transportation, which includes  
2 FHWA funding, for the Lane Use project.

3 40. Redwood City also receives funding from the EPA. EPA has appropriated \$1,200,000 for  
4 a grant for Redwood City's Citywide Stormwater Infrastructure Improvement Project. The City is  
5 currently preparing pre-award materials to secure these grant funds.

6 41. Plaintiff County of San Diego is a political subdivision of the State of California and a  
7 governmental entity that serves the San Diego County geographic region. It is the second-most populous  
8 county in California.

9 42. The County of San Diego manages seven airports within the County including Borrego  
10 Valley Airport, Fallbrook Community Airpark, Gillespie Field, Jacumba Airport, McClellan-Palomar  
11 Airport, Ocotillo Airport, and Ramona Airport. These airports support over 500,000 annual aircraft  
12 operations, have over 1,280 based aircraft, and at Palomar Airport, include one of only two airports in  
13 San Diego County providing scheduled airline service to passengers.

14 43. The County of San Diego's airport system relies on regular funding from FAA to  
15 complete necessary maintenance and improvements. For FY 2025, the County of San Diego anticipates  
16 approximately \$3,367,407 in revenue from FAA grants. FAA funding has been necessary to operate the  
17 airport system for at least the last 10 years. The County of San Diego has specifically submitted and  
18 received an AIP grant offer for its runway rehabilitation project for Fallbrook Airport. The airport's  
19 single runway has deteriorated and is in dire need of resurfacing.

20 44. Plaintiff County of San Diego also receives funding from HUD. The County has been  
21 allocated approximately \$14 million in CDBG, ESG, HOME, and HOPWA funds for fiscal year 2025-  
22 2026. The funds are received and administered on behalf of 12 smaller cities within the County of San  
23 Diego, including Coronado, Del Mar, Lemon Grove, Poway, Imperial Beach, and Solana Beach. For the  
24 fiscal year 2025-2026, the County has been allocated approximately \$4,283,065 in CDBG funding and  
25 \$371,576 in ESG funding. The allocations are used for activities such as street improvements, ADA  
26 barrier removal, improvements at senior centers and medical clinics, grants and loans for home and  
27 mobile home rehabilitation, affordable housing activities, providing emergency shelters, and other vital  
28 services. For the same fiscal year, the County received an allocation of \$2,870,446 in HOME funds to

1 support the development of affordable multifamily rental housing, first time home buyer programs, and  
 2 rental assistance to special-needs populations. The County has also received an allocation of  
 3 approximately \$6,369,845 in HOPWA funds to support people living with HIV/AIDS and their families  
 4 with housing, meal delivery, housing stabilization, emergency and transitional housing, and supportive  
 5 services. The County received an allocation of approximately \$631,547 in ESG funds.

6 45. San Diego County also receives grants administered by HHS, including Ending the HIV  
 7 Epidemic: A Plan for America — Ryan White HIV/AIDS Program (\$2,754,627), the Ryan White  
 8 HIV/AIDS Program Part A (\$12,325,778), and the Ryan White HIV/AIDS Program Part B (\$2,322,859).  
 9 The County uses these federal funds to deliver a range of services, either directly or through contracted  
 10 community-based organizations, to people living with and at risk for HIV. These services support local  
 11 efforts to diagnose, treat, and prevent HIV infection and include client support and navigation services to  
 12 ensure access to treatment and viral suppression, primary medical and dental care, case management,  
 13 emergency and temporary housing, mental health services, substance use treatment services, and other  
 14 related services.

15 46. Plaintiff City of Atlanta (“Atlanta”) is a municipal corporation existing under and by  
 16 virtue of the laws of the State of Georgia. Atlanta administers an extensive portfolio of public services,  
 17 including the operation of Hartsfield-Jackson Atlanta International Airport, housing services,  
 18 rental assistance, neighborhood development and revitalization, and non-aviation related transportation  
 19 support and service, among many others. Atlanta relies on many millions of dollars in federal funding,  
 20 including an anticipated \$24.9 million annually in HUD grants, \$68 million in DOT grants, \$48.9 million  
 21 in upcoming FAA grants, and \$2.4 million in EPA grants.

22 47. Atlanta relies on HUD funding for support of critical housing services, including to  
 23 support its mission of developing affordable, equitable, and resilient communities throughout the city.  
 24 Atlanta receives funding from HUD’s CDBG, HOME, ESG, HOPWA, and Lead Hazard Control grant  
 25 programs. For FY2023, FY2024, and FY2025 combined, Atlanta received an allocation of over \$6.5  
 26 million in HOME funding to support the development of affordable multifamily rental housing, first time  
 27 home buyer programs, and rental assistance to special-needs populations. Also, for FY2023, FY2024,  
 28 and FY2025 combined, Atlanta received an allocation of approximately \$45 million in HOPWA funds to

1 support low-income people living with HIV/AIDS and their families with housing, meal delivery,  
 2 housing stabilization, emergency and transitional housing, and supportive services. Additionally, Atlanta  
 3 received funding through the Lead Hazard Reduction Grant Program, including \$1,753,802.27 for  
 4 FY2024 and \$1,857,651 for FY2025, respectively. Atlanta uses these grants to build safer homes,  
 5 conduct lead inspections and risk assessments in older homes, and provide community education about  
 6 the risks of lead exposure and preventive measures.

7 48. Atlanta also receives significant annual Community Development Block Grant (CDBG)  
 8 and Emergency Solutions Grant (ESG) funding from HUD to support housing, shelter, and community  
 9 development programs. Atlanta received \$6,811,222 in CDBG funds for FY2024, \$6,971,235 for  
 10 FY2023, and \$6,602,130 for FY2025, which the City uses to support neighborhood revitalization, public  
 11 facility improvements, essential public services, and programs that benefit low- and moderate-income  
 12 residents. Atlanta additionally received \$615,584 in ESG funds in FY2023, \$612,698 in FY2024, and  
 13 \$598,623 in FY2025 to support homelessness prevention, emergency shelter operations, rapid rehousing,  
 14 and related services aimed at stabilizing individuals and families experiencing or at risk of  
 15 homelessness.

16 49. Through its Department of Transportation (“ATLDOT”), Atlanta is responsible for all  
 17 aspects of the public right of way within the jurisdiction of Atlanta, including but not limited to traffic  
 18 management and bridge, street, and sidewalk construction within the right of way. ATLDOT is  
 19 responsible for 95,000 street signs, 1,100 traffic signals, 1,400 miles of sidewalks, 155 bridges, and 4,500  
 20 miles of lanes throughout the city. As part of the funding of the ATLDOT construction and management  
 21 of the public right of way, Atlanta pursues and receives millions of dollars in federal grant funding,  
 22 including entitlement and discretionary funding from the DOT, awarded through agencies including the  
 23 FTA, the FWHA, and the FRA. Of particular importance to Atlanta are STBG (Surface Transportation  
 24 Block Grants) grants, flex fund transfers for pedestrian mobility and accessibility improvements adjacent  
 25 to rapid transit stations, bicycle mobility improvement grants, and a \$25 million BUILD/RAISE<sup>2</sup> grant

26 \_\_\_\_\_  
 27 <sup>2</sup> This grant program was renamed the Better Utilizing Investments to Leverage Development (BUILD)  
 28 program in 2018. In 2021, the program’s name was changed to Rebuilding American Infrastructure with  
 Sustainability and Equity (RAISE) grants. In 2025, the name was reverted back to the BUILD grant  
 program, though the program’s purpose and statutory authorization remain substantively the same.

1 from DOT (of which Atlanta is a subrecipient through the State of Georgia), that relate to the Atlanta  
 2 Beltline project, which is a core element of the redevelopment and revitalization of urban  
 3 neighborhoods.

4 50. In FY2024, Atlanta received a \$16 million BUILD/RAISE grant to fund the Westside  
 5 Park Multimodal Access Project, which will fund various infrastructure improvements. Atlanta has also  
 6 received several Section 5307 grants since FY2016, funding a number of multi-year transportation  
 7 infrastructure projects. The projects include: a \$6,517,049 grant for the Lee Street Trail Project to  
 8 construct a multi-use trail that will create safe transit access for pedestrians and cyclists and a \$5,880,000  
 9 grant for Pedestrian Accessibility Improvements. There is also extension funding for projects that are  
 10 already underway, including approximately \$16 million for pedestrian and bike improvements. Atlanta  
 11 has also been awarded a \$1.2 million railroad crossing elimination grant from the FRA to fund highway-  
 12 rail or pathway-rail grade crossing improvement projects that focus on improving the safety and mobility  
 13 of people and goods.

14 51. Atlanta's Hartsfield-Jackson International Airport also depends heavily on FAA grants,  
 15 including Airport Improvement Program (AIP) grants, Airport Infrastructure Grants (AIG), and Airport  
 16 Terminal Program (ATP) grants. In November 2025, Hartsfield-Jackson International Airport pre-  
 17 applied for federal grants from the FAA totaling \$48,933,406. These funds will be used for the  
 18 reconstruction of Runway 9L/27R and replace aging runway and taxiway pavement that has reached the  
 19 end of its service life. The federal funds will be matched with \$75.5 million from other sources.

20 52. Atlanta relies on EPA funding to support its goal to achieve 100% clean energy by 2035  
 21 and reduce greenhouse gas emissions by 59% by 2030. Atlanta receives funding from EPA's Clean  
 22 Heavy-Duty Vehicle Grant. The \$2,376,203 in funding will replace seven medium and heavy-duty diesel  
 23 vehicles with zero-emission electric vehicles (ZEVs), install ZEV charging port sites throughout the city,  
 24 and launch a workforce development and community engagement effort centered on equity and clean  
 25 transportation.

26 53. Plaintiff the City of Beaverton is a charter city and municipal corporation organized and  
 27 existing under the constitution and laws of the State of Oregon and the Beaverton City Charter.

28 54. Beaverton relies on HUD funding for a variety of public services. For FY2025, Beaverton

1 received an allocation of \$679,728 in CDBG funding. These funds allow Beaverton to offer grants to  
2 community programs such as outreach and shelter for homeless households with focus on homeless  
3 youth, critical home repair and disability home adaptations, microenterprise assistance and low-income  
4 homebuyer assistance. Beaverton has also received a \$3 million allocation through HUD Community  
5 Project Funding to support the operation of the Beaverton Shelter, which provides safe, warm  
6 accommodations for adults experiencing homelessness.

7 55. Beaverton also relies on DOT funding. Beaverton has been awarded several grants  
8 through NHTSA and FHWA as a subrecipient of the Oregon Department of Transportation (ODOT).  
9 These grants include a \$ 2 million BUILD/RAISE Planning Grant for the Beaverton Loop Complete  
10 Street Project, which will create a strong connection between Beaverton's Old Town and the Beaverton  
11 Central district, with wider sidewalks, protected bike lanes, better lighting, new street trees and  
12 landscaping, and safer crossings for pedestrians and cyclists. Beaverton has also received a \$20,000  
13 Safety Belt Grant that will fund the Beaverton Police Department's education services for safety belt and  
14 child passenger safety, as well as for education and traffic enforcement activities. Beaverton has also  
15 received a \$20,000 Impact Distracted Driving Grant as part of the Statewide Distracted Driving Overtime  
16 Enforcement Campaign (DD) mini-grant program to Oregon law enforcement agencies to include  
17 education and prevention for texting while driving and youth cell phone use while driving. In addition,  
18 Beaverton received a \$25,000 Impact DUII Grant that will fund overtime for Driving Under the  
19 Influence of Intoxicants enforcement. Beaverton has also been awarded a \$33,000 Impact Speed Grant  
20 as part of a Speed Overtime Enforcement mini-grant program to Oregon law enforcement agencies to  
21 reduce the number of vehicles exceeding the maximum permitted speed limits while driving.

22 56. Beaverton has also been awarded a \$500,000 Brownfield assessment grant by the EPA to  
23 assess the scope and scale of brownfields within Beaverton.

24 57. The City of Corvallis is a charter city and municipal corporation organized and existing  
25 under the constitution and laws of the State of Oregon and the Corvallis City Charter.

26 58. Corvallis relies on HUD funding to help address the needs of low-income residents. For  
27 FY2025, Corvallis received a \$343,303.22 HOME Investments Partnership Program grant, which will  
28 support tenant based rental assistance, Community Housing Development Organization (CHDO)

1 funding, and administration costs. Corvallis has also been awarded \$581,812.00 in CDBG funding,  
2 which will fund the Homeowner Rehabilitation Program, a program that assists low-income homeowners  
3 with housing rehabilitation loans that address housing quality standards and ensures continued housing  
4 for these homeowners. The award will also support the installation of an ADA public restroom in a low-  
5 income neighborhood, ADA Parking Spaces Reconstruction, Social Service Operations, and  
6 administration costs for these programs.

7 59. The City of Corvallis also relies on federal funding from DOT, FAA, FHWA, and FTA to  
8 provide critical transportation planning and improvements. For FY 2025, Corvallis was allocated  
9 approximately \$340,550 in Airport Infrastructure grants, which will fund several improvement projects  
10 for the Corvallis Municipal Airport, including projects for pavement maintenance and new hangar taxi  
11 lanes. The City of Corvallis also received an Airport Rescue Grant to support Airport operational  
12 expenses. In addition, the City of Corvallis has been awarded millions in FTA Section 5307 grants since  
13 FY2019, including over \$3.4 million in funding for FY2025 alone. Additionally, the FTA has awarded  
14 the City of Corvallis \$2,658,068 for FY2025 to fund the purchase of hybrid electric buses, and the City  
15 has received hundreds of thousands of dollars from FHWA as a subrecipient of the State of Oregon for  
16 traffic signal safety enhancement as part of the All-Roads Transportation Safety grant program.

17 60. The City of Hillsboro is a charter city and municipal corporation organized and existing  
18 under the constitution and laws of the State of Oregon and the Hillsboro City Charter.

19 61. Hillsboro annually receives HUD CDBG funding to support the provision of housing  
20 services. For FY2025, Hillsboro received an award of \$681,847. This award allows the City to assist  
21 community members by increasing housing stability, improving of public facilities, and providing  
22 opportunities for affordable homeownership.

23 62. Hillsboro also relies on DOT funding. Hillsboro has been awarded several grants through  
24 NHTSA as a subrecipient of Oregon Impact. These grants include approximately \$20,000 in total  
25 funding from the Impact Distracted Driving Grant, the Impact DUII Grant and the Impact Speed Grant to  
26 support distracted driving high visibility enforcement, driving under the influence of intoxicants high  
27 visibility enforcement, and speeding high visibility enforcement. Hillsboro has also received  
28 approximately \$195,000 in FHWA grant funding as a subrecipient from Oregon Metro under the Safe

1 Routes to School grant program, which is funded through FHWA's Surface Transportation Block Grant.

2 63. Hillsboro has received a \$2,240,000 Drinking Water System Infrastructure Resilience and  
3 Sustainability grant from the EPA, which is being used to make improvements to the Hillsboro water  
4 system. Hillsboro has also received \$500,000 in a Brownfield Assessment grant from the EPA to assess  
5 the scope and scale of brownfields within downtown Hillsboro.

6 64. Plaintiff City of Mountain View is a charter city organized and existing under and by  
7 virtue of the laws of the State of California.

8 65. Mountain View receives annual funding from HUD programs, including CDBG and  
9 HOME grants. For FY 25-26, Mountain View has been allocated \$617,916 in CDBG funds, and in  
10 previous years has been allocated \$604,684 for FY 24-25, \$610,539 for FY 23-24, \$624,777 for FY 22-  
11 23, and \$609,773 for FY 21-22 with varying remaining balances. The HOME program allocated  
12 \$230,385.94 for FY 25-26, \$237,782.16 for FY 24-25, \$285,869 for FY 23-24, \$297,598 for FY 22-23,  
13 \$271,350 for FY 21-22, \$273,103 for FY 20-21, and \$263,732 for FY 19-20, with significant remaining  
14 balances for each year. Additionally, the HOME Investment Partnerships Program American Rescue  
15 Plan provided \$983,655 and the Economic Development Initiative Community Project Funding provided  
16 \$1,616,279 in federal funds. Mountain View relies on these funds to support the development and  
17 rehabilitation of affordable housing projects, various nonprofit public services, supportive services, a  
18 program to assist low- and moderate-income homeowners with repairs, a program to assist  
19 microenterprise businesses that provide childcare services, and program administration costs.

20 66. Mountain View will also receive \$200,000 in federal funding from DOT as a subrecipient  
21 of the Metropolitan Transportation Commission via the Mobility Hub Pilot Grant Program. This  
22 program is funded through FHWA grant funding and will be used for a project at the Mountain View  
23 Transit Center to implement multi-modal enhancements, including bicycle storage and parking, charging  
24 for electric bikes and scooters, circulation improvements, information kiosks, and way-finding signage.

25 67. The City of Salem is a charter city and municipal corporation organized and existing  
26 under the constitution and laws of the State of Oregon and the Salem City Charter.

27 68. Salem relies on federal funding from DOT, FHWA, and FAA to provide critical  
28 transportation planning and improvements. Salem has been allocated multiple Airport Infrastructure

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1 Grants from the FAA totaling \$1,977,215 to support critical airport infrastructure improvements at the  
2 Salem-Willamette Valley Airport. Salem has also received a \$2,704,800 BUILD/RAISE grant from  
3 FHWA to fund development of the Front Street Redevelopment Transportation Corridor Plan in  
4 downtown Salem.

5 69. The City of San Mateo is a charter city organized and existing under and by virtue of the  
6 laws of the State of California.

7 70. San Mateo has been awarded a CDBG grant of \$766,315 from HUD, which will provide  
8 funds for critical public services, such as legal services for victims of domestic abuse, shelter services for  
9 families, youth mentoring, legal aid for eviction cases, sexual abuse services for youth, free groceries,  
10 rental assistance, and low-income home repair programs to the community.

11 71. The City of Santa Clara is a charter city organized and existing under and by virtue of the  
12 laws of the State of California.

13 72. Santa Clara relies on millions in HUD funding including CDBG and HOME grants. For  
14 FY2025/2026, Santa Clara has been awarded \$1,019,13 in CDBG grants and \$356,007 in HOME grants.  
15 Santa Clara has committed these funds to provide an extensive portfolio of housing services to low-  
16 income individuals in the community.

17 73. Santa Clara also has an extensive portfolio of entitlement and discretionary funding  
18 received directly and indirectly from DOT, including over \$5 million in Community Project Funding  
19 from the FHWA to upsize storm drain pipeline, replace existing storm drain manholes, and the design  
20 and construction of bicycle facilities and infrastructure, \$450,000 Safe Streets for All (SS4A) funds,  
21 \$4,386,152 for grade crossing improvements, and multiple awards under the Selective Traffic  
22 Enforcement Program. As a Designated Subrecipient of Caltrans, Santa Clara has received \$573,750 in  
23 federal funds to complete a project to improve railroad crossings, \$262,360 for bridge preventative  
24 maintenance, \$418,880 for bridge maintenance, and \$1,053,435 for the Transit and Intercity Rail Capital  
25 Program (TIRCP). Additional projects that rely on federal funding include a One Bay Area Grant for  
26 Bicycle and Pedestrian Improvements, which will fund significant pedestrian and bicycle improvements  
27 that will ensure safer infrastructure for cyclists and pedestrians, among others.

28 74. Santa Clara received \$332,902 in EPA funding through the San Francisco Bay Water

1 Quality Improvement Fund, a competitive grant program that funds projects to protect and restore the  
2 San Francisco Bay. This award funds a project to rehabilitate parking facilities at Bowers Park, a popular  
3 community park in the City.

4 75. Plaintiff the City of Santa Cruz is a charter city organized and existing under and by virtue  
5 of the laws of the State of California.

6 76. Santa Cruz relies on millions in HUD funding, including CDBG and HOME program  
7 formula funding. Santa Cruz uses CDBG funds to provide housing, establish a suitable living  
8 environment, and expand economic opportunities for its low- and moderate-income residents.  
9 Specifically, Santa Cruz uses its CDBG funds for services such as support for social service providers  
10 and community facility improvements. From Fiscal Years 2021-2025, Santa Cruz was awarded  
11 approximately \$1,951,110 in CDBG funds. Santa Cruz uses HOME funds to produce and preserve  
12 affordable housing for low-income households through building affordable housing, rental assistance,  
13 housing rehabilitation, and homeownership assistance. From Fiscal Year 2023-2026, Santa Cruz was  
14 awarded approximately \$6,471,573 in HOME funds.

15 77. In addition, Santa Cruz utilizes millions of dollars in DOT grant funding as both a direct  
16 recipient and subrecipient through Caltrans. The Santa Cruz Police Department relies on \$73,000 in  
17 pass-through funding from the California Office of Traffic Safety for the Traffic Enforcement Program.  
18 Santa Cruz's Department of Public Works relies on \$3,816,000 in DOT pass-through funding from the  
19 California Office of Traffic Safety for City Arterial & Collector Street Maintenance and Reconditioning;  
20 \$4,852,609 in FRA funding for Rail Trail Segments; \$45,096,435 in FHWA funding to address and  
21 mitigate future road damage due to storms and coastal erosion; and \$1,504,700 in Highway Safety  
22 Improvement Program funding for unsignalized crossing improvements and advanced dilemma zone  
23 detection and retroreflection.

24 78. Santa Cruz relies on millions of dollars of Congressional Direct Spending through the  
25 EPA for water projects, including \$1,000,000 for a water tank replacement and rehabilitation project and  
26 \$959,752 for a water pipeline project. Santa Cruz also intends to apply for millions of dollars in State  
27 Water Board pass-through grants from the EPA, related to supplying clean and safe drinking water, in or  
28 around March 2026.

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1 79. The City of Stockton is a charter city organized and existing under and by virtue of the  
2 laws of the State of California.

3 80. Stockton annually receives funding through various HUD grant programs. For FY2025,  
4 the City has been allocated \$3,229,216 in CDBG funds, \$248,821 in ESG funds, and \$1,382,561 in  
5 HOME funds. These grant funds support a variety of services to promote housing affordability, increase  
6 homeownership for low to moderate income populations, and other critical housing-related services.

7 81. The City of Sunnyvale is a charter city organized and existing under and by virtue of the  
8 laws of the State of California.

9 82. Sunnyvale depends on HUD funding to provide housing and supportive services through  
10 the community, including \$1,038,891 in CDBG funding and \$383,900 in HOME funding. This funding  
11 supports low-income home rehabilitation programs, counseling, food programs, fair housing programs,  
12 and tenant’s rights programs that serve vulnerable populations including children, foster youth, persons  
13 experiencing homelessness, and seniors. Sunnyvale also relies on approximately \$1,000,000 in  
14 Congressionally directed spending administered by HUD for the “Fire Station No. 2 – New  
15 Construction” project.

16 83. The City of Sunnyvale relies on approximately \$836,000 in Surface Transportation  
17 Program (STP) funding from DOT for the “Traffic Signal Upgrades at Sunnyvale/California” project and  
18 approximately \$1,000,000 in STP funding for the “Poplar Sidewalk” project.

19 84. The City relies on approximately \$880,000 in Congressionally directed spending  
20 administered by DOT for the “Pedestrian and Safe Routes to School (SRTS) Improvements in SNAIL  
21 and Braly Corners Neighborhoods” project; approximately \$3,000,000 in for the “Stevens Creek Trail  
22 Extension” project; and approximately \$2,500,000 for the “Bernardo Avenue Bicycle and Pedestrian  
23 Undercrossing” project.

24 85. Sunnyvale also relies on approximately \$2,480,000 in Caltrans Highway Bridge Program  
25 funding for the “Preventative Maintenance for Various Bridges” project, sourced from federal DOT  
26 funds.

27 86. In addition, the City relies on approximately \$500,000 in One Bay Area Grant program  
28 funding for the “Bernardo Avenue Bicycle and Pedestrian Undercrossing” project, funded by the

1 Congestion Mitigation and Air Quality (CMAQ) program through DOT.

2 87. Sunnyvale also relies on millions of dollars of EPA funding, including revolving fund  
3 loans, to support its Cleanwater Program’s rehabilitation and construction projects at the City’s Water  
4 Pollution Control Plant. These projects are ongoing and expected to continue into the 2040’s. For the  
5 2025-2026 fiscal year, Sunnyvale anticipates receiving over \$30 million in loans from the EPA for its  
6 Cleanwater Program.

7 88. The City of Vacaville is a general law city organized and existing under and by virtue of  
8 the laws of the State of California.

9 89. Vacaville has been awarded funding through DOT, including an FHWA Safe Streets and  
10 Roads for All (SS4A) grant of over \$11 million. Additionally, Vacaville has received over \$4 million in  
11 funding through the FTA, which supports operating assistance for Vacaville’s public transit system, as  
12 well as projects to improve and build electric charging infrastructure for buses and other transit  
13 expansion projects.

14 90. Vacaville also relies on federal funds administered by HUD, including \$2,638,400 in  
15 CDBG Section 108 Loan Guarantee Loan Program funds, \$500,000 in HOME Investment Partnership  
16 Program funds, and \$312,654 from Family Self Sufficiency (FSS) Program. These funds enable the City  
17 to finance critical community development projects, expand affordable housing opportunities, and  
18 provide stability and self-sufficiency services to low-income households.

19 91. The County of Los Angeles is a charter County organized and existing under and by virtue  
20 of the laws of the State of California.

21 92. Los Angeles County depends on HUD grant funding to support housing services. The  
22 County receives more than \$28 million in funding through the HUD, including Emergency Solutions  
23 Grant (\$1,725,321 for FY 2025-26), Community Development Block Grant (\$19,508,115 for FY 2025-  
24 26), and HOME Investment Partnerships Program Grant (\$7,427,175.63 for FY 2025-26). The ESG  
25 funding supports homelessness prevention, shelter, street outreach, and rapid rehousing programs.  
26 CDBG funding supports community, housing, and economic development programs that primarily  
27 benefit low- and moderate-income households/residents. The HOME Investment Partnerships Program  
28 Grant funds a wide range of activities including building, buying, and/or rehabilitating affordable

1 housing for rent or homeownership or providing direct rental assistance to low-income people.

2 93. Los Angeles County relies on approximately \$54,288,324 in DOT funding, which support  
 3 a wide range of projects aimed at improving transportation infrastructure and fostering transportation  
 4 safety and accessibility. This funding includes Safe Streets and Roads for All (SS4A) funds for the  
 5 Florence-Firestone for All Project (\$16,364,807), the Urban and Rural Los Angeles County: Together for  
 6 Road Safety Project (\$576,000), and the Safer Steps for Los Angeles County Pedestrians (\$29,805,830).  
 7 Los Angeles County also receives DOT funding for the Reconnecting Communities Grant Program for  
 8 the East Los Angeles Green Bridge Project for Belvedere Park (\$800,000), Promoting Resilient  
 9 Operations for Transformative, Efficient, and Cost-Savings Transportation (PROTECT) grant funds for  
 10 the Resilient Castaic-Santa Clarita Valley Project (\$3,178,400), and Bridge Investment Program funds  
 11 for the Enhancing Safety and Mobility: Slauson Avenue Bridge Widening Project (\$320,000).

12 94. Los Angeles County also receives Airport Improvement Program (AIP) and Airport  
 13 Infrastructure Grant (AIG) funds for the San Gabriel Valley Airport (\$1,497,535), the Compton/Woodley  
 14 Airport (\$1,156,319), and the General William J. Fox Airfield Airport (\$589,433).

15 95. In addition, Los Angeles County has been approved to receive approximately \$9 million  
 16 in federal grant funds from HHS for programs administered by the Health Resources and Services  
 17 Administration (HRSA), including the Healthy Start Initiative (\$1.1 million annually for five years) and  
 18 the Maternal Mental Health and Substance Use Disorders Program (\$750,000 annually for five years).  
 19 The County uses these federal grant funds for perinatal case management with group health education  
 20 and community education, as well as for operating a perinatal psychiatric and substance use consultation  
 21 line with accompanying provider training. Los Angeles County has also been approved to receive  
 22 \$8,766,368 in federal grant funds from HHS for the National Bioterrorism Hospital Preparedness  
 23 Program administered by the Administration for Strategic Preparedness and Response (ASPR). Los  
 24 Angeles County receives additional federal funds from HHS to deliver a range of services to people  
 25 living with and at risk for HIV, either directly or through contracted community-based organizations,  
 26 including Ending the HIV Epidemic: A Plan for America — Ryan White HIV/AIDS Program funds  
 27 (\$7,541,999), Ryan White HIV/AIDS Program Part A funds (\$46,295,740), and Ryan White Program  
 28 Part B funds (\$7,139,007). Los Angeles County and its Child Support Services Department (CSSD) also

1 receives HHS funds indirectly through the California Department of Child Support Services (DCSS),  
 2 which is the state agency designated to administer the federal Title IV-D State Plan. DCSS received a  
 3 five-year \$2,102,942 grant from HHS for the South Los Angeles Impact Outreach Impact Outreach  
 4 project (SOLA Project), which CSSD is implementing as a sub-grantee.

5 96. Additionally, Los Angeles County Public Works has applied for \$3,725,000 in federal  
 6 grant funds from the EPA, including \$350,000 to fund the Sustainable Water Infrastructure for Antelope  
 7 Valley Well Location Study, \$1,050,000 to fund the Hasley Canyon Stormwater Infrastructure  
 8 Improvements project, and \$2,325,000 through the EPA's Drinking Water Infrastructure Resiliency and  
 9 Sustainability Program for the Rock Creek Water Main Improvement project. These grants fund critical  
 10 infrastructure improvements and build water supply resilience for communities served by Los Angeles  
 11 County.

12 97. The County of Santa Barbara is a general law County organized and existing under and by  
 13 virtue of the laws of the State of California.

14 98. Santa Barbara County relies on over \$68 million in federal funding from DOT through  
 15 FAA, FHWA, FTA, and NHTSA, as both a direct recipient and a designated subrecipient of CalTrans.  
 16 Santa Barbara County's Santa Ynez Valley Airport has been allocated approximately \$1 million in FAA  
 17 grants for capital improvement projects, which includes an AIP grant for a project to rehabilitate the  
 18 airport's runways. The millions of dollars in federal funds that the County receives as a sub-recipient of  
 19 the State of California fund key infrastructure projects, such as the Fernald Point Bridge Replacement  
 20 Project, the Floradale Bridge Replacement Project, the Bonita School Ridge Road Replacement, the  
 21 Foothill Road at Cuyama River Project, the Refugio Road at Refugio Creek Project, and the East  
 22 Mountain Drive Project, all of which address the replacement of key bridges and future replacement  
 23 mitigation post-construction. These pass-through grant funds will also go to reconstruction and  
 24 improvements to Hollister Road, installation of new guardrail systems throughout Santa Barbara County,  
 25 and additional winter storm preparation measures.

26 99. Santa Barbara County has also been awarded or allocated approximately \$2.7 million  
 27 annually in HUD grants administered through various programs under HUD's CPD. Santa Barbara  
 28 County received a \$1,177,513 CDBG grant which will go toward funding public services and programs

1 administered by the County and associated agencies and non-profits, including: Freedom Warming  
 2 Centers of Santa Barbara, supporting accommodations for homeless and chronically homeless  
 3 individuals; CALM (Child Abuse Listening Mediation)'s Childhood Trauma Treatment Program;  
 4 CommUnifys construction of Head Start facilities; and the County's Bridgehouse Shelter utility  
 5 improvements. Santa Barbara County is also a recipient of \$1,073,695 in HOME funding, which will be  
 6 used to fund the Hollister Lofts and Perkins Place Affordable Housing Developments, as well as Tenant-  
 7 Based Rental Assistance programs in the Cities of Santa Maria and Lompoc.

8 100. Santa Barbara County relies on many millions of dollars in federal funding from the HHS  
 9 and its divisions. Santa Barbara County has received direct and subrecipient federal grant allocations  
 10 from HHS, including HRSA, CDC, and other HHS Administrative agencies, totaling nearly \$56 million  
 11 in funding. Santa Barbara County's HHS funding includes over \$10 million in 2025-2026 to fund Child  
 12 Support Services. It also encompasses over \$26 million in State of California pass-through grant funding  
 13 to support a range of COVID-19 testing, epidemiological surveillance systems, containment, and  
 14 mitigation, as well as to generally improve public health infrastructure, workforce, and data systems.  
 15 Moreover, over \$1 million of the pass-through grants go to Santa Barbara County maternal, child, and  
 16 adolescent health services. The County relies on millions of dollars of HSS funds through HRSA's  
 17 Health Center Program including a recent July of 2025 award of \$1,575,862. The County relies on  
 18 additional funds administered by HRSA including Behavioral Health Service Expansion grants and  
 19 Quality Improvement grants. The County also received \$1,022,981 in pass-through funding from the  
 20 Maternal Child and Adolescent Health Block Grant Program through CDPH and HRSA, which supports  
 21 maternal, child, and adolescent health services. Santa Barbara County also received a \$1,151,130 Ryan  
 22 White Part B grant and a \$333,214 yearly Ryan White Part C grant to fund medical case management,  
 23 health care referrals, primary health care, support services, outreach services, and food vouchers for  
 24 patients with HIV. In addition, Santa Barbara County has received over \$800,000 in funding through the  
 25 ASPR Hospital Preparedness Program to implement a disaster healthcare coalition, with the goal of  
 26 increasing hospitals' and the health care system's ability to prepare for and respond to bioterrorism and  
 27 medical and public health emergencies.

28 101. Defendant Scott Turner is the Secretary of HUD, the highest-ranking official in HUD, and

1 is responsible for the decisions of HUD. He is sued in his official capacity.

2 102. Defendant HUD is an executive department of the United States federal government. 42  
3 U.S.C. § 3532(a). HUD is an “agency” within the meaning of the APA. 5 U.S.C. § 551(1).

4 103. Defendant Sean Duffy is the Secretary of DOT, the highest-ranking official in DOT, and  
5 is responsible for the decisions of DOT. He is sued in his official capacity.

6 104. Defendant DOT is an executive department of the United States federal government. 49  
7 U.S.C. § 102(a). It houses a number of operating administrations (OAs), including the FTA, FHWA,  
8 FAA, and FRA. DOT is an “agency” within the meaning of the APA. 5 U.S.C. § 551(1).

9 105. Defendant Marcus J. Molinaro is the Administrator of the FTA, the highest-ranking  
10 official in the FTA, and is responsible for the decisions of the FTA. He is sued in his official capacity.

11 106. Defendant FTA is an operating administration within DOT. 49 U.S.C. § 107(a). FTA is  
12 an “agency” within the meaning of the APA. 5 U.S.C. § 551(1).

13 107. Defendant Gloria M. Shepherd is the Executive Director of the FHWA, the highest-  
14 ranking official in the FHWA, and is responsible for the decisions of the FHWA. She is sued in her  
15 official capacity.

16 108. Defendant FHWA is an operating administration within DOT. 49 U.S.C. § 104(a).  
17 FHWA is an “agency” within the meaning of the APA. 5 U.S.C. § 551(1).

18 109. Defendant Bryan Bedford is the Administrator of the FAA, the highest-ranking official in  
19 the FAA, and is responsible for the decisions of the FAA. He is sued in his official capacity.

20 110. Defendant FAA is an operating administration within DOT. 49 U.S.C. § 106(a). FAA is  
21 an “agency” within the meaning of the APA. 5 U.S.C. § 551(1).

22 111. Defendant David Fink is the Administrator of the FRA, the highest-ranking official in the  
23 FRA, and is responsible for the decisions of the FRA. He is sued in his official capacity.

24 112. Defendant Federal Railroad Administration is an operating administration within DOT.  
25 49 U.S.C. § 103(a). FRA is an “agency” within the meaning of the APA. 5 U.S.C. § 551(1).

26 113. Defendant Jonathan Morrison is the Administrator of NHTSA, the highest-ranking official  
27 in the NHTSA, and is responsible for the decisions of the NHTSA. He is sued in his official capacity.

28 114. Defendant NHTSA is an operating administration within DOT. 49 U.S.C. § 105(a).

1 NHTSA is an “agency” within the meaning of the APA. 5 U.S.C. § 551(1).

2 115. Defendant Robert F. Kennedy, Jr. is the Secretary of HHS, the highest-ranking official in  
3 HHS, and responsible for the decisions of HHS. He is sued in his official capacity.

4 116. Defendant HHS is an executive department of the United States federal government. 42  
5 U.S.C. § 3501. HHS is an “agency” within the meaning of the APA. 5 U.S.C. § 551(1).

6 117. Defendant Lee Zeldin is the Administrator of the EPA, the highest-ranking official in the  
7 EPA, and is responsible for the decisions of the EPA. He is sued in his official capacity.

8 118. Defendant EPA is an executive agency of the United States federal government. 42 U.S.  
9 Code § 13102(2). EPA is an “agency” within the meaning of the APA. 5 U.S.C. § 551(1).

#### 10 **IV. FACTUAL ALLEGATIONS**

##### 11 **A. HUD Grant Programs**

12 119. Congress established HUD in 1965 to promote the “sound development of the Nation’s  
13 communities and metropolitan areas” by, among other things, administering programs that “provide  
14 assistance for housing” and “development.” Department of Housing and Urban Development Act, 1965  
15 § 2, Pub. L. No. 89-174, 79 Stat. 667. The HUD Secretary is responsible for all actions taken by the  
16 Department and its component offices. *See* 42 U.S.C. §§ 3533, 3535; 24 C.F.R. Part 5. HUD  
17 administers both competitive and formula grant programs. Competitive grant programs “allocate[] a  
18 limited pool of funds to state and local applicants whose applications are approved by” a federal agency.  
19 *City of Los Angeles v. Barr*, 929 F.3d 1163, 1169 (9th Cir. 2019). Entitlement grant programs  
20 (sometimes referred to as formula grant programs) “are awarded pursuant to a statutory formula” wherein  
21 “Congress determines who the recipients are and how much money each shall receive.” *City of Los*  
22 *Angeles v. McLaughlin*, 865 F.2d 1084, 1088 (9th Cir. 1989) (cleaned up). HUD administers grants  
23 directly and through its program offices, including the Office of Community Planning & Development  
24 (CPD), and regional field offices. *See* 24 C.F.R. subchapter C (CPD-administered programs); *id.*  
25 § 982.101 (allocating budget authority for Section 8 Housing Choice Voucher program to field offices).

##### 26 **1. Continuum of Care Grant Program**

27 120. Congress established the Continuum of Care (CoC) program through the enactment of the  
28 McKinney-Vento Homeless Assistance Act (the “Homeless Assistance Act”). 42 U.S.C. §§ 11301,

1 11381. The program’s “purpose” is to “promote community-wide commitment to the goal of ending  
 2 homelessness” by “provid[ing] funding for efforts by nonprofit providers and State and local  
 3 governments to quickly rehouse homeless individuals and families.” *Id.* § 11381. In addition, the CoC  
 4 program is designed to promote access to and effective utilization of mainstream programs by homeless  
 5 individuals and families; and to optimize self-sufficiency among those experiencing homelessness. *Id.*

6 121. The Homeless Assistance Act directs the Secretary of HUD (the “HUD Secretary”) to  
 7 award CoC grants on a competitive basis using statutorily prescribed selection criteria. 42 U.S.C.  
 8 § 11382(a). These grants fund critical homelessness services administered by grant recipients either  
 9 directly or through service providers contracted by the grant recipient. The CoC program funds a variety  
 10 of programs that support homeless individuals and families, including through the construction of  
 11 supportive housing, rehousing support, rental assistance, and supportive services, including childcare, job  
 12 training, healthcare, mental health services, trauma counseling, and life skills training. *Id.* §§ 11360 (29),  
 13 11383.

14 122. Grants are awarded to local coalitions, or “Continuums,” that may include representatives  
 15 from local governments, nonprofits, faith-based organizations, advocacy groups, public housing  
 16 agencies, universities, and other stakeholders. 24 C.F.R § 578.3. Each Continuum designates an  
 17 applicant to apply for CoC funding on behalf of the Continuum. *Id.*

18 **a. Congress Imposes Legislative Directives, and HUD Promulgates Rules,**  
 19 **Regarding CoC Grant Conditions**

20 123. HUD’s administration of the CoC program, including the award of CoC grants, is  
 21 authorized and governed by statutory directives. Congress has specified what activities are eligible for  
 22 funding under the CoC program, the selection criteria HUD must apply in awarding CoC grants, and  
 23 program requirements HUD can require recipients agree to as conditions for receiving funds. *See* 42  
 24 U.S.C. §§ 11383, 11386, 11386a.

25 124. Section 422 of the Homeless Assistance Act, 42 U.S.C. §§ 11382, contains Congress’s  
 26 overarching authorization for HUD to award CoC grants. Subsection (A) of that section states:

27 The Secretary shall award grants, on a competitive basis, and using the  
 28 selection criteria described in section 11386a of this title, to carry out  
 eligible activities under this part for projects that meet the program

1 requirements under section 11386 of this title, either by directly awarding  
2 funds to project sponsors or by awarding funds to unified funding agencies.

3 125. Section 427 of the Homeless Assistance Act, 42 U.S.C. § 11386a, provides for the HUD  
4 Secretary to establish selection criteria to evaluate grant applications and sets forth specific criteria the  
5 HUD Secretary must use. These required criteria include things like the recipient's previous  
6 performance in addressing homelessness, whether the recipient has demonstrated coordination with other  
7 public and private entities serving homeless individuals, and the need within the geographic area for  
8 homeless services. *Id.* (b)(1)-(2).

9 126. Section 426 of the Homeless Assistance Act, 42 U.S.C. § 11386, sets forth "[r]equired  
10 agreements" to which grant recipients must adhere. Recipients must agree to, among other things,  
11 "monitor and report to the [HUD] Secretary the progress of the project," "take the educational needs of  
12 children into account when families are placed in emergency or transitional shelter," "place families with  
13 children as close as possible to their school of origin," and obtain various certifications from direct  
14 service providers. 42 U.S.C. § 11386(b).

15 127. The Homeless Assistance Act does not authorize HUD to condition CoC funding on  
16 opposition to all forms of Diversity, Equity, and Inclusion (DEI) policies and initiatives through the guise  
17 of federal nondiscrimination law, nor on participating in aggressive and lawless immigration  
18 enforcement, exclusion of transgender people, or cutting off access to information about lawful  
19 abortions.

20 128. Congress has authorized the Secretary to promulgate regulations establishing, *inter alia*,  
21 other selection criteria and "other terms and conditions" on grant funding "to carry out [the CoC  
22 program] in an effective and efficient manner." *Id.* §§ 11386(b)(8), 11386a(b)(1)(G), 11387.

23 129. Pursuant to this authority, HUD has promulgated the Continuum of Care Program rule at  
24 24 C.F.R. part 578 (the "CoC Rule"), which, among other things, sets forth additional conditions to  
25 which grant recipients must agree in the CoC grant agreements they execute with HUD. *Id.* § 578.23(c).  
26 While the CoC Rule permits HUD to require CoC recipients to comply with additional "terms and  
27 conditions," such terms and conditions must be "establish[ed] by" a Notice of Funding Opportunity  
28

1 (NOFO).<sup>3</sup> *Id.* § 578.23(c)(12).

2 130. The CoC Rule does not impose any conditions on CoC funding related to prohibiting all  
3 kinds of DEI, facilitating enforcement of federal immigration laws, verification of immigration status, or  
4 prohibiting the “promot[ion]” of “gender ideology” or “elective abortion.” Congress has not delegated  
5 authority that would permit an agency to adopt such conditions.

6 **b. Congress Appropriates CoC Grant Funding and Authorizes HUD to**  
7 **Issue a NOFO for Fiscal Years 2024 and 2025**

8 131. Funding for CoC grants comes from congressional discretionary appropriations.

9 132. Congress appropriated funds for the CoC program in the Consolidated Appropriations  
10 Act, 2024, Pub. L. 118-42, 138 Stat. 25 (the “2024 Appropriations Act”).

11 133. The 2024 Appropriations Act contains additional directives to HUD regarding CoC  
12 funding. For instance, it requires the Secretary to “prioritize funding. . . to continuums of care that have  
13 demonstrated a capacity to reallocate funding from lower performing projects to higher performing  
14 projects,” and requires the Secretary to “provide incentives to create projects that coordinate with  
15 housing providers and healthcare organizations to provide permanent supportive housing and rapid re-  
16 housing services.” *Id.*, 138 Stat. 362-363.

17 134. The 2024 Appropriations Act also authorized HUD to issue a two-year NOFO for Fiscal  
18 Years 2024 and 2025 program funding. *Id.*, 138 Stat. 386.

19 135. By statute, the HUD Secretary must announce recipients within five months after the  
20 submission of applications for funding in response to the NOFO. 42 U.S.C. § 11382(c)(2).

21 136. The HUD Secretary’s announcement is a “conditional award,” in that the recipient must  
22 meet “all requirements for the obligation of those funds, including site control, matching funds, and  
23 environmental review requirements.” *Id.* § 11382(d)(1)(A).

24 137. Once the recipient meets those requirements, HUD must obligate the funds within 45  
25 days. *Id.* § 11382(d)(2) (providing that “the Secretary shall obligate the funds”).

26 \_\_\_\_\_  
27 <sup>3</sup> The terms NOFO, “Notice of Funding Availability,” and “Funding Opportunity Announcement” refer  
28 to a formal announcement of the availability of federal funding. As part of an effort to standardize  
terminology, most federal agencies now use the term NOFO. For clarity, this Complaint uses the term  
NOFO.

1 138. None of the 2024 Appropriations Act’s directives to HUD or any other legislation  
 2 authorize HUD to impose CoC grant fund conditions related to prohibiting all kinds of DEI, facilitating  
 3 enforcement of federal immigration laws, verification of immigration status, or prohibiting the  
 4 “promot[ion]” of “gender ideology” or “elective abortion.”

5 **c. HUD Conditionally Awards CoC Grants**

6 139. In July 2024, HUD posted a biennial NOFO announcing a competition for CoC funding  
 7 for Fiscal Years 2024 and 2025 (the “FYs 2024 & 2025 NOFO”). *See* U.S. Dep’t of Housing & Urban  
 8 Dev., Notice of Funding Opportunity for FY 2024 and FY 2025 Continuum of Care Competition and  
 9 Renewal or Replacement of Youth Homeless Demonstration Program (Jul. 24, 2024), [https://www.  
 10 hud.gov/sites/dfiles/CPD/documents/FY2024\\_FY2025\\_CoC\\_and\\_YHDP\\_NOFO\\_FR-6800-N-25.pdf](https://www.hud.gov/sites/dfiles/CPD/documents/FY2024_FY2025_CoC_and_YHDP_NOFO_FR-6800-N-25.pdf)  
 11 (last visited December 17, 2025).

12 140. The FYs 2024 & 2025 NOFO directed Continuums to consider policy priorities in their  
 13 applications, including “Racial Equity” and “Improving Assistance to LGBTQ+ Individuals.” *Id.* at 9.  
 14 The FYs 2024 & 2025 NOFO specified that “HUD is emphasizing system and program changes to  
 15 address racial equity within CoCs and projects. Responses to preventing and ending homelessness  
 16 should address racial inequities . . . .” *Id.* The FYs 2024 & 2025 NOFO further specified that “CoC  
 17 should address the needs of LGBTQ+, transgender, gender non-conforming, and non-binary individuals  
 18 and families in their planning processes. Additionally, when considering which projects to select in their  
 19 local competition to be included in their application to HUD, CoCs should ensure that all projects  
 20 provide privacy, respect, safety, and access regardless of gender identity or sexual orientation.” *Id.*

21 141. The NOFO did not include any grant conditions prohibiting DEI efforts, facilitating  
 22 enforcement of federal immigration laws, verifying immigration status, or prohibiting the “promot[ion]”  
 23 of “gender ideology” or “elective abortion.” Nor did any of the 2024 Appropriations Act’s directives to  
 24 HUD or any other legislation authorize HUD to impose such conditions on CoC grants.

25 142. CoC grants fund permanent supportive housing programs, which provide long-term,  
 26 affordable housing combined with supportive services for individuals and families experiencing, or at  
 27 risk of homelessness. Such supportive services include case management which provides links to  
 28 healthcare, job training, and other resources that facilitate their ability to obtain and keep their housing.

1 These programs allow participating individuals and families to live independently and stably in their  
2 communities.

### 3 **2. Community Development Block Grant Program**

4 143. Congress established the Community Development Block Grant (CDBG) program  
5 through Title I of the Housing and Community Development Act of 1974 (the “HCD Act”), Pub. L. 93-  
6 383, 88 Stat. 633, and subsequent amendments. The program’s stated “primary objective” is to promote  
7 “development of viable urban communities” through “decent housing,” a “suitable living environment,”  
8 and “expan[sion of] economic opportunities, principally for persons of low and moderate income.” 42  
9 U.S.C. § 5301(c). Specific objectives include “conserv[ing] and expan[ding] the Nation’s housing stock”  
10 especially for low- and moderate-income households, promoting mixed-income communities, and  
11 enhancing the “diversity and vitality of neighborhoods” by eliminating slums or blight and revitalizing  
12 “deteriorating or deteriorated neighborhoods,” among other goals. *Id.* § 5301(c)(1), (c)(3), (c)(6).

13 144. The CDBG program is codified at title 42, chapter 69 of the U.S. Code. The program  
14 provides flexible funding through annual block grants awarded on a formula basis to state and local  
15 governments for purposes related to economic and community development. In enacting the program,  
16 Congress consolidated “a number of complex and overlapping” grant programs such that funding would  
17 be provided “on an annual basis, with maximum certainty and minimum delay,” and communities could  
18 “rely [on funding] in their planning.” *Id.* § 5301(d). The HCD Act permits communities to tailor  
19 program activities to meet local needs so long as they advance national objectives identified by Congress,  
20 including benefiting low- and moderate-income persons, preventing or eliminating slums or blight, or, in  
21 certain cases, responding to serious and immediate threats to community health or welfare where other  
22 funds are unavailable. *Id.* §§ 5301(c), 5304(b)(4).

23 145. The HCD Act authorizes the HUD Secretary to award CDBG funds using statutorily  
24 prescribed selection criteria. 42 U.S.C. §§ 5303–04. The HUD Secretary must distribute funds annually  
25 using a formula that considers population and measures of distress including poverty, age of housing,  
26 housing overcrowding, and growth lag. *Id.* §§ 5303–04, 5306. These grants fund vital urban community  
27 development projects and public services administered by grant recipients either directly or through  
28 service providers contracted by the grant recipient. *See id.* § 5305 (listing activities eligible for

1 assistance).

2 **d. Congress Imposes Legislative Directives, and HUD Promulgates Rules**  
 3 **Regarding CDBG Grant Conditions**

4 146. HUD’s administration of the CDBG program, including the award of block grants, is  
 5 authorized and governed by statutory directives. Congress has specified what activities are eligible for  
 6 funding under the CDBG program, the selection criteria HUD must apply in awarding CDBG grants, and  
 7 program requirements HUD can require recipients agree to as conditions for receiving funds. *See* 42  
 8 U.S.C. §§ 5301, 5304–05.

9 147. Section 103 of the HCD Act, 42 U.S.C. § 5303, contains Congress’s overarching  
 10 authorization to award CDBG funding. That provision states in relevant part: “The Secretary is  
 11 authorized to make grants to States, units of general local government, and Indian tribes to carry out  
 12 activities in accordance with the provisions of this chapter.”

13 148. In addition to the statutory objectives and allocation formula discussed above, Congress  
 14 has imposed other requirements on CDBG funds. For instance, 42 U.S.C. § 5305 limits the use of  
 15 CDBG funds to enumerated eligible activities. The HCD Act also mandates that recipients use at least  
 16 70% of CDBG funds on activities that principally benefit low- and moderate-income persons, *id.*  
 17 § 5301(c), and prescribes eligibility criteria for such activities, *id.* § 5305(c). Grant recipients must also  
 18 submit annual plans to the HUD Secretary describing their priority nonhousing community development  
 19 needs eligible for CDBG funding pursuant to procedures set out in the HCD Act. *Id.* § 5304(m). Finally,  
 20 Congress has enumerated various certifications that CDBG recipients must make as a condition of  
 21 receiving funds, including that the recipient will develop and follow a citizen participation plan, comply  
 22 with statutory transparency requirements, ensure funds are consistent with the HCD Act’s objectives, and  
 23 administer programs in conformity with nondiscrimination laws. *Id.* § 5304(a)(3), (b).

24 149. The HCD Act does not authorize HUD to condition CDBG funding on prohibiting all  
 25 forms of DEI, facilitating enforcement of federal immigration laws, verification of immigration status, or  
 26 prohibiting the “promot[ion]” of “gender ideology” or “elective abortion.”

27 150. The HCD Act indicates congressional intent to benefit historically disadvantaged groups.  
 28 For example, the Act requires the Secretary to set aside some of the funds appropriated for the CDBG

1 program for “special purpose grants,” which may include, among other things, grants to “historically  
 2 Black colleges.” 42 U.S.C. § 5307(b)(2). The Act further provides that, of the amount set aside for  
 3 special purpose grants, the Secretary “shall” make grants to institutions of higher education “for the  
 4 purpose of providing assistance to economically disadvantaged and minority students who participate in  
 5 community development work study programs and are enrolled in” qualifying degree programs. *Id.*  
 6 § 5307(c). The Act also authorizes urban development action grants to cities and urban counties  
 7 experiencing severe economic distress, but only if the HUD Secretary determines the city or county has  
 8 “demonstrated results in,” among other things, “providing equal opportunity in housing and employment  
 9 for low- and moderate-income persons and members of minority groups.” *Id.* § 5318(a)–(b).

10 151. Congress has authorized the HUD Secretary to promulgate “rules and regulations”  
 11 necessary to carrying out the Secretary’s “functions, powers, and duties.” 42 U.S.C. § 3535(d).

12 152. Pursuant to this authority, HUD has promulgated the CDBG program rule at 24 C.F.R.  
 13 part 570 (the “CDBG Rule”), which, among other things, imposes additional restrictions on the use of  
 14 CDBG funds. *See* 24 C.F.R. § 570.207. The CDBG Rule also obligates grant recipients to submit  
 15 annual consolidated plans in accordance with 24 C.F.R. part 91. 24 C.F.R. § 570.302. These annual  
 16 consolidated plans must include additional certifications enumerated in HUD regulations, including that  
 17 the recipient complies with lead-based paint procedures and has policies barring the use of excessive  
 18 force against non-violent civil rights demonstrators. 24 C.F.R. § 91.225.

19 153. The CDBG Rule does not impose any conditions on CDBG funding related to prohibiting  
 20 all forms of DEI policies and initiatives, participating in immigration enforcement, verification of  
 21 immigration status, opposing transgender acceptance, or cutting off access to information about lawful  
 22 abortions.

23 **e. Congress Appropriates CDBG Grant Funding**

24 154. Funding for CDBG grants comes from congressional discretionary appropriations.

25 155. Congress appropriated funds for the CDBG program in the 2024 Appropriations Act. The  
 26 2024 Appropriations Act contains additional directives to HUD regarding CDBG funding. For instance,  
 27 it requires that no more than 20% of any grant under the CDBG program may be expended for certain  
 28 planning and administrative purposes and imposes limitations on funds provided to for-profit entities.

1 138 Stat. 358–59.

2 156. None of the 2024 Appropriations Act’s directives to HUD or any other legislation  
3 authorize HUD to impose CDBG grant conditions related to prohibiting all forms of DEI, facilitating  
4 enforcement of federal immigration laws, verification of immigration status, or prohibiting the  
5 “promot[ion]” of “gender ideology” or “elective abortion.”

6 **3. Emergency Solutions Grant Program**

7 **a. Congress Authorizes the Establishment of the Emergency Solutions**  
8 **Grant Program Through the HEARTH Act**

9 157. In 2009, Congress established the Emergency Solutions Grant (ESG) program through the  
10 Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act, Pub. L. 111-22, 123  
11 Stat. 1663. *See* 42 U.S.C. §§ 11371–11378. In enacting the HEARTH Act, Congress sought to remedy  
12 the “lack of affordable housing and limited scale of housing assistance programs” that it found to be “the  
13 primary causes of homelessness” and “establish a Federal goal of ensuring that individuals and families  
14 who become homeless return to permanent housing within 30 days.” HEARTH Act, § 1002, 123 Stat.  
15 1664.

16 158. The HEARTH Act amended the Homeless Assistance Act to expand what had been  
17 known as the Emergency Shelter Grant program, which provided formula funding to state and local  
18 governments for the short-term needs of homeless individuals. Reflecting a broadened focus on factors  
19 that lead to homelessness, the HEARTH Act expanded the activities eligible for funding under the new  
20 ESG program to include short- or medium-term rental assistance and housing relocation and stabilization  
21 services, in addition to emergency shelters, homelessness prevention, and supportive services, which had  
22 been covered under the original program. *See* 42 U.S.C. § 11374(a).

23 159. The Homeless Assistance Act, as amended by the HEARTH Act, directs the Secretary of  
24 HUD to award ESG grants to cities, urban counties, and states on a non-competitive basis using HUD’s  
25 formula for allocating CDBG funds, discussed above. 42 U.S.C. §§ 11372, 11373(a). These grants fund  
26 programs that address the most critical and immediate needs of those experiencing or at risk of  
27 homelessness, including programs for preventing homelessness, immediately rehousing individuals who  
28 become homeless, and providing emergency shelter to those experiencing homelessness. *Id.* § 11374(a).

**b. Congress Imposes Legislative Directive, and HUD Promulgates Rules, Regarding ESG Grant Conditions**

160. HUD’s administration of the ESG program, including the award of ESG funds, is authorized and governed by statutory directives. Congress has specified what activities are eligible for funding under the ESG program, the responsibilities of ESG recipients, and specific certifications ESG recipients must agree to as a condition of receiving funds. 42 U.S.C. §§ 11374(a), 11375.

161. Congress’s overarching direction to HUD to award ESG grants is codified at 42 U.S.C. § 11372, which provides:

The Secretary shall make grants to States and local governments (and to private nonprofit organizations providing assistance to persons experiencing homelessness or at risk of homelessness, in the case of grants made with reallocated amounts) for the purpose of carrying out activities described in section 11374 of this title.

162. Section 11374 of Title 42 limits the activities for which ESG funds may be used to specific services: maintaining, operating, or renovating emergency shelters; providing supportive services related to emergency shelter or street outreach; paying short- or medium-term rental assistance; and providing housing relocation or stabilization services for homeless or at-risk individuals and families.

163. Section 11375 of Title 42 sets forth certifications that recipients must make to the Secretary of HUD regarding their use of ESG funds. Recipients must certify that, among other things, they will operate facilities that receive funding as homeless shelters for a specified number of years, any ESG-funded renovation will be sufficient to ensure the shelter is safe and sanitary, they will assist homeless individuals in obtaining permanent housing and services such as medical and mental health treatment and counseling, and they will involve homeless individuals and families through employment, volunteer services, or otherwise, in constructing and operating shelters to the maximum extent practicable. 42 U.S.C. § 11375(c).

164. The HEARTH Act does not authorize HUD to condition ESG funding on prohibiting all forms of DEI, facilitating enforcement of federal immigration laws, verification of immigration status, or prohibiting the “promot[ion]” of “gender ideology” or “elective abortion.”

165. Section 11376 of Title 42 authorizes the Secretary of HUD “by notice” to “establish such

1 requirements as may be necessary to carry out the provisions of” the ESG program. “Such requirements  
2 shall be subject to section 553 of title 5,” which requires rulemaking to occur pursuant to notice and  
3 comment procedures. 42 U.S.C. § 11376.

4 166. Pursuant to this authority, HUD has promulgated the ESG Rule at 24 C.F.R. part 576,  
5 which sets forth additional requirements and conditions on ESG funding. *See* 24 C.F.R. §§ 576.400–  
6 576.409. For instance, the ESG Rule requires ESG recipients to meet minimum safety, sanitation, and  
7 privacy standards for emergency shelters; integrate ESG services with other programs targeted to  
8 homeless individuals in the area; coordinate with local Continuums; conduct initial evaluations of  
9 program participants consistent with HUD requirements; and abide by recordkeeping and reporting  
10 requirements. *Id.* §§ 576.400, 576.401, 576.403(b), 576.500.

11 167. The ESG Rule also obligates ESG recipients to submit and obtain HUD approval of a  
12 consolidated plan in accordance with the requirements in 24 C.F.R. part 91. *Id.* § 576.200. HUD’s  
13 consolidated planning regulations set forth additional certifications that must be included in a  
14 consolidated plan, including that the jurisdiction will affirmatively further fair housing, is in compliance  
15 with anti-lobbying requirements, and possesses the legal authority to carry out programs for which it is  
16 seeking funding, among other certifications. *Id.* § 91.225(a).

17 168. Neither the ESG Rule nor HUD’s consolidated planning regulations impose any  
18 conditions on ESG funding related to prohibiting all forms of DEI, facilitating enforcement of federal  
19 immigration laws, verification of immigration status, or prohibiting the “promot[ion]” of “gender  
20 ideology” or “elective abortion.” Congress has not delegated authority that would permit an agency to  
21 adopt such conditions.

22 169. Funding for the ESG program comes from congressional discretionary appropriations.

23 170. Congress appropriated funds for the ESG program in the 2024 Appropriations Act, 138  
24 Stat. at 362.

25 171. Nothing in the 2024 Appropriations Act or any other legislation authorizes HUD to  
26 impose ESG grant fund conditions related to prohibiting all forms of DEI, facilitating enforcement of  
27 federal immigration laws, verification of immigration status, or prohibiting the “promot[ion]” of “gender  
28 ideology” or “elective abortion.”

1                   **4. HOME Investment Partnerships Program**

2           172. Congress established the HOME program through the HOME Investment Partnerships  
3 Act (HOME Act), under Title II of the Cranston-Gonzalez National Affordable Housing Act (NAHA),  
4 Pub. L. No. 101–625, 104 Stat. 4079, and subsequent amendments. The HOME program is a formula  
5 grant program that aims to help state and local governments implement local housing strategies to  
6 increase affordable housing opportunities for low-income families. The HOME program requires the  
7 HUD Secretary “to make funds available to participating jurisdictions for investment to increase the  
8 number of families served with decent, safe, sanitary, and affordable housing and expand the long-term  
9 supply of affordable housing.” 42 U.S.C. §§ 12741, 12747(b).

10           173. Participating jurisdictions may use HOME grants for a variety of housing activities.  
11 These include providing “incentives to develop and support affordable rental housing and  
12 homeownership affordability through the acquisition, new construction, reconstruction, or moderate or  
13 substantial rehabilitation of affordable housing.” 42 U.S.C. § 12742(a)(1).

14           174. Participating jurisdictions must allocate matching funds to affordable housing projects  
15 equivalent to at least 25 percent of the HOME funds the jurisdictions use. 42 U.S.C. § 12750.

16                   **a. Congress Imposes Legislative Directives, and HUD Promulgates Rules,**  
17                   **Regarding HOME Grant Conditions**

18           175. HUD’s administration of the HOME program is authorized and governed by statutory  
19 directives. The HOME Act specifies the eligibility requirements to become a participating jurisdiction,  
20 the permissible and prohibited uses of HOME funds, the maximum incomes of families who may receive  
21 HOME funds, and what housing qualifies as affordable for purposes of the program. 42 U.S.C.  
22 §§ 12742, 12744, 12475, 12476.

23           176. The HOME Act does not grant HUD discretion in designating which jurisdictions may  
24 participate and under what circumstances those jurisdictions shall receive HOME funds. It instead  
25 directs the HUD Secretary to establish by regulation the statutorily specified procedures with which  
26 states and local governments must comply to be designated as participating jurisdictions and receive  
27 allocations of HOME funds. 42 U.S.C. § 12746. The HOME Act provides that such regulations “shall  
28 only provide for the” requirements for allocation, eligibility, notification, submission, reallocation,

1 revocation, and reduction of funds listed in the statute. *Id.* § 12746(1)–(10) (emphasis added). Once a  
 2 jurisdiction meets the statutory formula and complies with the listed requirements, HUD “*shall*  
 3 designate” it “a participating jurisdiction” and the jurisdiction “*shall* remain a participating jurisdiction  
 4 for subsequent fiscal years” unless certain revocation conditions are met. *Id.* § 12746(7)–(8) (emphasis  
 5 added).

6 177. The HOME Act further directs the HUD Secretary to “establish by regulation an  
 7 allocation formula that reflects each jurisdiction’s share of total need among eligible jurisdiction[s] for an  
 8 increased supply of affordable housing for very low-income and low-income families of different size.”  
 9 42 U.S.C. § 12747(b)(1)(A). This formula must be based on the “objective measures” specified in the  
 10 HOME Act. *Id.*

11 178. The Home Act further directs the HUD Secretary to establish a HOME Investment Trust  
 12 Fund for each participating jurisdiction, along with a line of credit that includes the participating  
 13 jurisdiction’s allocated HOME funds. 42 U.S.C. § 12748(a)–(b).

14 179. As directed by Congress, HUD promulgated the HOME program rule at 24 C.F.R. part 92  
 15 (the “HOME Rule”). The HOME Rule implements the allocation formula prescribed by Congress, along  
 16 with the eligibility and related requirements listed in the HOME Act. *See, e.g.*, 24 C.F.R. §§ 92.50,  
 17 92.102–07, 92.150, 92.200–22. The HOME Rule also lists other federal requirements with which  
 18 participating jurisdictions must comply, including the nondiscrimination requirements that apply to all  
 19 HUD Programs, listed at 24 C.F.R. § 5.105(a), as well as the nondiscrimination requirements in the  
 20 HOME Act, 42 U.S.C. § 12832, addressed below. 24 C.F.R. § 92.350.

21 180. Neither Congress nor HUD’s regulations authorize HUD to condition HOME funding on  
 22 prohibiting all forms of DEI, facilitating enforcement of federal immigration laws, verification of  
 23 immigration status, or prohibiting the “promot[ion]” of “gender ideology” or “elective abortion.”

24 181. NAHA and the HOME Act indicate congressional intent to benefit historically  
 25 disadvantaged groups. One of Congress’s objectives in enacting NAHA was to “improve housing  
 26 opportunities for all residents of the United States, particularly members of disadvantaged minorities, on  
 27 a nondiscriminatory basis.” 42 U.S.C. § 12702(3). The HOME Act requires participating jurisdictions  
 28 “to establish and oversee a minority outreach program . . . to ensure the inclusion, to the maximum extent

1 possible, of minorities and women, and entities owned by minorities and women . . . in all contracts[]  
 2 entered into by the participating jurisdiction . . . to provide affordable housing authorized under this Act.”  
 3 *Id.* § 12831(a). The HOME Act also forbids participating jurisdictions from denying benefits to or  
 4 otherwise discriminating against any person “on the grounds of race, color, national origin, religion, or  
 5 sex.” *Id.* § 12832.

6 182. In January 2025, HUD issued a final rule amending the HOME Rule “to update, simplify,  
 7 or streamline requirements, better align the program with other Federal housing programs, and  
 8 implement recent amendments to the HOME statute.” HOME Investment Partnerships Program:  
 9 Program Updates and Streamlining, 90 Fed. Reg. 746, 746 (Jan. 6, 2025). The revised HOME Rule does  
 10 not add any grant conditions related to DEI, immigration enforcement, verification of immigration status,  
 11 “gender ideology,” or abortion. The revised HOME Rule was originally set to become effective  
 12 February 5, 2025, but HUD delayed parts of the Rule until October 2025. *See* HOME Investment  
 13 Partnerships Program: Program Updates and Streamlining—Delay of Effective Date, Withdrawal, and  
 14 Correction, 90 Fed. Reg. 16085 (Apr. 17, 2025).

15 **b. Congress Appropriates HOME Grant Finding**

16 183. Funding for the HOME program comes from congressional discretionary appropriations.

17 184. Congress appropriated \$1,250,000,000 for the HOME program in the 2024 Appropriations  
 18 Act. 38 Stat. 360. The 2024 Appropriations Act contains additional directives to HUD regarding HOME  
 19 funding. For instance, it extends the statutory deadline for participating jurisdictions to draw funds from  
 20 their HOME Investment Trust Fund. *Id.*

21 185. None of the 2024 Appropriations Act’s directives to HUD or any other legislation  
 22 authorize HUD to impose HOME grant conditions related to prohibiting all forms of DEI, facilitating  
 23 enforcement of federal immigration laws, verification of immigration status, or prohibiting the  
 24 “promot[ion]” of “gender ideology” or “elective abortion.”

25 186. Additionally, Section 3205 of the American Rescue Plan Act (ARPA) of 2021 allocated  
 26 \$5 billion to the HOME program in response to the COVID-19 pandemic for homelessness assistance  
 27 and supportive services. Pub. L. 117-2, 135 Stat. 61. These funds were appropriated to the HOME  
 28 program and distributed to states, localities, consortia, and insular areas via the HOME formula.

1 187. The ARPA did not authorize HUD to impose grant conditions related to prohibiting all  
2 forms of DEI, facilitating enforcement of federal immigration laws, verification of immigration status, or  
3 prohibiting the “promot[ion]” of “gender ideology” or “elective abortion.”

4 **5. The Housing Opportunities for Persons with AIDS Program**

5 188. Congress established the Housing Opportunities for Persons with AIDS (HOPWA)  
6 program through the AIDS Housing Opportunity Act, Subtitle D of Title VIII of NAHA, Pub. L. No.  
7 101–625, 104 Stat. 4079, and subsequent amendments. The objective of the HOPWA program is “to  
8 provide States and localities with the resources and incentives to devise long-term comprehensive  
9 strategies for meeting the housing needs of persons with acquired immunodeficiency syndrome and  
10 families of such persons.” 42 U.S.C. § 12901. To meet this aim, the program authorizes formula grants  
11 and competitively awarded grants to provide housing assistance and related supportive services to meet  
12 the housing needs of low-income persons living with HIV or AIDS and their families.

13 189. The HOPWA program permits grant recipients to use HOPWA funds for a number of  
14 housing programs for persons living with HIV or AIDS, including providing information and services,  
15 short-term housing, rental assistance, development of single room occupancy dwellings, and  
16 development and operation of community residences. 42 U.S.C. §§ 12906–910.

17 190. Ninety percent of HOPWA funds must be allocated pursuant to a statutory formula based  
18 on total population, the number of persons living with HIV or AIDS, fair market rents, and poverty data.  
19 42 U.S.C. § 12903(c)(1)(A). The HUD Secretary must award the remaining 10 percent of grant funds on  
20 a competitive basis to states and local governments not eligible for a formula grant, or to states, local  
21 governments, or nonprofits seeking funding for “special projects of national significance.” *Id.*  
22 § 12903(c)(5)(A), (C).

23 **a. Congress Imposes Legislative Directives, and HUD Promulgates Rules**  
24 **Regarding HOPWA Grant Conditions**

25 191. To be eligible for HOPWA funds, states and local governments must submit an  
26 application for the HUD Secretary’s approval. 42 U.S.C. § 12903(d). Congress instructed the HUD  
27 Secretary to establish by regulation procedures for the submission of applications using specified  
28 requirements. *Id.* § 12903(d)(1)–(6). Congress also permitted the HUD Secretary to require “other

1 information or certifications” but only to the extent “necessary to achieve the purposes of this section,”  
 2 i.e., to award formula and competitive grants pursuant to the statutorily listed criteria. *Id.* § 12903(d)(6).

3 192. Pursuant to this authority, HUD promulgated the HOPWA program rule at 24 C.F.R. part  
 4 574 (the “HOPWA Rule”). The HOPWA Rule implements the allocation formula prescribed in the  
 5 statute, as well as the permissible uses of HOPWA funds. 24 C.F.R. §§ 574.110, 130, 300. The Rule  
 6 also creates an application process for competitive grants, requiring applications “comply with the  
 7 provisions of the Department’s Notice of Funding Availability (NOFA) for the fiscal year.” *Id.*  
 8 § 574.240. The HOPWA Rule also sets out conditions grantees and project sponsors must agree to,  
 9 including compliance with HUD regulations and “such other terms and conditions . . . as HUD may  
 10 establish for purposes of carrying out the program *in an effective and efficient manner.*” *Id.* § 574.500  
 11 (emphasis added). The HOPWA Rule further lists other federal requirements with which participating  
 12 jurisdictions must comply, including the nondiscrimination requirements that apply to all HUD programs  
 13 listed at 24 C.F.R. § 5.105(a). 24 C.F.R. § 574.603.

14 193. Neither NAHA nor the HOPWA Rule permit HUD to condition HOPWA funding on  
 15 prohibiting all forms of DEI, facilitating enforcement of federal immigration laws, verification of  
 16 immigration status, or prohibiting the “promot[ion]” of “gender ideology” or “elective abortion.”

17 194. As discussed above, NAHA, which established the HOPWA program, indicates  
 18 congressional intent to benefit historically disadvantaged groups, including the aim to “improve housing  
 19 opportunities for . . . members of disadvantaged minorities.” 42 U.S.C. § 12702(3).

20 **b. Congress Appropriates HOPWA Grant Funding**

21 195. Funding for HOPWA grants comes from congressional discretionary appropriations. *See*  
 22 42 U.S.C. § 12912.

23 196. Congress appropriated \$505,000,000 for the HOPWA program in the 2024 Appropriations  
 24 Act. 38 Stat. 358. The 2024 Appropriations Act contains additional directives to HUD regarding  
 25 HOPWA funding. For instance, it instructs HUD to “renew or replace all expiring contracts for  
 26 permanent supportive housing . . . before awarding funds for new contracts.” *Id.*

27 197. None of the 2024 Appropriations Act’s directives to HUD or any other legislation  
 28 authorize HUD to impose HOPWA grant conditions related to prohibiting all forms of DEI, facilitating

1 enforcement of federal immigration laws, verification of immigration status, or prohibiting the  
2 “promot[ion]” of “gender ideology” or “elective abortion.”

3 **6. Family Self-Sufficiency Program Grant**

4 198. Congress established the Family Self-Sufficiency Program (FSSP) under Section 23 of the  
5 Housing Act. 42 U.S.C. § 1437u. The purpose of the FSSP is to “promote the development of local  
6 strategies to coordinate use of assistance” under sections 1437f (“Low-income housing assistance”) and  
7 1437g (“Public housing Capital and Operating Funds”) “with public and private resources” and to  
8 ultimately “enable eligible families to achieve economic independence and self-sufficiency.” *Id.*  
9 § 1437u; *see also id.* §§ 1437f, 1437g.

10 199. FSSP grants enable PHAs to assist low-income families to achieve financial self-  
11 sufficiency through services such as case management, training, and referrals to supportive social  
12 services.

13 **a. Congress Imposes Legislative Directives, and HUD Promulgates Rules**  
14 **Regarding FSSP Grant Conditions**

15 200. HUD’s administration of the FSSP is authorized and governed by statutory directives.  
16 Congress has specified what activities are eligible for funding under the FSSP, the formula HUD must  
17 apply in allocating grants, and program requirements HUD may require recipients agree to as conditions  
18 for receiving funds. *See* 42 U.S.C. § 1437u.

19 201. Section 23 of the Housing Act, 42 U.S.C. § 1437u, contains Congress’s overarching  
20 authorization for HUD to allocate FSSP grants. Subsection (i)(1) of that section states:

21 Subject to appropriations, the Secretary shall establish a formula by which  
22 annual funds shall be awarded or as otherwise determined by the Secretary  
23 for the costs incurred by an eligible entity in administering the [FSSP]  
under this section.

24 202. Section 23 of the Housing Act, 42 U.S.C. § 1437u(i)(2), provides for the HUD Secretary  
25 to establish a formula to determine FSSP funding amounts and sets forth eligibility criteria the HUD  
26 Secretary shall consider to determine awards. These considerations include the number of participants in  
27 an FSSP program and other criteria. *Id.* at § 1437u(i)(2).

28 203. The Housing Act does not authorize HUD to condition FSSP funding on opposition to all

1 forms of DEI, facilitating enforcement of federal immigration laws, verification of immigration status, or  
 2 prohibiting the “promot[ion]” of “gender ideology” or “elective abortion.”

3 204. Pursuant to the authority to establish formulas and funding criteria under the Housing Act,  
 4 HUD has promulgated the Program rule at 24 C.F.R. part 984 (the “Family Self-Sufficiency Rule”),  
 5 which, among other things, sets forth additional conditions to which grant recipients must agree to in the  
 6 grant agreements they execute with HUD. *Id.* Part 984.

7 205. The Family Self-Sufficiency Rule does not impose any conditions on Public Housing  
 8 funding related to prohibiting all kinds of DEI, facilitating enforcement of federal immigration laws,  
 9 verification of immigration status, or prohibiting the “promot[ion]” of “gender ideology” or “elective  
 10 abortion.” Congress has not delegated authority that would permit an agency to adopt such conditions.

#### 11 **b. Congress Appropriates FSSP Grant Funding**

12 206. Funding for FSSP grants comes from congressional appropriations. Congress  
 13 appropriated funds for the FSSP program in the 2024 Consolidated Appropriations Act. *See*  
 14 Consolidated Appropriations Act, 2024, Pub. L. 118-42, 138 Stat. 355.

15 207. None of the 2024 Appropriations Act’s directives to HUD or any other legislation  
 16 authorize HUD to impose FSSP grant conditions related to prohibiting all forms of DEI, facilitating  
 17 enforcement of federal immigration laws, verification of immigration status, or prohibiting the  
 18 “promot[ion]” of “gender ideology” or “elective abortion.”

#### 19 **7. Lead Hazard Reduction Grant Program**

20 208. The Residential Lead-Based Paint Hazard Reduction Act of 1992 authorized the creation  
 21 of the Lead Hazard Reduction (LHR) grant programs, which awards grants on a competitive basis. 42  
 22 U.S.C. § 4852. The purpose of the program is to maximize the number of children under the age of six  
 23 protected from lead poisoning by assisting certain States, Tribes, and local governments in undertaking  
 24 comprehensive programs to identify and control lead-based paint hazards.

#### 25 **a. Congress Imposes Legislative Directives Regarding LHR Grant** 26 **Conditions**

27 209. HUD’s administration of the LHR program is authorized and governed by statutory  
 28 directives. Congress has specified what activities are eligible for funding under the LHR program, the

1 selection criteria HUD shall apply in selecting recipients, and program requirements HUD may require  
2 recipients agree to as conditions for receiving funds. *See* 42 U.S.C. § 4852.

3 210. The statute authorizes HUD to award grants only to States and units of local government  
4 with an approved comprehensive housing affordability strategy. 42 U.S.C. § 4852(b). Grant funds may  
5 be used solely for non-federally assisted, non-federally owned housing that meets specified income-  
6 targeting and occupancy requirements, including minimum set-asides for very low- and low-income  
7 households and prioritization of families with children under the age of six. 42 U.S.C. § 4852(a)(1)–(2).  
8 The statute requires applicants submit an application “in such form and in such manner as the [HUD]  
9 Secretary shall prescribe”. However, the statute identifies specific information that must be included in  
10 the applications, including the relevant portions of the applicants housing strategy, a description of the  
11 amount of assistance requested, the activities to be undertaken, the forms of financial assistance to be  
12 provided, and assurances demonstrating the applicant’s capacity to carry out the program. *Id.*  
13 § 4852(c)(1)–(5). In awarding grants, the Secretary must apply statutory selection criteria that focus on  
14 reducing lead poisoning risks to young children, the severity of lead hazards in the jurisdiction, the  
15 applicant’s ability to leverage non-federal funds, and the applicant’s administrative and technical  
16 capacity. *Id.* § 4852(d)(1)–(4). The statute permits the HUD Secretary to consider “such other factors as  
17 the Secretary determines appropriate” but only “to ensure that grants made available under this section  
18 are used effectively and to promote the purposes of this chapter.” *Id.* § 4852(d)(5). Recipients are  
19 further required to provide a non-federal match of at least ten percent of the grant amount, may not use  
20 grant funds to supplant existing State or local funding, must limit administrative expenses to no more  
21 than ten percent of the grant, and must maintain financial records and submit annual reports documenting  
22 the use and outcomes of the funds. 42 U.S.C. § 4852(h)–(l).

23 211. Congress has not authorized HUD to condition funding on opposition to all forms of  
24 Diversity, Equity, and Inclusion (DEI) policies and initiatives through the guise of federal  
25 nondiscrimination law, nor on participating in aggressive and lawless immigration enforcement,  
26 exclusion of transgender people, or cutting off access to information about lawful abortions.

27 **b. Congress Appropriates LHR Grant Funding**

28 212. Funding for LHR grants comes from congressional appropriations. Congress appropriated

1 funds for the LHR program in the 2024 Consolidated Appropriations Act. *See* Consolidated  
2 Appropriations Act, 2024, Pub. L. 118-42, 138 Stat. 370-372.

3 213. None of the 2024 Appropriations Act’s directives to HUD or any other legislation  
4 authorize HUD to impose LHR grant conditions related to prohibiting all forms of DEI, facilitating  
5 enforcement of federal immigration laws, verification of immigration status, or prohibiting the  
6 “promot[ion]” of “gender ideology” or “elective abortion.”

7 **8. Other HUD Grants**

8 214. HUD and its program offices administer a range of other competitive and formula grant  
9 programs that some plaintiffs have previously received, currently receive, or are otherwise eligible to  
10 receive. Congress also appropriates Congressionally Directed Spending and Community Project Funding  
11 through specific line items or set-asides in HUD’s annual appropriations acts. Those funds are  
12 administered through existing HUD programs and are generally subject to the requirements of the  
13 underlying program, unless Congress expressly waives or modifies those requirements in the  
14 appropriations law.

15 215. Plaintiffs are not aware of Congress ever imposing or authorizing directives for or  
16 conditions on these other HUD funds related to a prohibition on all forms of DEI, facilitating  
17 enforcement of immigration laws, verification of immigration status, or prohibiting the “promot[ion]” of  
18 “gender ideology” or “elective abortion.”

19 216. Congress annually appropriates funding for HUD grant programs. In the annual  
20 appropriations legislation, Congress sets forth priorities and directives to the Secretary of HUD with  
21 respect to funding. Plaintiffs are not aware of Congress ever imposing or authorizing directives for or  
22 conditions on HUD grants related to a prohibition on all forms of DEI, facilitating enforcement of  
23 immigration laws, verification of immigration status, or prohibiting the “promot[ion]” of “gender  
24 ideology” or “elective abortion.” *See, e.g.*, Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134  
25 Stat. 1865–1902; Consolidated Appropriations Act, 2022, Pub. L. 117-103, 136 Stat. 725–766;  
26 Consolidated Appropriations Act, 2023, Pub. L. 117-328, 136 Stat 5138–5181; Consolidated  
27 Appropriations Act, 2024, Pub. L. 118-42, 138 Stat. 344–386.

28 217. Plaintiffs City of Fresno, City of Eureka, City of Saint Paul, City of Alameda, City of

1 Redwood City, County of Monroe, County of Marin, County of San Diego, County of Sacramento, City  
 2 of Hillsboro, City of Atlanta, City of Beaverton, City of Mountain View, City of San Mateo, City of  
 3 Santa Clara, City of Stockton, City of Sunnyvale, City of Vacaville, City of Corvallis, City of Santa  
 4 Cruz, County of Santa Barbara, and County of Los Angeles (collectively the “HUD Plaintiffs”) have  
 5 previously received, currently receive, or are otherwise eligible to receive HUD grants, including CoC  
 6 grants, CDBG grants, ESG grants, HOME grants, HOPWA grants, FSSP grants, LHR grants, and/or  
 7 other HUD grant funding. These Plaintiffs rely on millions of dollars in appropriated federal funds from  
 8 HUD grant programs.

9 218. The HUD Plaintiffs rely on HUD block grant programs, including the block programs  
 10 described above (CDBG, ESG, HOME, and HOPWA), to provide decent, affordable housing and a  
 11 suitable living environment, and to increase economic opportunities for low- and moderate-income  
 12 persons throughout their jurisdictions. The programs that these grants support are extensive and  
 13 essential. These funds are used for programs like the creation and preservation of affordable rental  
 14 housing, homeownership rehabilitation and weatherization, food banks, childcare and afterschool  
 15 programs, community development capital improvements, home weatherization, and job training  
 16 programs. They help those plaintiffs provide basic needs services, including food distribution, basic  
 17 chore assistance for homebound seniors and disabled persons, support for children who have experienced  
 18 violence or neglect, and domestic violence prevention for the benefit of low-income individuals and  
 19 households. They also help those plaintiffs provide housing services, including rental assistance, housing  
 20 case management, downpayment assistance for first-time homebuyers, and capital development for  
 21 affordable housing to benefit low-income individuals and households and to create affordable housing,  
 22 provide rental assistance, and address homelessness in the region. They help prevent and address  
 23 homelessness, including by supporting emergency shelter services.

24 **B. DOT Grant Programs**

25 219. Congress established DOT in 1966 “to assure the coordinated, effective administration of  
 26 the transportation programs of the Federal Government.” Department of Transportation Act, 1966, Pub.  
 27 L. 89-670, 80 Stat. 931. DOT administers both competitive and entitlement (sometimes referred to as  
 28 formula) grant programs. Competitive grant programs “allocate[] a limited pool of funds to state and

1 local applicants whose applications are approved by” a federal agency. *City of Los Angeles v. Barr*, 929  
2 F.3d 1163, 1169 (9th Cir. 2019). In administering grant programs, DOT manages certain grant programs  
3 centrally through the Office of the Secretary of Transportation (OST). However, DOT often acts through  
4 its operating administrations, including the FTA, FHWA, FAA, FRA, and NHTSA. By law, the DOT  
5 Secretary is responsible for all acts taken by its operating administrations. The administrators of the  
6 FTA, FHWA, FAA, FRA, and NHTSA report directly to the DOT Secretary. 49 U.S.C. § 103(b), (d),  
7 (g)(1) (FRA); *id.* §§ 104(b)(1), (c)(1) (FHWA); *id.* §§ 106(b)(1)(E), (f)(3)(A) (FAA); *id.* §§ 107(b), (c)  
8 (FTA); *see also* 49 C.F.R. Part 1 (organization and authority of DOT).

9 220. Congress has established by statute a wide variety of grant programs administered by  
10 DOT centrally through the Office of the Secretary of Transportation (OST). This includes, but is not  
11 limited to, the Reconnecting Communities Pilot (RCP) Program and the Innovative Finance and Asset  
12 Concession (IFAC) Grant Program.

13 221. Section 11509 of the Infrastructure Investment and Jobs Act established the Reconnecting  
14 Communities Pilot (RCP) Program to advance community-centered transportation connection projects.  
15 Pub. L. 117-58, 135 Stat. 448 (codified as a note to 23 U.S.C. § 101). The Act directs the DOT Secretary  
16 to establish a program to establish a pilot program through which an eligible entity may apply for funding  
17 in order to restore community connectivity. The Act requires appropriation of \$30 million over five  
18 years to fund RCP Planning grants, which are awarded on a competitive basis. Pub. L. 117-58, Title 1,  
19 § 11101(d)(3)(A), 135 Stat. 448. The Act also requires appropriation of the following funding amounts  
20 for Capital Construction Grants: \$65,000,000 for fiscal year 2022; \$68,000,000 for fiscal year 2023;  
21 \$70,000,000 for fiscal year 2024; \$72,000,000 for fiscal year 2025; and \$75,000,000 for fiscal year 2026.  
22 Pub. L. 117-58, Title 1, § 11101(d)(3)(B), 135 Stat. 448.

23 222. Congress must annually authorize the amounts, consistent with the Act, to be made  
24 available for RCP grants until expended. Pub. L. 117-58, Title 1, § 11101(d)(3)(C). In the annual  
25 appropriation legislation, Congress sets forth priorities and directives to the DOT Secretary with respect  
26 to transportation funding. Plaintiffs are not aware of Congress ever imposing or authorizing directives  
27 for or conditions on RCP grants related to a prohibition on all forms of DEI, facilitating enforcement of  
28 immigration laws, verification of immigration status, or prohibiting the “promot[ion]” of “gender

1 ideology” or “elective abortion.” *See, e.g.*, Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134  
 2 Stat. 1835; Consolidated Appropriations Act, 2022, Pub. L. 117-103, 136 Stat. 698; Consolidated  
 3 Appropriations Act, 2023, Pub. L. 117-328, 136 Stat. 5109; Consolidated Appropriations Act, 2024, Pub.  
 4 L. 118-42, 138 Stat. 315.

5 223. Section 71001 of the Infrastructure Investment and Jobs Act created an asset concession  
 6 program. The Act directs the DOT Secretary to establish a program to facilitate access to expert services  
 7 and to provide grants to states, tribes, and local governments to enhance the technical capacity of eligible  
 8 entities and facilitate and evaluate public-private partnerships for transportation infrastructure projects,  
 9 including through asset concessions. 23 U.S.C. § 611(b). The Act requires appropriation of \$100 million  
 10 over five years to fund IFAC grants. IFAC grants are awarded on a competitive basis.

11 224. Congress must annually authorize \$20,000,000 to be made available for IFAC grants until  
 12 expended. 23 U.S.C. § 611(g)(2). In the annual appropriation legislation, Congress sets forth priorities  
 13 and directives to the DOT Secretary with respect to transportation funding. Plaintiffs are not aware of  
 14 Congress ever imposing or authorizing directives for or conditions on IFAC grants related to a  
 15 prohibition on all forms of DEI, facilitating enforcement of immigration laws, verification of  
 16 immigration status, or prohibiting the “promot[ion]” of “gender ideology” or “elective abortion.” *See,*  
 17 *e.g.*, Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134 Stat. 1826; Consolidated  
 18 Appropriations Act, 2022, Pub. L. 117- 103, 136 Stat. 687; Consolidated Appropriations Act, 2023, Pub.  
 19 L. 117-328, 136 Stat. 5097; Consolidated Appropriations Act, 2024, Pub. L. 118-42, 138 Stat. 301.

20 225. Plaintiff the City of Saint Paul has been awarded an IFAC grant and is currently in the  
 21 post-award phase of negotiating with DOT the terms and conditions of the Cooperative Agreement for  
 22 the disbursement of funds. Saint Paul is relying on \$805,000 in awarded federal funds from DOT to  
 23 identify assets that can provide opportunities for public-private partnership and increase the efficiency of  
 24 the City’s public transit system.

### 25 1. FTA Grant Programs

26 226. Congress has established by statute a wide variety of grant programs administered by  
 27 DOT, acting through the FTA, that provide federal funds to state and local governments for public transit  
 28 services. These include, but are not limited to, programs codified in title 49, chapter 53 of the U.S. Code,

1 as amended by the Fixing America’s Surface Transportation (FAST) Act of 2015, Pub. L. 114-94, 129  
 2 Stat. 1312, and the Infrastructure Investment and Jobs Act of 2021, Pub. L. 117-58, 135 Stat. 429.

3 227. For instance, section 5307 authorizes the Secretary of DOT (the “DOT Secretary”) to  
 4 make urbanized area formula grants (“UA Formula Grants”), which go toward funding the operating  
 5 costs of public transit facilities and equipment in urban areas, as well as certain capital, planning, and  
 6 other transit-related projects. *See* 49 U.S.C. § 5307(a)(1). Section 5307 imposes specific requirements  
 7 on UA Formula Grant recipients related to the recipient’s operation and control of public transit systems.  
 8 *See id.* § 5307(c). None of these requirements pertain to a prohibition on all kinds of DEI or facilitating  
 9 the enforcement of federal immigration laws.

10 228. Section 5309 establishes certain fixed guideway capital investment grants (“Fixed  
 11 Guideway Grants”). *See* 49 U.S.C. § 5309(b). This program funds certain state and local government  
 12 projects that develop and improve “fixed guideway” systems—meaning public transit systems that  
 13 operate on a fixed right-of-way, such as rail, passenger ferry, or bus rapid transit systems. *Id.*  
 14 §§ 5302(8), 5309(b). Section 5309 imposes specific requirements on Fixed Guideway Grant recipients  
 15 related to, for example, the recipient’s capacity to carry out the project, maintain its equipment and  
 16 facilities, and achieve budget, cost, and ridership outcomes. *See id.* § 5309(c). None of these  
 17 requirements pertain to a prohibition on all kinds of DEI or facilitating the enforcement of federal  
 18 immigration laws.

19 229. Section 5337 authorizes grants to fund state and local government capital projects that  
 20 maintain public transit systems in a state of good repair, as well as competitive grants for replacement of  
 21 rail rolling stock (“Repair Grants”). *See* 49 U.S.C. § 5337(b), (f). Section 5337 specifically limits what  
 22 projects may be eligible for Repair Grants, *id.* § 5337(b), and imposes specific requirements on multi-  
 23 year agreements for competitive rail vehicle replacement grants, *id.* § 5337(f)(7). It does not, however,  
 24 impose any conditions on Repair Grants related to a prohibition on all kinds of DEI or facilitating the  
 25 enforcement of federal immigration laws.

26 230. Section 5339 authorizes grants to fund the purchase and maintenance of buses and bus  
 27 facilities (“Bus Grants”). *See* 49 U.S.C. § 5339(a)(2), (b), (c). The Bus Grant program incorporates the  
 28 specific funding requirements set forth in section 5307 for UA Formula Grants and imposes other

1 requirements on Bus Grant recipients. *See id.* § 5339(a)(3), (7), (b)(6), (c)(3). Section 5339 does not,  
 2 however, impose any conditions on Bus Grants related to a prohibition on all kinds of DEI or local  
 3 participation in the enforcement of federal immigration laws.

4 231. Congress annually appropriates funding for FTA grant programs, including the programs  
 5 identified above. In the annual appropriations legislation, Congress sets forth priorities and directives to  
 6 the DOT Secretary with respect to transportation funding. Plaintiffs are not aware of Congress ever  
 7 imposing or authorizing directives for or conditions on FTA grants related to a prohibition on all forms of  
 8 DEI, facilitating enforcement of immigration laws, verification of immigration status, or prohibiting the  
 9 “promot[ion]” of “gender ideology” or “elective abortion.” *See, e.g.,* Consolidated Appropriations Act,  
 10 2021, Pub. L. 116-260, 134 Stat. 1182, 1854; Consolidated Appropriations Act, 2022, Pub. L. 117-103,  
 11 136 Stat. 716, 724; Consolidated Appropriations Act, 2023, Pub. L. 117-328, 136 Stat. 5129, 5138;  
 12 Consolidated Appropriations Act, 2024, Pub. L. 118- 42, 138 Stat. 334, 342.

13 232. Plaintiffs the City of Fresno, City of Alameda, County of Sacramento, City of Atlanta, the  
 14 City of Corvallis, City of Santa Cruz, City of Vacaville, and the County of Santa Barbara (collectively,  
 15 the “FTA Plaintiffs”) have previously received, currently receive, or are otherwise eligible to receive  
 16 FTA grants. These Plaintiffs rely on over millions of dollars in appropriated federal funds from FTA  
 17 direct or pass-through grant programs for transportation-related projects undertaken for the benefit of  
 18 their communities.

## 19 2. FHWA Grant Programs

20 233. Congress has established by statute a variety of grant programs administered by DOT,  
 21 acting through the FHWA, that provide federal funds to state and local governments for road and street  
 22 infrastructure projects. These include, but are not limited to, programs codified in title 23 of the U.S.  
 23 Code and the Infrastructure Investment and Jobs Act of 2021, Pub. L. 117-58, 135 Stat. 429.

24 234. For instance, Section 24112(b) of the Infrastructure Investment and Jobs Act, established  
 25 Safe Streets and Roads for All, or SS4A, a competitive grant program that provides funding for  
 26 improving roadway safety through the development, refinement, and subsequent implementation of  
 27 comprehensive safety action plans. 135 Stat. 815–817. The Act requires the DOT Secretary to consider,  
 28 among other things, the extent to which applicants and their proposed projects will ensure “equitable

1 investment in the safety needs of underserved communities in preventing transportation-related fatalities  
2 and injuries” and “achieve[] such other conditions as the Secretary considers to be necessary.” *See id.*  
3 § 24112(c)(3). None of these considerations pertain to a prohibition on all kinds of DEI or facilitating  
4 the enforcement of federal immigration laws.

5 235. In February 2024, DOT posted a Notice of Funding Opportunity (NOFO)—which it  
6 updated in April 2024—announcing a competition for SS4A grant funding for Fiscal Year 2024 (the “FY  
7 2024 SS4A NOFO”). *See* U.S. Dep’t of Transp., Notice of Funding Opportunity for FY 2024 Safe  
8 Streets and Roads for All Funding (Apr. 16, 2024), [https://www.transportation.gov/sites/dot.gov/  
9 files/2024-04/SS4A-NOFO-FY24-Amendment1.pdf](https://www.transportation.gov/sites/dot.gov/files/2024-04/SS4A-NOFO-FY24-Amendment1.pdf) (last visited December 17, 2025).

10 236. The FY 2024 SS4A NOFO directed applicants to consider policy priorities in their  
11 applications, including “Equity and Barriers to Opportunity” and “Climate Change and Environmental  
12 Justice.” *Id.* at 39; *see also id.* at 27, 29 (listing “Equity” as a selection criterion for grants). The FY  
13 2024 SS4A NOFO specified that “[e]ach applicant selected for SS4A grant funding must demonstrate  
14 effort to improve equity and reduce barriers to opportunity as described in Section A” and stated “the  
15 Department seeks to award funds under the SS4A grant program that will create proportional impacts to  
16 all populations in a project area, remove transportation related disparities to all populations in a project  
17 area, and increase equitable access to project benefits.” *Id.* at 12, 39.

18 237. The FY 2024 SS4A NOFO strongly emphasized equity considerations throughout. The  
19 NOFO defined “equity” as “[t]he consistent and systematic fair, just, and impartial treatment of all  
20 individuals, including individuals who belong to underserved communities that have been denied such  
21 treatment, such as Black, Latino, Indigenous and Native Americans, Asian Americans and Pacific  
22 Islanders, and other persons of color; members of religious minorities; lesbian, gay, bisexual,  
23 transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and  
24 persons otherwise adversely affected by persistent poverty or inequality.” *Id.* at 4. The NOFO did not  
25 include any grant conditions related to prohibiting all kinds of DEI or facilitating the enforcement of  
26 federal immigration laws.

27 238. In addition to SS4A, FHWA administers the Federal Highway-Aid Program, which  
28 provides federal formula funding for the construction, maintenance, and operation of the country’s 3.9-

1 million-mile highway network, including the Interstate Highway System, primary highways, and  
2 secondary local roads.

3 239. The Infrastructure Investment and Jobs Act authorized \$356.5 billion for fiscal years 2022  
4 through 2026 to be used for the Federal Highway-Aid Program. Currently, there are nine core formula  
5 funding programs within the Federal Highway-Aid Program: the National Highway Performance  
6 Program, 23 U.S.C. § 119; the Surface Transportation Block Grant Program (STBG), 23 U.S.C. § 133;  
7 the Highway Safety Improvement Program (HSIP), 23 U.S.C. § 148 and 23 C.F.R. Part 924; the  
8 Railway-Highway Crossings Program, 23 U.S.C. § 130 and 23 C.F.R. Part 924; the Congestion  
9 Mitigation and Air Quality Improvement Program (CMAQ), 23 U.S.C. § 149; the Metropolitan Planning  
10 Program, 23 U.S.C. § 104(d); the National Highway Freight Program, 23 U.S.C. § 167; the Carbon  
11 Reduction Program, 23 U.S.C. § 175; and the PROTECT Formula Program, 23 U.S.C. § 176. None of  
12 these statutes authorizes DOT or FHWA to impose a prohibition on DEI or a requirement to facilitate the  
13 enforcement of federal immigration laws as a precondition to receiving federal grants.

14 240. Section 11118 of the Infrastructure Investment and Jobs Act created the Bridge  
15 Investment Program (BIP) to assist states, tribes, and local governments with rehabilitating or replacing  
16 bridges to improve safety and efficiency for people and freight moving across bridges. 23 U.S.C.  
17 § 124(b)(2). The Act directs the DOT Secretary to consider factors such as cost considerations, safety  
18 benefits, and mobility improvements. *Id.* §§ 124(f)(3)(B); (g)(4)(B). No part of the BIP's authorizing  
19 language describes immigration enforcement or ending DEI as considerations for the grant.

20 241. Section 21203 of the Infrastructure Investment and Jobs Act created the National Culvert  
21 Removal, Replacement, and Restoration Grant Program, also known as the Culvert Aquatic Organism  
22 Passage Program (Culvert AOP) Program to assist states, tribes, and local governments with projects that  
23 would meaningfully improve or restore passage for anadromous fish (species that are born in freshwater  
24 such as streams and rivers, spend most of their lives in the 19 marine environment, and migrate back to  
25 freshwater to spawn). 49 U.S.C. § 6703. The Act directs the DOT Secretary to prioritize projects that  
26 would improve fish passage for certain categories of anadromous fish stocks or that would open more  
27 than 200 meters of upstream habitat before the end of the natural habitat. *Id.* § 6703(e). The FHWA  
28 administers some Culvert AOP Program grants on behalf of DOT. No part of the Culvert AOP

1 Program’s authorizing language describes immigration enforcement or ending DEI as considerations for  
2 the grant.

3 242. Section 21202 of the Infrastructure Investment and Jobs Act created the Local and  
4 Regional Project Assistance Program, which authorized the Secretary of Transportation to award grants  
5 for “capital investments in surface transportation infrastructure.” 49 U.S.C. § 6702(b)(1). Section 21202  
6 establishes the program’s primary selection criteria, which directs the DOT secretary to evaluate the  
7 extent to which a project “(A) improves safety; (B) improves environmental sustainability; (C) improves  
8 the quality of life of rural areas or urbanized areas; (D) increases economic competitiveness and  
9 opportunity, including increasing tourism opportunities; (E) contributes to a state of good repair; and  
10 (F) improves mobility and community connectivity.” 49 U.S.C. § 6702(d)(3). To implement the Local  
11 and Regional Project Assistance Program, DOT created the Rebuilding American Infrastructure with  
12 Sustainability and Equity (RAISE) Grant Program). The RAISE program is now known as the Better  
13 Utilizing Investments to Leverage Development (BUILD) Grant Program. No part of the Program’s  
14 authorizing language describes immigration enforcement or ending DEI as considerations for the grant.

15 243. The FHWA also administers the FY 2023-24 Advanced Transportation Technology and  
16 Innovation (ATTAIN) grant program, as directed by Congress in 23 U.S.C. § 503(c)(4). Section  
17 503(c)(4) directs the DOT Secretary to provide grants “to deploy, install, and operate advanced  
18 transportation technologies to improve safety, mobility, efficiency, system performance, intermodal  
19 connectivity, and infrastructure return on investment.” The DOT Secretary was directed to develop  
20 selection criteria that included an enumerated list of considerations, including how the deployment of  
21 technology would “improve the mobility of people and goods,” “protect the environment and deliver  
22 environmental benefits that alleviate congestion and streamline traffic flow,” and “reduce the number and  
23 severity of traffic crashes and increase driver, passenger, and pedestrian safety.” *Id.* Nothing in the  
24 statutory provisions authorizing the ATTAIN grant program describes immigration enforcement or  
25 ending DEI as considerations for the grant.

26 244. In practice, local governments frequently do not receive FHWA-administered funds  
27 directly from DOT but instead receive such funds as sub-grantees through their respective state  
28 departments of transportation. Under the Federal Highway-Aid Program and many IJJA-authorized

1 programs, FHWA apportions or awards funds to states, which then pass through a substantial portion of  
 2 these funds to cities and counties for locally sponsored projects, subject to the same statutory and  
 3 regulatory requirements that attach to the underlying federal program.

4 245. In fulfillment of the statutory authorization of FHWA grant programs, including the ones  
 5 identified above, Congress annually appropriates funding for FHWA grants. In appropriations  
 6 legislation, Congress sets forth priorities and directives to the DOT Secretary with respect to  
 7 transportation funding, but Plaintiffs are not aware of Congress ever imposing or authorizing directives  
 8 for or conditions on FHWA grants related to a prohibition on all forms of DEI, facilitating enforcement  
 9 of immigration laws, verification of immigration status, or prohibiting the “promot[ion]” of “gender  
 10 ideology” or “elective abortion.” *See, e.g.*, Consolidated Appropriations Act, 19 2021, Pub. L. 116-260,  
 11 134 Stat. 1835–1842; Consolidated Appropriations Act, 2022, Pub. L. 117- 103, 136 Stat. 697–705;  
 12 Consolidated Appropriations Act, 2023, Pub. L. 117-328, 136 Stat. 5109– 5117; Consolidated  
 13 Appropriations Act, 2024, Pub. L. 118-42, 138 Stat. 315–324.

14 246. Plaintiffs City of Fresno, City of Eureka, City of Saint Paul, City of Alameda, City of  
 15 Redwood City, County of Marin, County of San Diego, County of Sacramento, City of Atlanta, the City  
 16 of Beaverton, City of Corvallis, City of Hillsboro, City of Mountain View, City of Santa Clara, City of  
 17 Santa Cruz, City of Salem, City of Vacaville, County of Santa Barbara, and County of Los Angeles  
 18 (collectively, the “FHWA Plaintiffs”) have previously received, currently receive, or are otherwise  
 19 eligible to receive FHWA grants. These Plaintiffs rely on millions of dollars in appropriated federal  
 20 funds from FHWA direct or pass-through grant programs for transportation-related projects undertaken  
 21 for the benefit of their communities.

### 22 3. FAA Grant Program

23 247. Congress has established by statute a variety of grant programs administered by DOT,  
 24 acting through the FAA, that provide federal funds to public agencies for planning and development of  
 25 airports. These include, but are not limited to, programs codified in title 49 of the U.S. Code, as well as  
 26 the Infrastructure Investment and Jobs Act of 2021, Pub. L. 117-58, 135 Stat. 429.

27 248. For instance, the Airport Improvement Program (AIP) is codified under title 49, chapter  
 28 471 of the U.S. Code. Under the AIP, the DOT Secretary is authorized to make formula and

1 discretionary grants to recipients (referred to as “sponsors”) for the planning and development of certain  
2 public-use airports. 49 U.S.C. 47101 et seq. The DOT Secretary may approve AIP grant applications  
3 only if the sponsor and project meet certain statutory requirements. For example, requiring consistency  
4 with plans for development of the surrounding area, financial capacity, and ability to complete the project  
5 “without unreasonable delay,” and only if the sponsor makes certain written assurances based on the type  
6 of grant at issue, such as “the airport will be available for public use on reasonable conditions and  
7 without unjust discrimination” and “the airport and facilities on or connected with the airport will be  
8 operated and maintained suitably, with consideration given to climatic and flood conditions.” 49 U.S.C.  
9 §§ 47106, 47107.

10 249. Congress has been precise in the requirements that attach to grant recipients and has set  
11 those forth in statute, which has been implemented by DOT through contractual “Grant Assurances” that  
12 are terms of every grant agreement. None of the statutory requirements pertain to a prohibition on DEI  
13 or a requirement of local participation in the enforcement of federal immigration laws.

14 250. AIP funding levels are established periodically by reauthorization acts, such as the FAA  
15 Reauthorization Act of 2018, Pub. L. 115-254, 132 Stat. 3186, and the FAA Reauthorization Act of 2024,  
16 Pub. L. 118-63, 138 Stat. 1025. The reauthorization acts define the AIP authorization levels, amend the  
17 various AIP statutes, and set out directives to the DOT Secretary with respect to airport improvement  
18 funding, but they do not impose or authorize directives for or conditions on AIP grants related to a  
19 prohibition on DEI or requirement of local participation in federal immigration enforcement.

20 251. Similarly, the Airport Infrastructure Grants (AIG) program is authorized under the  
21 Infrastructure Investment and Jobs Act of 2021, Pub. L. 117-58, 135 Stat. 1416–1418. Under the AIG  
22 program, the DOT Secretary is authorized to make formula and discretionary grants for runways,  
23 taxiways, airport safety and sustainability projects, as well as terminal, airport transit connections, and  
24 roadway projects. Grants made under the AIG program are treated as having been made pursuant to the  
25 DOT Secretary’s authority for project grants issued under the AIP statute. 135 Stat. 1417–1418. The  
26 Infrastructure Investment and Jobs Act sets forth the AIG funding levels but does not impose any  
27 conditions on AIG grants related to prohibitions on DEI or the requirement of local participation in the  
28 enforcement of federal immigration laws.

1           252. The Airport Rescue Grant (ARG) program is authorized under the American Rescue Plan  
2 Act of 2021 (ARPA), Pub. L. 117-2, 135 Stat. 96–98. Section 7102 of ARPA provides approximately \$8  
3 billion in economic relief to airports to prevent, prepare for, and respond to the COVID-19 pandemic.  
4 The ARPA establishes funding criteria but does not impose any conditions on ARG funds related to  
5 prohibitions on DEI or the requirement of local participation in the enforcement of federal immigration  
6 laws.

7           253. In fulfillment of the statutory authorization of FAA grant programs, including the ones  
8 identified above, Congress annually appropriates funding for FAA grants. In the annual appropriations  
9 legislation, Congress sets forth additional priorities and directives to the DOT Secretary with respect to  
10 transportation funding, but Plaintiffs are not aware of Congress ever imposing directives for or conditions  
11 on FAA grants related to a prohibition on all forms of DEI, facilitating enforcement of immigration laws,  
12 verification of immigration status, or prohibiting the “promot[ion]” of “gender ideology” or “elective  
13 abortion.” *See, e.g.*, Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134 Stat. 1830–1835,  
14 1939–1941; Consolidated Appropriations Act, 2022, Pub. L. 117-103, 136 Stat. 691–697; Consolidated  
15 Appropriations Act, 2023, Pub. L. 117-328, 136 Stat. 5101–5108; Consolidated Appropriations Act,  
16 2024, Pub. L. 118- 42, 138 Stat. 307–314.

17           254. Plaintiffs City of Fresno, City of South Lake Tahoe, County of Marin, County of San  
18 Diego, County of Sacramento, County of Monroe, the Monroe Airport Authority, City of Atlanta, City of  
19 Corvallis, City of Salem, County of Santa Barbara, and County of Los Angeles (collectively, the “FAA  
20 Plaintiffs”) have previously received, currently receive, or are otherwise eligible to receive FAA grants.  
21 These Plaintiffs rely on millions of dollars in appropriated federal funds from FAA direct or pass-through  
22 grant programs for transportation-related projects undertaken for the benefit of their communities.

#### 23           **4. FRA Grants**

24           255. Congress has established by statute a variety of grant programs administered by DOT,  
25 acting through the FRA, that provide federal funds to public agencies for rail infrastructure projects.  
26 These include, but are not limited to, programs codified in title 49 of the U.S. Code, as well as the  
27 Infrastructure Investment and Jobs Act of 2021, Pub. L. 117-58, 135 Stat. 429.

28           256. For example, the Railroad Crossing Elimination (RCE) Grant Program, authorized in

1 Section 22305 of the Infrastructure Investment and Jobs Act, directs the DOT Secretary, in cooperation  
 2 with the FRA Administrator, to establish a competitive grant program that provides funds to improve the  
 3 safety and mobility of people and goods at railway crossings. 49 U.S.C. § 22909. Section 22305 limits  
 4 eligibility for the RCE program to certain entities such as states and local governments. *Id.* § 22909(c).  
 5 It also directs that the Secretary “shall” evaluate certain criteria for selecting projects funded by the  
 6 grants, including, among other things, whether the proposed projects would “improve safety at highway-  
 7 rail or pathway-rail crossings”; “grade separate, eliminate, or close highway-rail or path-way rail  
 8 crossings”; “improve the mobility of people or goods”; “reduce emissions, protect the environment, and  
 9 provide community benefits, including noise reduction”; “improve access to emergency services”;  
 10 “provide economic benefits”; and “improve access to communities separated by rail crossings.” *Id.*  
 11 § 22909(d), (f). None of these considerations pertains to prohibiting DEI or facilitating enforcement of  
 12 federal immigration laws.

13 257. Funding for the RCE program was made available for FY 2024 and 2025 through advance  
 14 appropriations provided in the Infrastructure Investment and Jobs Act and by remaining unawarded FY  
 15 2022 RCE Program balances. 135 Stat. 1436. The appropriations provisions do not impose or authorize  
 16 directives for or conditions on FRA grants related to prohibiting DEI or to local participation in federal  
 17 immigration enforcement.

18 258. Plaintiffs the City of Santa Cruz and City of Atlanta (the “FRA Plaintiff”) have previously  
 19 received, currently receive, or are otherwise eligible to receive FRA grants. These Plaintiffs rely on over  
 20 a million dollars in appropriated federal funds from FRA direct or pass-through grant programs for  
 21 transportation-related projects undertaken for the benefit of their communities.

## 22 5. NHTSA Grants

23 259. Congress has established by statute a variety of grant programs administered by DOT,  
 24 acting through the National Highway Traffic Safety Administration (NHTSA), that provide federal funds  
 25 to state and local governments for highway safety and traffic enforcement projects. These include, but  
 26 are not limited to, programs codified in title 23 of the U.S. Code, as well as the Infrastructure Investment  
 27 and Jobs Act of 2021, Pub. L. 117-58, 135 Stat. 429.

28 260. In practice, local governments frequently do not receive NHTSA-administered funds

1 directly from DOT but instead receive such funds as sub-grantees through their respective state  
2 departments of transportation. Under the authorized programs discussed above, NHTSA apportions or  
3 awards funds to states, which then pass through a substantial portion of these funds to cities and counties  
4 for locally sponsored projects, subject to the same statutory and regulatory requirements that attach to the  
5 underlying federal program.

6 261. For example, the Highway Safety Grant Program, authorized under 23 U.S.C. § 402,  
7 directs the DOT Secretary, in cooperation with the NHTSA Administrator, to provide federal funds to  
8 states to support initiatives that reduce traffic fatalities and injuries. Eligible activities include, among  
9 others, driver education, impaired driving prevention, seat belt enforcement, and child passenger safety  
10 programs. *Id.* § 402(a)-(b). States receiving funds must submit annual highway safety plans for approval  
11 by NHTSA, which review them based on criteria including potential for reducing crashes, injuries, and  
12 fatalities. *Id.* § 402(a)(2). None of these statutory requirements pertains to prohibiting diversity, equity,  
13 and inclusion initiatives or facilitating enforcement of federal immigration laws.

14 262. Similarly, the National Priority Safety Program, authorized under 23 U.S.C. § 405, directs  
15 the DOT Secretary, acting through NHTSA, to provide federal funds to states to address specified traffic  
16 safety priorities identified by Congress. Eligible activities vary by program area but include, among  
17 others, initiatives related to occupant protection, impaired driving prevention, distracted driving,  
18 motorcycle safety, nonmotorized road user safety, speeding, and traffic safety data systems. *Id.* § 405(a),  
19 (b). To receive funds, a state must satisfy the statutory eligibility criteria applicable to each priority area  
20 and submit the required certifications and assurances demonstrating compliance with those criteria,  
21 which NHTSA evaluates before awarding funds. *Id.* § 405(c)-(e). None of these statutory requirements  
22 concerns restricting diversity, equity, and inclusion initiatives or facilitating the enforcement of federal  
23 immigration laws.

24 263. Section 402 and Section 405 grants are primarily formula-based. Funding is appropriated  
25 annually by Congress through DOT's Federal Highway Administration and NHTSA accounts. The  
26 statutory and appropriations provisions do not impose or authorize conditions on NHTSA grants related  
27 to prohibiting DEI or to local participation in federal immigration enforcement.

28 264. Plaintiffs City of Beaverton, City of Hillsboro, City of Santa Clara, City of Santa Cruz,

1 County of Santa Barbara (the “NHTSA Plaintiffs”) have previously received, currently receive, or are  
 2 otherwise eligible to receive NHTSA grants. These Plaintiff rely on over a million dollars in  
 3 appropriated federal funds from NHTSA direct or pass-through grant programs for transportation-related  
 4 projects undertaken for the benefit of their communities.

5 **6. Other DOT Grants**

6 265. DOT and its operating administrations administer a range of other competitive and  
 7 formula grant programs that some Plaintiffs have previously received, currently receive, or are otherwise  
 8 eligible to receive. Congress also appropriates Congressionally Directed Spending and Community  
 9 Project Funding through specific line items or set-asides in DOT’s annual appropriations acts. Those  
 10 funds are administered through existing DOT programs and are generally subject to the requirements of  
 11 the underlying program, unless Congress expressly waives or modifies those requirements in the  
 12 appropriations law.

13 266. Plaintiffs are not aware of Congress ever imposing or authorizing directives for or  
 14 conditions on these other DOT grants related to a prohibition on all forms of DEI, facilitating  
 15 enforcement of immigration laws, verification of immigration status, or prohibiting the “promot[ion]” of  
 16 “gender ideology” or “elective abortion.”

17 267. Congress annually appropriates funding for DOT grant programs. In the annual  
 18 appropriations legislation, Congress sets forth priorities and directives to the Secretary of DOT with  
 19 respect to funding. Plaintiffs are not aware of Congress ever imposing or authorizing directives for or  
 20 conditions on HUD grants related to a prohibition on all forms of DEI, facilitating enforcement of  
 21 immigration laws, verification of immigration status, or prohibiting the “promot[ion]” of “gender  
 22 ideology” or “elective abortion.” *See, e.g.,* Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134  
 23 Stat. 1182, 1835–1842, 1854; Consolidated Appropriations Act, 2022, Pub. L. 117-103, 136 Stat. 697–  
 24 705, 716, 724; Consolidated Appropriations Act, 2023, Pub. L. 117-328, 136 Stat. 5109– 5117, 5129,  
 25 5138; Consolidated Appropriations Act, 2024, Pub. L. 118- 42, 138 Stat. 315–324, 334, 342.

26 268. Plaintiffs City of Fresno, City of South Lake Tahoe, City of Eureka, City of Saint Paul,  
 27 City of Alameda, City of Redwood City, County of San Diego, County of Marin, County of Sacramento,  
 28 County of Monroe, Monroe Airport Authority, City of Atlanta, City of Beaverton, City of Mountain

1 View, City of Santa Clara, City of Sunnyvale, City of Santa Cruz, City of Vacaville, City of Corvallis,  
 2 City of Hillsboro, City of Salem, County of Santa Barbara, and County of Los Angeles (collectively, the  
 3 “DOT Plaintiffs”) have previously received, currently receive, or are otherwise eligible to receive DOT  
 4 grants. These Plaintiffs rely on millions of dollars in appropriated federal funds from DOT direct or  
 5 pass-through grant programs for transportation-related projects undertaken for the benefit of their  
 6 communities.

### 7 **C. HHS Grant Programs**

8 269. Congress established the precursor to HHS—the cabinet-level Department of Health,  
 9 Education, and Welfare—in 1953. After a separate Department of Education was created in 1979, HHS  
 10 took its current name. Today, HHS is the largest grant-making agency in the United States. It  
 11 administers both competitive grant programs and formula and block grant programs that provide funds to  
 12 local governments to enhance the health and well-being of their communities. In administering grant  
 13 programs, HHS often acts through its operating divisions and agencies, such as the Centers for Disease  
 14 Control and Prevention (CDC), the Centers for Medicare & Medicaid Services (CMS), the Health  
 15 Resources and Services Administration (HRSA), the Substance Abuse and Mental Health Services  
 16 Administration (SAMHSA), and the National Institutes of Health (NIH), among others. *See* U.S. Dep’t  
 17 Health & Hum. Servs., HHS Agencies & Offices, [https://www.hhs.gov/about/agencies/hhs-agencies-and-](https://www.hhs.gov/about/agencies/hhs-agencies-and-offices/index.html)  
 18 [offices/index.html](https://www.hhs.gov/about/agencies/hhs-agencies-and-offices/index.html) (last visited December 17, 2025). The Secretary of HHS is responsible for overseeing  
 19 the actions of its operating divisions and agencies. *See, e.g.*, 42 U.S.C. § 290aa (similar for SAMHSA  
 20 and its head; authority of HHS Secretary); 42 U.S.C. § 242c (appointment and authority of CDC  
 21 Director; functions of HHS Secretary); 42 U.S.C. § 282 (appointment and authority of NIH Director;  
 22 functions of HHS Secretary); 42 U.S.C. §§ 202–203 (organization of Public Health Service, which  
 23 includes NIH, within HHS); 42 U.S.C. § 1317 (appointment of CMS Administrator); U.S. Dep’t Health  
 24 & Hum. Servs., Centers for Medicare & Medicaid Services, 66 Fed. Reg. 35437 (Jul. 5, 2001)  
 25 (establishing CMS and delegating authority from HHS Secretary to CMS Administrator). Some  
 26 examples of the grants administered by HHS and its operating divisions and agencies are discussed  
 27 below.  
 28

1                   **1. Health Resources and Services Administration Programs**

2           270. The Health Resources and Services Administration (HRSA) within HHS awards grant  
3 funding to more than 3,000 recipients, including state and local governments, to support health services  
4 projects, such as training health care workers and providing specific health services. *See* Elayne J.  
5 Heisler, Cong. Rsch. Serv., R46001, HRSA FY2020 President’s Budget Request and Agency Funding  
6 History: In Brief (Nov. 12, 2019).

7           271. HRSA awards a variety of competitive and formula grants in several program areas,  
8 including Primary Care/Health Centers, Health Workforce Training, HIV/AIDS, Organ Donation,  
9 Maternal and Child Health, Rural Health, and other areas. *See* Grants, U.S. Dep’t Health & Hum. Servs.,  
10 Health Res. & Servs. Admin., <https://data.hrsa.gov/topics/grants> (last visited December 17, 2025).

11           272. Among HRSA’s largest grant programs are the Health Center Program (HCP) and the  
12 Ryan White HIV/AIDS (RWHA) program.

13                   **a. The Health Center Program**

14           273. Congress authorized the federal HCP program through Section 330 of the Public Health  
15 Service Act (PHSA), as amended. 42 U.S.C. § 254b. The HCP program funds grants to support  
16 qualified outpatient facilities that provide primary care to low-income individuals and other underserved  
17 communities, as specified in the statute.

18           274. In particular, the HCP program supports four types of health centers: (1) community  
19 health centers (CHCs), (2) health centers for the homeless (HCHs), (3) health centers for residents of  
20 public housing, and (4) migrant health centers. *See* 42 U.S.C. §254b(a), (g), (h), (i). The majority of  
21 these are CHCs, which must provide “primary health services” to medically underserved populations and  
22 serve all residents of the CHC’s services area. *Id.* § 2549(a). HCHs provide services to individuals  
23 experiencing or at risk of homelessness and are required to provide all services CHCs provide as well as  
24 substance abuse treatment. *Id.* § 2549(h). Health centers for residents of public housing are located in,  
25 and offer primary care services to those who reside in or near, public housing facilities. *Id.* § 2549(i).  
26 Finally, migrant health centers provide care to migratory and seasonal agricultural workers and their  
27 families. *Id.* § 2549(g).

28           275. Funding for the HCP program comes from a combination of discretionary funding,

1 appropriated by Congress each year, and mandatory funding from the Community Health Center Fund.  
2 By statute, HCH programs receive 8.7% of HCP funds.

3 276. In addition to the HCP grants themselves, health centers that receive funding under  
4 Section 330 of the PHSA become eligible for other congressionally authorized benefits. For instance,  
5 such health centers are eligible for designation as Federally Qualified Health Centers (FQHCs), which  
6 entitles them to higher, cost-based Medicare and Medicaid reimbursement rates. 42 U.S.C.  
7 §§ 1395i(a)(1)(z), 1395m(o), 1395x(aa)(3). FQHCs may also receive drug discounts under Section 340B  
8 of the PHSA. *Id.* § 256b.

9 277. Section 330 of the PHSA sets out numerous requirements that health centers must meet to  
10 ensure that HCP-funded facilities serve as part of a safety net for underserved communities. In addition  
11 to the requirements set forth above, Congress requires that HCP-funded health centers provide services to  
12 all patients regardless of ability to pay. 42 U.S.C. § 254b(k)(3). Recipients must therefore have fee  
13 schedules consistent with locally prevailing wages while covering operating costs, and must offer  
14 discounts based on the patient's ability to pay. *Id.* § 254b(k)(3)(G). They must also be located in areas  
15 or serve populations that the HHS Secretary has designated as "medically underserved." *Id.*  
16 §§ 254b(a)(1), (b)(3), (c)(1), (e)(1)(A). The statute sets forth additional detailed funding conditions  
17 concerning Medicaid coordination and reimbursement, governance, provision of services, reporting, and  
18 quality assurance. *Id.* §§ 254b(b)(1), (k)(3)(C), (F), (H), (I), (q).

19 278. Section 330 of the PHSA does not authorize conditions on HCP grants related to  
20 prohibiting DEI in all forms, excluding transgender individuals, denying services to immigrants, or  
21 incorporating executive orders unrelated to providing health care to underserved populations.

22 279. The HHS Secretary has promulgated regulations further governing the HCP program at 42  
23 C.F.R. parts 51c and 56 (the "HCP Rule"). Among other things, the HCP Rule sets forth additional  
24 limitations on the use of HCP funds, 42 C.F.R. § 51c.107, and enumerates project requirements and  
25 criteria the HHS Secretary will consider in awarding grants based on the purpose of the funds, *id.*  
26 §§ 51c.203, 51c.204, 51c.303, 51c.305, 51c.403, 51c.404, 51c.504. For instance, in reviewing proposals  
27 to plan or develop new health centers, the HHS Secretary must consider the relative need of the  
28 population to be served by the proposed project, the health center's potential for developing new and

1 effective methods for providing services, and the distribution of resources across the country. *Id.*  
 2 § 51c.204. The HCP Rule also sets forth specific requirements for migrant health centers, including a  
 3 requirement that they provide specific services to migrant and seasonal agricultural workers' needs, such  
 4 as supportive services, environmental health services, accident prevention, and prevention and treatment  
 5 of health conditions related to pesticide exposure. 42 C.F.R. § 56.102(g).

6 280. The HCP Rule does not impose any conditions on HCP grants related to prohibiting DEI  
 7 in all forms, excluding transgender individuals, or incorporating executive orders unrelated to providing  
 8 health care to underserved populations.

9 **b. Ryan White HIV/AIDS Program**

10 281. In 1990, Congress established the Ryan White HIV/AIDS (RWHA) program as part of the  
 11 Ryan White Comprehensive AIDS Resources Emergency Act, Pub. L. 101-381, 104 Stat. 576, and has  
 12 revised and extended it several times, including in the Ryan White HIV/AIDS Treatment Modernization  
 13 Act of 2006, Pub. L. 109-415, 120 Stat. 2767, and the Ryan White HIV/AIDS Treatment Extension Act  
 14 of 2009, Pub. L. 111-87, 123 Stat. 2885. The program is codified at Title 42, Subchapter XXIV of the  
 15 U.S. Code and contains four major parts. Among these are Part A, which provides grants to urban areas  
 16 and mid-sized cities, 42 U.S.C. §§ 300ff-11 to 300ff-20; Part B, which provides grants to states and  
 17 territories, *id.* §§ 300ff-21 to 300ff-38; and Part C, which funds HIV outpatient primary care to low-  
 18 income and medically underserved people living with HIV/AIDS, *id.* §§ 300ff-51 to 300ff-67.

19 **i. RWHA Part A Program**

20 282. Part A of the RWHA program provides grants for medical and support services to eligible  
 21 metropolitan areas with high levels of reported AIDS cases in the previous five years. 42 U.S.C. § 300ff-  
 22 11(a). HRSA distributes two-thirds of appropriated Part A grants non-competitively to eligible  
 23 metropolitan areas based on a statutory formula, *id.* § 300ff-13(a)(2)–(3), and the remaining one-third via  
 24 competitive supplemental grants awarded based on the applicant's demonstrated need, *id.* § 300ff-13(b).  
 25 With respect to the two-thirds comprised of formula grants, the Secretary has no discretion to withhold  
 26 funding and is required to allocate grants based on a formula that considers how many individuals are  
 27 living with HIV/AIDS in the jurisdiction. *See id.* § 300ff-13(a)(2), (3).

28 283. Congress has imposed detailed conditions on RWHA Part A grants. For instance, Part A

1 grant recipients must spend 75% of awarded funds on “core medical services,” which are defined to  
 2 include outpatient/ambulatory medical care services, AIDS pharmaceutical assistance, home health care,  
 3 and mental health and substance abuse outpatient services, among others. 42 U.S.C. § 300ff-14(c). The  
 4 remaining Part A funds must go toward “support services,” such as outreach, medical transportation, and  
 5 referrals, as well as statutorily permitted administrative expenses. *Id.* § 300ff-14(c)(1), (d). Congress has  
 6 also mandated that grant recipients establish HIV Health Services Planning Councils to set priorities for  
 7 care delivery and has prescribed several related requirements. *Id.* § 300ff-12(b).

8 284. Congress has also enacted statutory factors that HRSA must consider in awarding  
 9 competitive supplemental grants to applicants based on demonstrated need. These include the rates of  
 10 HIV/AIDS, impacts of co-morbid factors, and prevalence of homelessness in the applicant’s area. 42  
 11 U.S.C. § 300ff-13(b)(2)(B).

12 285. Neither the statutes governing the RWHA Part A program nor any other legislation  
 13 authorizes HRSA to impose grant conditions related to prohibiting all forms of DEI, exclusion of  
 14 transgender individuals, denying services to immigrants, or adherence to executive orders unrelated to  
 15 providing health services for low-income individuals with HIV/AIDS.

16 **ii. RWHA Part B Program**

17 286. The RWHA Part B program provides grants to each of the 50 states, the District of  
 18 Columbia, Guam, and the Virgin Islands for services such as drug treatments, home and community-  
 19 based health care, support services, or health insurance coverage for low-income individuals living with  
 20 HIV/AIDS, among other services. 42 U.S.C. §§ 30ff-22–26. Some of these states and territories pass  
 21 through RWHA Part B funds to subrecipients, including local governments. One portion of RWHA  
 22 Part B is the AIDS Drug Assistance Program (ADAP), which receives separate appropriations from  
 23 Congress. *Id.* § 300ff-26. The remaining funding goes toward Part B base grants and supplemental  
 24 grants. Base grants are awarded pursuant to a formula based on the number of individuals living with  
 25 HIV/AIDS cases in the state or territory relative to various comparators. *Id.* § 300ff-28. Supplemental  
 26 grants under RWHA Part B are awarded to states and territories with a demonstrated need based on  
 27 increasing rates of HIV/AIDS cases, unmet needs for services, and other factors. *Id.* § 300ff-29a.

28 287. Congress has imposed detailed conditions on RWHA Part B grants. For instance, as in

1 the Part A program, recipients of Part B funds must spend 75% of awarded funds on “core medical  
2 services” and 25% on “support services,” which are each limited to specifically defined activities. 42  
3 U.S.C. § 300ff-22. The Part B program also authorizes states and territories to award grants to  
4 subrecipients and imposes additional requirements on such sub-awards based on the type of services the  
5 subrecipient will provide. *See id.* §§ 300ff-23–24. For example, Congress has authorized states and  
6 territories to award grants for home- and community-based health services, but requires states and  
7 territories to prioritize providers who serve low-income individuals with HIV/AIDS and participate in an  
8 HIV care consortium. *Id.* § 300ff-24(b).

9 288. The statute authorizes the Secretary of HHS to require other “agreements, assurances, and  
10 information” from states and territories, but only to the extent “necessary to carry out” the Secretary’s  
11 authority to “make grants to . . . enable . . . States to improve the quality, availability and organization of  
12 health care and support services for individuals and families with HIV/AIDS.” 42 U.S.C. §§ 300ff-27(a),  
13 300ff-21.

14 289. Congress has also authorized states and territories to award grants using RWHA Part B  
15 funds to certain associations, called HIV care consortia, comprised of public or private service providers  
16 and community-based organizations in areas most affected by HIV/AIDS. 42 U.S.C. § 300ff-23. In  
17 doing so, Congress set forth specific agreements and assurances related to the purposes of the Part B  
18 program that HIV care consortia must make as a condition to receiving funds. For instance, HIV care  
19 consortia must “agree to use such assistance for the planning, development and delivery . . . of  
20 comprehensive outpatient health and support services for individuals with HIV/AIDS.” *Id.* § 300ff-  
21 23(a)(2).

22 290. The assurances and application requirements Congress specified for HIV care consortia  
23 under RWHA Part B indicate a statutory purpose to address the needs of minority and underserved  
24 communities. For instance, each HIV care consortium must provide an assurance that “the populations  
25 and subpopulations of individuals and families with HIV/AIDS have been identified by the consortium,  
26 particularly those experiencing disparities in access and services and those who reside in historically  
27 underserved communities.” *Id.* § 300ff-23(b)(1)(A). The consortium must also provide an assurance that  
28 it has established a service plan that “addresses the special care and service needs of” such historically

underserved communities. *Id.* § 300ff-23(b)(1)(B). Finally, Congress specified grant application requirements that HIV care consortia must meet to be eligible for funding, including that the application “demonstrates that adequate planning occurred to address disparities in access and services and historically underserved communities.” *Id.* § 300ff-23(c)(1)(F).

291. Neither the statutes governing the RWHA Part B program nor any other legislation authorizes HRSA to impose grant conditions related to prohibiting all forms of DEI, exclusion of transgender individuals, denying services to immigrants, or adherence to executive orders unrelated to providing health services for low-income individuals with HIV/AIDS.

### iii. RWHA Part C Program

292. RWHA Part C grants emphasize services designed to intervene early to improve health outcomes for low-income individuals with HIV/AIDS. HRSA awards RWHA Part C grants competitively to eligible facilities, including municipal health facilities, that serve medically underserved populations. 42 U.S.C. § 300ff-52(a). Congress has mandated that HRSA prioritize applicants experiencing increased burdens on HIV/AIDS services when awarding RWHA Part C grants. *Id.* § 300ff-53.

293. Like Part A and Part B grants, Part C grants are subject to specific statutory requirements. For instance, Part C grant recipients must also provide a mix of statutorily prescribed “core services” and “supportive serves.” 42 U.S.C. § 300ff-51(b)(1). At least half of allocated funding must go toward such services that focus on early intervention, including HIV/AIDS testing and referrals. *Id.* § 300ff-51(b)(2). The statute also requires applicants to agree to certain funding conditions, including that the applicant will only use funds for statutorily authorized purposes, will establish fiscal control and accounting procedures, and will establish a clinical quality management program, among others. *Id.* § 300ff-64(g). Finally, Congress has mandated conditions on the use of funds for HIV/AIDS counseling, including that counseling programs may not directly promote intravenous drug use or sexual activity and must educate patients on the availability of hepatitis a and b vaccines. *Id.* § 300ff-67.

294. Neither the statutes governing the RWHA Part C program nor any other legislation authorizes HRSA to impose grant conditions related to prohibiting all forms of DEI, exclusion of transgender individuals, or adherence to executive orders unrelated to providing early intervention

1 services for low-income individuals with HIV/AIDS.

2 **c. Maternal Mental Health and Substance Use Disorders Program**

3 295. Congress authorized the Maternal Mental Health and Substance Use Disorders Program  
4 (MMH-SUD) through the enactment of the Into the Light for Maternal Mental Health and Substance Use  
5 Disorder Act of 2022, within the Consolidated Appropriations Act of 2023. Pub. L.117-328, 136 Stat.  
6 5640-5643. The Act amends the Public Health Service Act (PHSA) to create the MMH-SUD program.  
7 Administered by HRSA’s Maternal and Child Health Bureau, the program funds grants to support the  
8 expansion of health care providers’ capacity to screen, assess, treat, and refer pregnant and postpartum  
9 people for maternal mental health and substance use disorders. *See* 42 U.S.C. § 247b–13a.

10 296. Section 317L-1(a) of the PHSA authorizes the HHS Secretary to make grants “to  
11 establish, improve, or maintain programs for screening, assessment, and treatment services, including  
12 culturally and linguistically appropriate services, as appropriate, for women who are postpartum,  
13 pregnant, or have given birth within the preceding 12 months, for maternal mental health and substance  
14 use disorders.” *Id.* § 247b–13a(a).

15 297. Section 317L-1(b) of the PHSA sets forth the application criteria for MMH-SUD grant  
16 applicants. The statute specifies that an entity seeking a grant through the program must submit an  
17 application to include explanations of “(1) how a program, or programs, will increase the percentage of  
18 women screened and treated, as appropriate, for maternal mental health and substance use disorders in 1  
19 or more communities; and (2) how a program, or programs, if expanded, would increase access to  
20 screening and treatment services for maternal mental health and substance use disorders.” *Id.* § 247b–  
21 13a(b).

22 298. Section 317L-1(c) of the PHSA commands the HHS Secretary to prioritize eligible  
23 entities providing screening and treatment for maternal behavioral health issues through partnerships  
24 with community-based organizations in areas with disproportionate need or in health professional  
25 shortage areas. *Id.* § 247b–13a(c).

26 299. Section 317-L(d) specifies the eligible uses of funds, including screening, brief  
27 intervention, and treatment; psychiatric consultation; coordination with maternal and child health  
28 programs, including child psychiatric access programs; public outreach and awareness; creation of a

1 multistate consortia; and training primary care providers on trauma-informed care, culturally appropriate  
 2 services, and other best practices. *Id.* § 247b–13a(d)(1)–(2).

3 300. Section 317L-1(h) of the PHSA Section authorizes \$24 million to be appropriated for the  
 4 MMH-SUD program for each of fiscal years 2023 through 2027.

5 301. Plaintiffs are not aware of Congress ever imposing or authorizing directives for or  
 6 conditions on MMH-SUD funds related to a prohibition on all kinds of DEI, exclusion of transgender  
 7 people, denying services to immigrants, or adherence to executive orders unrelated to the purpose of the  
 8 grant.

9 **d. Healthy Start Program**

10 302. Congress authorized the Healthy Start Program (HSP) through Section 330H of the Public  
 11 Health Service Act (“PHSA”), as amended. 42 U.S.C. § 254c-8. PHSA authorizes the HHS Secretary,  
 12 acting through the Administrator of the HRSA, Maternal and Child Health Bureau, to establish a grant  
 13 program with the aim of reducing infant mortality by providing community-based services for pregnant  
 14 women, infants, and families in high-risk areas, focusing on tailored support and addressing social  
 15 determinants of health. *See id.*, § 254c-8(a).

16 303. HRSA’s administration of the HSP is authorized and governed by statutory directives.  
 17 Congress has specified what activities are eligible for funding under the HSP, the criteria HRSA must  
 18 consider in allocating grants, and program requirements HRSA may require recipients agree to as  
 19 conditions for receiving funds. *See id.*, § 254c-8(a).

20 304. Section 330H of the PHSA sets out numerous requirements that projects for HSP grant  
 21 funding must meet. For example, grant recipients are required to establish “community based consortia  
 22 of individuals and organizations” that are appropriate for participation in HSP projects. *Id.* § 254c-8(b).  
 23 The statute also sets forth criteria the HHS Secretary may take into account when selecting grant  
 24 recipients, which include the following considerations: factors that contribute to infant mortality,  
 25 including poor birth outcomes and social determinants of health; communities with high rates of infant  
 26 mortality or poor perinatal outcomes or high rates of infant mortality or poor perinatal outcomes in  
 27 specific subpopulations within the community; and the extent to which applicants for such grants  
 28 facilitate collaboration with the local community in the development of the project, among other such

1 considerations. *See id.*, § 254c-8(b)(2).

2 305. Funding for the HSP program comes from congressional appropriations. The most recent  
3 authorization comes from Section 330H(e) of the PHSA, as amended by Section 3225 of the Coronavirus  
4 Aid, Relief, and Economic Security (CARES) Act. Pub. L. 116-136, 134 Stat. 381. Congress authorized  
5 an appropriation of \$125,500,000 for each of the fiscal years 2021 through 2025. *See id.* § 254c-8(e).

6 306. Plaintiffs are not aware of Congress ever imposing or authorizing directives for or  
7 conditions on HSP funds related to a prohibition on all kinds of DEI, exclusion of transgender people,  
8 denying services to immigrants, or adherence to executive orders unrelated to the purpose of the grant.

9 **2. Substance Abuse and Mental Health Services Administration Programs**

10 307. The Substance Abuse and Mental Health Services Administration (SAMHSA) within  
11 HHS, “funds organizations providing substance use and mental health services, research, technical  
12 assistance, and training to advance the behavioral health and to improve the lives of individuals living  
13 with mental and substance use disorders, and their families.” Grants, SAMHSA, [https://www.samhsa.  
14 gov/grants](https://www.samhsa.gov/grants) (last visited December 17, 2025). SAMHSA administers both competitive, discretionary  
15 grant programs and “noncompetitive, formula grant” programs “mandated by the U.S. Congress.” *Id.*  
16 Examples of these noncompetitive block grants include the Community Mental Health Services Block  
17 Grant and the Substance Use Prevention, Treatment, and Recovery Services Block Grant.

18 308. SAMHSA’s authority to issue grants under its various programs is conferred by statute.  
19 *See, e.g.*, 42 U.S.C. §§ 290dd-3 (Grants for reducing overdose deaths), 290dd-4 (Program to support  
20 coordination and continuation of care for drug overdose patients), 290ee (Opioid overdose reversal  
21 medication access, education, and co-prescribing grant programs), 290ee-1 (First responder training),  
22 290ee-2 (Building communities of recovery), 290ee-3 (State demonstration grants for comprehensive  
23 opioid abuse response), 290ee-3a (Grant program for State and Tribal response to opioid use disorders),  
24 290ee-5a (Sobriety treatment and recovery teams), 290ee-9 (Services for families and patients in crisis).  
25 These statutes list the required criteria for a grant application and allowable uses for grant funds. None  
26 of the statutes establishing these programs authorize conditions on these grants related to prohibiting all  
27 forms of DEI, exclusion of transgender individuals, denying services to immigrants, or adherence to  
28 executive orders unrelated to the purpose of the grant.

1 309. One of the requirements provided in SAMHSA’s Notices of Award (NOA) is a “Disparity  
2 Impact Statement (DIS),” which includes “[a] quality improvement plan for how [recipients will use  
3 program data] to monitor and manage program outcomes by race, ethnicity, and LGBT status, when  
4 possible.” SAMHSA also requires the quality improvement plan to “include strategies for how processes  
5 and/or programmatic adjustments will support efforts to reduce disparities for the identified sub-  
6 populations.” The NOAs do not include any grant conditions related to prohibiting all kinds of DEI,  
7 exclusion of transgender people, or adherence to executive orders unrelated to overdose response.

### 8 3. Center for Disease Control and Prevention Grant Programs

9 310. The Centers for Disease Control and Prevention (CDC) within HHS describes itself as  
10 “the nation’s leading science-based, data-driven, service organization that protects the public’s health.”  
11 Home, CDC, <https://www.cdc.gov/> (last visited December 17, 2025). CDC provides much of the  
12 funding to support public health systems and activities by state and local governments. *See* Josh  
13 Michaud, et al., CDC’s Funding for State and Local Public Health: How Much and Where Does it Go?,  
14 KFF, [https://www.kff.org/other-health/cdcs-funding-for-state-and-local-public-health-how-much-and-  
15 where-does-it-go/#:~:text=Among%20the%20key%20findings%3A,and%20public%20health  
16 %20infrastructure%20rebuilding](https://www.kff.org/other-health/cdcs-funding-for-state-and-local-public-health-how-much-and-where-does-it-go/#:~:text=Among%20the%20key%20findings%3A,and%20public%20health%20infrastructure%20rebuilding) (last visited December 17, 2025). In FY 2023, CDC obligated almost  
17 \$15 billion to state and local jurisdictions. *Id.* The CDC’s funding supports a range of programs  
18 including HIV/AIDS, Viral Hepatitis, STI, and TB Prevention; Chronic Disease Prevention and Health  
19 Promotion; Public Health Preparedness and Response; and Injury Prevention and Control. *See* Grant  
20 Funding Profiles – Funding Category View, CDC, <https://fundingprofiles.cdc.gov/Category/Category>  
21 (last visited December 17, 2025).

22 311. For example, one of the grants awarded by CDC is the High-Impact HIV Prevention and  
23 Surveillance Programs for Health Departments grant, which is a part of CDC’s funding for HIV/AIDS,  
24 Viral Hepatitis, STI, and TB Prevention. As explained by the 2024 NOFO for this program, the grant  
25 funds recipients “to implement a comprehensive, person-centered HIV prevention and surveillance  
26 program to prevent new HIV infections and improve the health of people with HIV.”

27 312. The NOFO for this program includes as a required element, “Addressing Social and  
28 Structural Factors.” The NOFO recognizes that “[t]he impact of racism, homophobia, transphobia, and

1 stigma significantly exacerbates the health disparities experienced among communities  
 2 disproportionately affected by HIV. Health equity is a desirable goal that entails special efforts to  
 3 improve the health of those who have experienced social or economic disadvantage.” With respect to the  
 4 “Population(s) of Focus,” the NOFO explains that “Applicants must provide HIV services to populations  
 5 within the jurisdiction that are disproportionately impacted by HIV as identified by their epidemiological  
 6 data, gaps in services, or need,” and “Examples to consider based on national and local data, include  
 7 transgender women, cisgender Black or African American women, gay and bisexual men, American  
 8 Indian or Alaska Native gay and bisexual men, people who inject drugs (PWID), youth, pregnant and  
 9 postpartum persons and their infants, and other populations with disproportionately higher rates of HIV  
 10 diagnosis including individuals involved in the justice system and people experiencing housing  
 11 insecurity.”

12 313. The NOFO did not include any grant conditions related to prohibiting all kinds of DEI,  
 13 exclusion of transgender people, or adherence to executive orders unrelated to HIV/AIDS surveillance  
 14 and prevention.

15 314. Statutory authority for the Fiscal Year 2024 High-Impact HIV Prevention and  
 16 Surveillance Programs for Health Departments grant comes from 42 U.S.C. § 247c(b)–(c) and the  
 17 Consolidated Appropriations Act of 2016, Pub. L. 114-113, 129 Stat. 2242. 42 U.S.C. § 247c authorizes  
 18 HHS to make grants like the High-Impact HIV Prevention and Surveillance Programs for Health  
 19 Departments grant. It also identifies authorized conditions for the grants, including recordkeeping  
 20 requirements, 42 U.S.C. § 247c(e)(3), and patient confidentiality mandates, *id.* § 247c(e)(5). Neither  
 21 U.S.C. § 247c nor the Consolidated Appropriations Act of 2016 authorizes or imposes conditions on this  
 22 grant related to prohibiting all forms of DEI, exclusion of transgender individuals, denying services to  
 23 immigrants, or adherence to executive orders unrelated to HIV/AIDS surveillance and prevention.

#### 24 **4. Hospital Preparedness Program (HPP)**

25 315. Congress authorized the Hospital Preparedness Program (HPP) through the enactment the  
 26 Pandemic and All-Hazards Preparedness Act (PAHPA), Pub. L. No. 109-417, 120 Stat. 2861 (2000).  
 27 The program is administered by the Office of the Assistant Secretary for Preparedness and Response  
 28 (ASPR). The HPP is intended to prepare the health care delivery system to meet community needs,

1 provide equitable access to care, and save lives during disasters and emergencies.

2 316. HHS’s administration of the HPP is authorized and governed by statutory directives.  
3 Congress has specified what activities are eligible for funding under the HPP program, the criteria HHS  
4 must consider in allocating grant funding, and program requirements HHS may require applicants to  
5 agree to as conditions for receiving funds. *See* 42 U.S.C. § 247d–3b(b).

6 317. The PHSA authorizes the Assistant Secretary for Preparedness and Response to award  
7 competitive grants or cooperative agreements to eligible entities to improve surge capacity and enhance  
8 community and hospital preparedness. U.S.C. § 247d–3b(a).

9 318. The statute requires ASPR to distribute HPP funding based on specified eligibility criteria,  
10 and sets forth eligible activities funds may be used for. *See* 42 U.S.C. § 247d–3b(c).

11 319. The PHSA does not authorize conditions on HSI grants related to prohibiting DEI in all  
12 forms, excluding transgender individuals, denying services to immigrants, or incorporating executive  
13 orders unrelated to hospital emergency preparedness.

14 320. Plaintiffs are not aware of Congress ever imposing or authorizing directives for or  
15 conditions on HPP grants related to a prohibition on all forms of DEI, facilitating enforcement of  
16 immigration laws, verification of immigration status, or prohibiting the “promot[ion]” of “gender  
17 ideology.”

## 18 **5. Other HHS Grants**

19 321. HHS and its operating divisions and agencies administer a range of other grant programs  
20 that some plaintiffs have previously received, currently receive, or are otherwise eligible to receive.  
21 Plaintiffs are not aware of Congress ever imposing or authorizing directives for or conditions on these  
22 other HHS grants related to a prohibition on all kinds of DEI, exclusion of transgender people, denying  
23 services to immigrants, or adherence to executive orders unrelated to the purpose of the grant.

24 322. Congress annually appropriates funding for HHS grant programs. In the annual  
25 appropriations legislation, Congress sets forth priorities and directives to the Secretary of HHS with  
26 respect to funding. Plaintiffs are not aware of Congress ever imposing or authorizing directives for or  
27 conditions on HHS grants related to a prohibition on DEI, exclusion of transgender people, denying  
28 services to immigrants, or adherence to executive orders unrelated to the purpose of the grant. *See, e.g.,*

1 Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134 Stat. 1523–28, 1567–98; Consolidated  
 2 Appropriations Act, 2022, Pub. L. 117-103, 136 Stat. 397–402, 441–74; Consolidated Appropriations  
 3 Act, 2023, Pub. L. 117-328, 136 Stat. 4808–13, 4854–87; Consolidated Appropriations Act, 2024, Pub.  
 4 L. 118-42, 138 Stat. 272–77, 397–419.

5 323. Plaintiffs County of Marin, County of Sacramento, County of San Diego, County of Los  
 6 Angeles, and County of Santa Barbara (collectively, the “HHS Plaintiffs”) have previously received,  
 7 currently receive, or are otherwise eligible to receive HHS grants. The HHS Plaintiffs rely on millions of  
 8 dollars in appropriated federal funds from HHS direct or pass-through grant programs for health and  
 9 human services-related projects undertaken for the benefit of their communities.

#### 10 **D. EPA Grant Programs**

11 324. Congress established the Environmental Protection Agency (EPA) in 1970 through  
 12 Reorganization Plan No. 3 of 1970, 35 Fed. Reg. 15623 (Oct. 6, 1970), which consolidated many  
 13 environmental responsibilities of the federal government under one agency. Every year, EPA awards  
 14 more than \$4 billion in funding for grants and other assistance agreements to state and local  
 15 governments, tribes, universities, nonprofit recipients, and other entities to protect human health and the  
 16 environment. *See* U.S. Env'tl. Prot. Agency, EPA Grants Overview for Applicants and Recipients,  
 17 <https://www.epa.gov/grants/epa-grants-overview-applicants-and-recipients> (last visited December 17,  
 18 2025). The EPA Administrator is responsible for overseeing all agency programs and offices,  
 19 supervising the administration of grants and other funding, and ensuring the agency’s actions comply  
 20 with statutory and executive requirements. *See, e.g.*, 42 U.S. Code §§ 6912; 9628; 13103(a).

##### 21 **1. Brownfields and Land Revitalization Program**

22 325. The EPA’s Brownfields and Land Revitalization Program provides funds to states, Tribal  
 23 Nations, communities, and other stakeholders to work together to prevent, assess, safely clean up, and  
 24 sustainably reuse contaminated or potentially contaminated properties, commonly referred to as  
 25 “brownfields.” *See* U.S. Env'tl. Prot. Agency, EPA Brownfields Revolving Loan Fund Grants Program  
 26 Overview, [https://www.epa.gov/system/files/documents/2022-08/Program%20Overview\\_RLF.pdf](https://www.epa.gov/system/files/documents/2022-08/Program%20Overview_RLF.pdf) (last  
 27 visited December 17, 2025). Revolving Loan Fund (RLF) Grants provide funding to a grant recipient for  
 28 capitalizing an RLF program. RLF programs provide loans and subgrants to eligible entities to carry out

1 cleanup activities at brownfield sites contaminated with hazardous substances.

2 326. Congress authorized the Brownfields and Land Revitalization Program through the Small  
3 Business Liability Relief and Brownfields Revitalization Act of 2002, Pub. L. No. 107-118, 115 Stat.  
4 2356 (2002). This statute amended section 104 of the Comprehensive Environmental Response,  
5 Compensation, and Liability Act (CERCLA) and established EPA's Brownfields Program in its current  
6 form. Congress authorized the EPA to award assessment grants, cleanup grants, revolving loan fund  
7 (RLF) grants, and job training grants. *See* 42 U.S.C. § 9604(k)(2)–(6). The RLF program, set forth in 42  
8 U.S.C. § 9604(k)(3), enables eligible entities to establish loan funds that can be used to finance cleanup  
9 activities at brownfield sites.

10 327. EPA's administration of the Brownfields and Land Revitalization Program, including the  
11 award of RLF grants, is authorized and governed by statutory directives. Congress has specified what  
12 activities are eligible for funding under the Brownfields and Land Revitalization Program, the  
13 responsibilities of grant recipients, and specific certifications that grant recipients must agree to as a  
14 condition of receiving funds. For example, assessment grants may only be used for inventorying,  
15 characterizing, assessing, and conducting planning activities related to brownfield sites. 42 U.S.C.  
16 § 9604(k)(2). RLF grants must be used either to capitalize revolving loan funds or, in certain cases,  
17 directly for remediation at sites owned by the grantee or an eligible nonprofit. *Id.* § 9604(k)(3).  
18 Congress also imposed clear prohibitions on the use of funds. No grant or loan may be used to pay  
19 penalties or fines, to satisfy a federal cost-share requirement, to pay cleanup costs at a site where the  
20 recipient is a potentially responsible party under CERCLA § 107, or to cover compliance costs under  
21 other federal environmental laws (except those associated with cleanup). *Id.* § 9604(k)(5)(B).

22 328. Additionally, every grant or loan agreement must require the recipient to comply with all  
23 applicable federal and state laws and provide a 20 percent non-federal matching share in cash or in-kind  
24 contributions, unless EPA determines that such a match would cause undue hardship. 42 U.S.C.  
25 § 9604(k)(10)(B). Congress further directed EPA to weigh community involvement and equity  
26 considerations in awarding grants. The ranking criteria, established by statute, requires consideration of  
27 the extent to which projects provide for meaningful local community participation in cleanup and reuse  
28 decisions, and “the extent to which a grant would address or facilitate the identification and reduction of

1 threats to the health or welfare of children, pregnant women, minority or low-income communities, or  
 2 other sensitive populations.” *Id.* § 9604(k)(6)(C)(x).

3 329. The Small Business Liability Relief and Brownfields Revitalization Act of 2002 does not  
 4 authorize EPA to condition funding on prohibiting all forms of DEI, facilitating enforcement of federal  
 5 immigration laws, certifying certain facts are material for the purposes of the False Claims Act, or  
 6 prohibiting the “promot[ion]” of “gender ideology” or “elective abortion.” Funding for the Brownfields  
 7 and Land Revitalization Program comes from congressional appropriations. Congress appropriated  
 8 funds for the Brownfields and Land Revitalization Program in the Consolidated Appropriations Act,  
 9 2024, Pub. L. 118-42, 138 Stat. 252–263. Nothing in the 2024 Appropriations Act or any other  
 10 legislation authorizes EPA to impose grant fund conditions related to prohibiting all forms of DEI,  
 11 facilitating enforcement of federal immigration laws, certifying certain facts are material for the purposes  
 12 of the False Claims Act, or prohibiting the “promot[ion]” of “gender ideology” or “elective abortion.”

## 13 2. Drinking Water System Infrastructure Resilience and Sustainability Program

14 330. The Safe Drinking Water Act (SDWA), codified at 42 U.S.C. §§ 300f et seq., as amended  
 15 through the 2018 America’s Water Infrastructure Act (Pub. L. No. 115–270), authorizes the  
 16 Environmental Protection Agency (EPA) to establish the Drinking Water System Infrastructure  
 17 Resilience and Sustainability Program. Under 42 U.S.C. § 300j-19a(1), EPA may award grants to eligible  
 18 public water systems to assist underserved, small, and disadvantaged communities for the purpose of  
 19 increasing drinking water facility resilience to natural hazards. The statute directs EPA to prioritize  
 20 funding for small, underserved, and disadvantaged communities and for projects that improve a drinking  
 21 water system’s ability to prepare for, withstand, and recover from natural hazards and extreme weather  
 22 events, including droughts, floods, wildfires, and earthquakes. *Id.* §§ 300j-19a(1)(2), (5). Eligible  
 23 activities include planning, design, and construction of infrastructure improvements, as well as system  
 24 consolidation, regionalization, and other measures that reduce vulnerability to climate-related and natural  
 25 hazard risks. *Id.* § 300j-19a(1)(3)(A)–(F).

26 331. Congress expressly prescribed the application and selection criteria for grants awarded  
 27 under the Drinking Water System Infrastructure Resilience and Sustainability Program. *See* 42 U.S.C.  
 28 § 300j-19a(1)(4). The statute requires that any eligible entity seeking funding submit an application

1 containing specific, enumerated elements, including a detailed proposal describing the program or project  
 2 to be planned, designed, constructed, implemented, operated, or maintained; identification of the natural  
 3 hazard risk the project is intended to address; and documentation prepared by a federal, state, regional, or  
 4 local governmental agency substantiating the existence of that natural hazard risk in the project area. *Id.*  
 5 § 300j-19a(l)(4)(A)–(C). Applicants must further describe any recent natural hazard events that have  
 6 affected the applicable water system and explain how the proposed program or project would improve  
 7 system performance under anticipated natural hazard conditions. *Id.* § 300j-19a(l)(4)(D)–(E). Finally,  
 8 the application must explain how the proposed program or project is expected to enhance the resilience  
 9 of the drinking water system to the identified hazards. *Id.* § 300j-19a(l)(4)(F). These criteria are  
 10 statutory requirements enacted by Congress that govern both eligibility and EPA’s evaluation of grant  
 11 applications.

12 332. Nothing in the authorizing statutes or any other legislation related to the Drinking Water  
 13 System Infrastructure Resilience and Sustainability Program authorizes EPA to impose grant fund  
 14 conditions related to prohibiting all forms of DEI, facilitating enforcement of federal immigration laws,  
 15 certifying certain facts are material for the purposes of the False Claims Act, or prohibiting the  
 16 “promot[ion]” of “gender ideology” or “elective abortion.”

### 17 3. Other EPA Grants

18 333. EPA and its operating divisions and agencies administer a range of other grant programs  
 19 that some plaintiffs have previously received, currently receive, or are otherwise eligible to receive.  
 20 Additionally, Congress appropriates resources for specifically named community water infrastructure  
 21 projects identified as Congressionally Directed Spending and Community Project Funding items in  
 22 Appropriations Acts. Funding is provided in the State and Tribal Assistance Grants (STAG) account for  
 23 these drinking water, wastewater, stormwater infrastructure, and water quality protection Community  
 24 Grants projects. Plaintiffs are not aware of Congress ever imposing or authorizing directives for or  
 25 conditions on these other EPA grants related to a prohibition on all kinds of DEI, exclusion of  
 26 transgender people, denying services to immigrants, or adherence to executive orders unrelated to the  
 27 purpose of the grant.

28 334. Congress annually appropriates funding for EPA grant programs. In the annual

1 appropriations legislation, Congress sets forth priorities and directives to the Administrator of EPA with  
 2 respect to funding. Plaintiffs are not aware of Congress ever imposing or authorizing directives for or  
 3 conditions on EPA grants related to a prohibition on DEI, exclusion of transgender people, denying  
 4 services to immigrants, or adherence to executive orders unrelated to the purpose of the grant. *See, e.g.*,  
 5 Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134 Stat. 1507–1516; Consolidated  
 6 Appropriations Act, 2022, Pub. L. 117-103, 136 Stat. 380–389; Consolidated Appropriations Act, 2023,  
 7 Pub. L. 117-328, 136 Stat. 4790–4800; Consolidated Appropriations Act, 2024, Pub. L. 118-42, 138  
 8 Stat. 252–263.

9 335. Plaintiffs the City of Fresno, City of Redwood City, City of Alameda, City of Atlanta,  
 10 City of Beaverton, City of Hillsboro, City of Santa Clara, City of Santa Cruz, City of Sunnyvale, and  
 11 County of Los Angeles (collectively, the “EPA Plaintiffs”), have previously received, currently receive,  
 12 or are otherwise eligible to receive EPA grants. Fresno and Alameda rely on millions of dollars in  
 13 appropriated federal funds from EPA’s direct or pass-through grant programs for environmental projects  
 14 undertaken for the benefit of their communities.

15 **E. Following President Trump’s Inauguration, Defendants Unilaterally Impose New**  
 16 **Conditions on Federal Grants.**

17 **1. President Trump Issues Executive Orders Directing Federal Agencies to**  
 18 **Impose New Conditions on Federal Grants**

19 336. Since taking office, President Trump has issued numerous executive orders directing the  
 20 heads of executive agencies to impose conditions on federal funding that bear little or no connection to  
 21 the purposes of the grant programs Congress established, lack statutory authorization, conflict with the  
 22 law as interpreted by the courts, and are even at odds with the purposes of the grants they purport to  
 23 amend. Instead, the conditions appear to require federal grant recipients to agree to promote the political  
 24 agenda President Trump campaigned on during his run for office and has continued espousing since,  
 25 including prohibiting all kinds of DEI, facilitating enforcement of federal immigration laws, verification  
 26 of immigration status, or prohibiting the “promot[ion]” of “gender ideology” or “elective abortion.”  
 27 Plaintiffs cannot comply with Defendants’ vague, ambiguous, and unauthorized conditions without  
 28 exposing themselves to substantial legal liability or forgo critical federal funding.

1           337. The “Ending Illegal Discrimination and Restoring Merit-Based Opportunity” executive  
2 order directs each federal agency head to include “in every contract or grant award” a term that the  
3 contractor or grant recipient “certify that it does not operate any programs promoting DEI” that would  
4 violate federal antidiscrimination laws. Exec. Order 14173 § 3(b)(iv)(B), 90 Fed. Reg. 8633 (Jan. 21,  
5 2025) (the “DEI Order”). The certification is not limited to programs funded with federal grants. *Id.*  
6 § 3(b)(iv).

7           338. The DEI Order also directs each agency head to include a term requiring the contractor or  
8 grant recipient to agree that its compliance “in all respects” with all applicable federal nondiscrimination  
9 laws is “material to the government’s payment decisions” for purposes of the False Claims Act (FCA),  
10 31 U.S.C. §§ 3729 et seq. *Id.* § 3(b)(iv)(A). The FCA imposes liability on “any person” who “knowingly  
11 presents, or causes to be presented, a false or fraudulent claim for payment or approval.” 31 U.S.C.  
12 § 3729(a)(1)(A). For FCA liability to attach, the alleged misrepresentation must be “material to the  
13 Government’s payment decision”—an element the U.S. Supreme Court has called “demanding.”  
14 *Universal Health Servs., Inc. v. United States ex rel. Escobar*, 579 U.S. 176, 192, 194 (2016). Each  
15 violation of the FCA is punishable by a civil penalty of up to \$27,894, plus mandatory treble damages  
16 sustained by the federal government because of that violation. 31 U.S.C. § 3729(a); 28 C.F.R. § 85.5(a).  
17 Given the demands of proving materiality and the severity of penalties imposed by the FCA, the  
18 certification term represents another effort to coerce compliance with the President’s policies by  
19 effectively forcing grant recipients to concede an essential element of an FCA claim.

20           339. The DEI Order does not define the term “DEI.” As explained below, subsequent  
21 executive agency memoranda and letters make clear that the Trump Administration’s conception of what  
22 federal antidiscrimination law requires, including what constitutes a purportedly “illegal” DEI program,  
23 is inconsistent with the requirements of federal nondiscrimination statutes as interpreted by the courts.

24           340. The “Ending Taxpayer Subsidization of Open Borders” executive order directs all agency  
25 heads to ensure “that Federal payments to States and localities do not, by design or effect, facilitate the  
26 subsidization or promotion of illegal immigration, or abet so-called ‘sanctuary’ policies that seek to  
27 shield illegal aliens from deportation.” Executive Order 14218 § 2(ii), 90 Fed. Reg. 10581 (Feb. 19,  
28 2025) (the “Immigration Order”).

1           341. The Immigration Order also purports to implement the Personal Responsibility and Work  
2 Opportunity Reconciliation Act (PRWORA), pursuant to which certain federal benefits are limited to  
3 individuals with qualifying immigration status. *See* 8 U.S.C. § 1611(a). In particular, the Immigration  
4 Order directs all agency heads to “identify all federally funded programs administered by the agency that  
5 currently permit illegal aliens to obtain any cash or non-cash public benefit” and “take all appropriate  
6 actions to align such programs with the purposes of this order and the requirements of applicable Federal  
7 law, including ... PRWORA.” *Id.* § 2(i).

8           342. On April 28, 2025, President Trump issued additional executive orders related to  
9 immigration and law enforcement. The “Protecting American Communities from Criminal Aliens”  
10 executive order states that “some State and local officials ... continue to use their authority to violate,  
11 obstruct, and defy the enforcement of Federal immigration laws” and directs the Attorney General in  
12 coordination with the Secretary of Homeland Security to identify “sanctuary jurisdictions,” take steps to  
13 withhold federal funding from such places, and develop “mechanisms to ensure appropriate eligibility  
14 verification is conducted for individuals receiving Federal public benefits ... from private entities in a  
15 sanctuary jurisdiction, whether such verification is conducted by the private entity or by a governmental  
16 entity on its behalf.” [https://www.whitehouse.gov/presidential-actions/2025/04/protecting-american-](https://www.whitehouse.gov/presidential-actions/2025/04/protecting-american-communities-from-criminal-aliens/)  
17 [communities-from-criminal-aliens/](https://www.whitehouse.gov/presidential-actions/2025/04/protecting-american-communities-from-criminal-aliens/) (last visited December 17, 2025). The “Strengthening and  
18 Unleashing America’s Law Enforcement to Pursue Criminals and Protect Innocent Citizens” executive  
19 order directs the Attorney General to, among other things, “prioritize prosecution of any applicable  
20 violations of Federal criminal law with respect to State and local jurisdictions” whose officials “willfully  
21 and unlawfully direct the obstruction of criminal law, including by directly and unlawfully prohibiting  
22 law enforcement officers from carrying out duties necessary for public safety and law enforcement” or  
23 “unlawfully engage in discrimination or civil-rights violations under the guise of “diversity, equity, and  
24 inclusion” initiatives that restrict law enforcement activity or endanger citizens.” [https://www.](https://www.whitehouse.gov/presidential-actions/2025/04/strengthening-and-unleashing-americas-law-enforcement-to-pursue-criminals-and-protect-innocent-citizens/)  
25 [whitehouse.gov/presidential-actions/2025/04/strengthening-and-unleashing-americas-law-enforcement-](https://www.whitehouse.gov/presidential-actions/2025/04/strengthening-and-unleashing-americas-law-enforcement-to-pursue-criminals-and-protect-innocent-citizens/)  
26 [to-pursue-criminals-and-protect-innocent-citizens/](https://www.whitehouse.gov/presidential-actions/2025/04/strengthening-and-unleashing-americas-law-enforcement-to-pursue-criminals-and-protect-innocent-citizens/) (last visited December 17, 2025).

27           343. The “Defending Women from Gender Ideology Extremism and Restoring Biological  
28 Truth to the Federal Government” executive order directs agency heads to “take all necessary steps, as

1 permitted by law, to end the Federal funding of gender ideology” and “assess grant conditions and  
 2 grantee preferences” to “ensure grant funds do not promote gender ideology.” Exec. Order No. 14168  
 3 § 3(e), (g), 90 Fed. Reg. 8615 (Jan. 20, 2025) (the “Gender Ideology Order”). The Gender Ideology  
 4 Order states that “[g]ender ideology’ replaces the biological category of sex with an ever-shifting  
 5 concept of self-assessed gender identity, permitting the false claim that males can identify as and thus  
 6 become women and vice versa, and requiring all institutions of society to regard this false claim as true.”  
 7 *Id.* § 2(f). It goes on to state that “[g]ender ideology includes the idea that there is a vast spectrum of  
 8 genders that are disconnected from one’s sex” and is therefore “internally inconsistent, in that it  
 9 diminishes sex as an identifiable or useful category but nevertheless maintains that it is possible for a  
 10 person to be born in the wrong sexed body.” *Id.*

11 344. The “Enforcing the Hyde Amendment” executive order declares it the policy of the United  
 12 States “to end the forced use of Federal taxpayer dollars to fund or promote elective abortion.” Exec.  
 13 Order No. 14182, 90 Fed. Reg. 8751 (Jan. 24, 2025) (the “Abortion Order”). The Acting Director of the  
 14 U.S. Office of Management and Budget (OMB) issued a memorandum to the heads of the executive  
 15 agencies providing guidance on how agencies should implement the Abortion Order. Memorandum  
 16 from Acting Director of OMB Matthew J. Vaeth to Heads of Executive Departments and Agencies (Jan.  
 17 24, 2025), [https://www.whitehouse.gov/wp-content/uploads/2025/03/M-25-12-Memorandum-on-Hyde-](https://www.whitehouse.gov/wp-content/uploads/2025/03/M-25-12-Memorandum-on-Hyde-Amendment-EO.pdf)  
 18 [Amendment-EO.pdf](https://www.whitehouse.gov/wp-content/uploads/2025/03/M-25-12-Memorandum-on-Hyde-Amendment-EO.pdf) (the “OMB Memo”) (last visited December 17, 2025). The OMB Memo told  
 19 agency heads that the Trump Administration’s policy is “not to use taxpayer funds to fund, facilitate, or  
 20 promote abortion, including travel or transportation to obtain an abortion, consistent with the Hyde  
 21 Amendment and other statutory restrictions on taxpayer funding for abortion.” *Id.* (emphasis added).  
 22 The OMB Memo further instructed agency heads to “reevaluate” policies and other actions to conform  
 23 with the Abortion Funding Order, audit federally funded activities suspected to contravene the Abortion  
 24 Funding Order, and submit a monthly report to OMB on each agency’s progress in implementing the  
 25 OMB Memo. *Id.*

26 345. On August 7, 2025 President Trump issued another executive order titled, Improving  
 27 Oversight of Federal Grantmaking that requires that discretionary grant awards “demonstrably advance  
 28 the President’s policy priorities” and “shall not be used to fund, promote, encourage, subsidize, or

1 facilitate” “racial preferences or other forms of racial discrimination by the grant recipient,” “denial by  
 2 the grant recipient of the sex binary in humans or the notion that sex is a chosen or mutable  
 3 characteristic,” or “any other initiatives that compromise public safety or promote anti-American values.”  
 4 Exec. Order No. 14332, 90 Fed. Reg. 38929 (Aug. 7, 2025) (the “Grantmaking Oversight Order”).

5 **2. HUD Attaches New Conditions to HUD Grants**

6 346. Since President Trump’s issuance of the executive orders described above and Defendant  
 7 Turner’s confirmation as HUD Secretary, HUD has implemented President Trump’s Executive Orders by  
 8 attaching new and unlawful conditions (collectively, the “HUD Grant Conditions”) across the expansive  
 9 portfolio of HUD grants established by Congress; demanding grant recipients’ agreement to those new  
 10 conditions and issuing agency-wide letters and statements about how HUD will enforce those conditions.

11 **a. HUD issues new policy terms for all financial assistance incorporating**  
 12 **the unlawful conditions**

13 347. In or around April 2025, HUD amended its General Administrative, National, and  
 14 Departmental Policy Requirements and Terms for HUD’s Financial Assistance Programs (the “HUD  
 15 Policy Terms”), which set forth “various laws and policies that may apply to recipients of” HUD grant  
 16 awards. This document is posted on HUD’s website at [https://www.hud.gov/sites/default/files/CFO/  
 17 documents/Administrative-Requirements-Addendum-FY2025.pdf](https://www.hud.gov/sites/default/files/CFO/documents/Administrative-Requirements-Addendum-FY2025.pdf) (last visited December 17, 2025).  
 18 Among such potentially applicable policies, the document lists several of President Trump’s executive  
 19 orders as well as language implementing those orders.

20 348. For example, in a section labelled “Compliance with Immigration Requirements,” the  
 21 HUD Policy Terms list the Immigration Order and summarize the potentially applicable policy:

22 No state or unit of general local government that receives HUD funding  
 23 under may use that funding in a manner that by design or effect facilitates  
 24 the subsidization or promotion of illegal immigration or abets policies that  
 seek to shield illegal aliens from deportation.

25 349. Next, in a section labelled “Other Presidential Executive Actions Affecting Federal  
 26 Financial Assistance Programs,” HUD Policy Terms state that “Recipients of Federal Awards must  
 27 comply with applicable existing and future Executive Orders, as advised by the Department, including  
 28 but not limited to . . . :” followed by a “non-exhaustive list” of nine executive orders—including the

1 Immigration Order, the Abortion Order, the DEI Order, and the Gender Ideology Order—as “applicable”  
2 conditions. The HUD Policy Terms then summarize the potentially applicable policies reflected in those  
3 executive orders.

4 a. First, the HUD Policy Terms state that the Immigration Order “prohibits taxpayer  
5 resources and benefits from going to unqualified aliens.”

6 b. Second, the HUD Policy Terms summarize the Abortion Order as “prohibit[ing] the use of  
7 Federal taxpayer dollars to fund or promote elective abortion.”

8 c. Third, the HUD Policy Terms state that the DEI Order “requires Federal agencies to  
9 terminate all discriminatory and illegal preferences.”

10 d. Fourth, the HUD Policy Terms summarize the Gender Ideology Order as “set[ting] forth  
11 U.S. policy recognizing two sexes, male and female.”

12 350. These requirements outlined in the HUD Policy Terms are unlawful because the  
13 requirements violate the Separation of Powers, the Spending Clause, the Fifth Amendment’s void-for-  
14 vagueness doctrine, and the APA.

15 **b. HUD attaches a new, unlawful anti-DEI certification to its standard**  
16 **assurances and certifications**

17 351. In or around May 2025, HUD updated its standard Applicant and Recipient Assurances  
18 and Certifications (the “HUD Certifications”) on Form HUD-424-B, which must be submitted as part of  
19 any application for HUD funding or post-award submission. These changes implemented President  
20 Trump’s executive orders, including the DEI Order, by imposing a new anti-DEI certification that is not  
21 authorized by any of the statutes that establish HUD grant programs, any appropriations law  
22 appropriating funds for HUD grant programs, or HUD’s own regulations. In particular, the HUD  
23 Certifications require HUD grant applicants to certify that the applicant:

24 Will not use Federal funding to promote diversity, equity, and inclusion  
25 (DEI) mandates, policies, programs, or activities that violate any applicable  
26 Federal antidiscrimination laws.

27 352. This certification is unlawful, as explained further below, because the anti-DEI  
28 certification violates the Separation of Powers, the Spending Clause, the Fifth Amendment’s void-for-  
vagueness doctrine, and the APA.

**c. HUD attaches new, unlawful conditions to CoC grants**

353. In or around June 2025, following President Trump’s issuance of the executive orders described above, HUD presented recipients with CoC grant agreements for CoC funds awarded. These grant agreements contained additional grant conditions not included in the FYs 2024 & 2025 NOFO, and are not authorized by the Homeless Assistance Act, the Appropriations Act, or the Rule HUD itself promulgated to implement the CoC program. HUD has required Plaintiffs with CoC grant awards to agree to these conditions to receive funds they are entitled to.

354. The CoC grant agreements contain substantially the same unlawful, new terms and conditions, including the following (collectively, the “CoC Grant Conditions”):

355. First, the CoC grant agreements state that “[t]his Agreement, the Recipient’s use of funds provided under this Agreement . . . , and the Recipient’s operation of projects assisted with Grant Funds” are “governed by” not only certain specified statutes, rules and grant-related documents, but also by “all current Executive Orders.” The CoC grant agreements further require recipients to comply with “applicable requirements that . . . may [be] establish[ed] from time to time to comply with . . . other Executive Orders” (together, the “CoC EO Condition”).

356. Second, a grant recipient must certify 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 must further agree that this condition is “material” for purposes of the FCA by agreeing 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 [the FCA].

(together, the “CoC Discrimination Condition”)

357. While Plaintiffs have routinely certified compliance with federal nondiscrimination laws as a condition of federal funding in the past, the Administration’s communications to federal grant recipients make clear that the agencies seek compliance with the Trump Administration’s novel, incorrect, and unsupported interpretation of federal nondiscrimination law as barring any and all DEI programs. Without Congress passing his anti-DEI agenda, President Trump instead purports to legislate

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1 by executive order and impose his decrees on state and local governments seeking grant funding.

2 358. Third, the CoC Grant Agreements provide:

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

6 The CoC Grant Agreements further require compliance with “applicable requirements that . . . may [be]  
7 establish[ed] from time to time to comply with . . . [the Immigration Order] . . or immigration laws”  
8 (together, the “CoC Enforcement Condition”).<sup>4</sup>

9 359. Fourth, the CoC Grant Agreements impose requirements purportedly related to PRWORA  
10 and other immigration eligibility and verification requirements:

11 The recipient must administer its grant in accordance with all applicable  
12 immigration restrictions and requirements, including the eligibility and  
13 verification requirements that apply under title IV of [PRWORA] and any  
14 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.

15 ...

16 Subject to the exceptions provided by PRWORA, the recipient must use  
17 [the Systematic Alien Verification for Entitlements (SAVE) system], or an  
18 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.

19 (the “CoC Verification Condition”).

20 360. Fifth, the CoC Grant Agreements require the recipient to agree that it “shall not grant  
21 funds to promote ‘gender ideology,’ as defined in” the Gender Ideology Order (the “CoC Gender  
22 Ideology Condition”).

23 361. Finally, the CoC Grant Agreements require the recipient to agree that it “shall not use any  
24 Grant Funds to fund or promote elective abortions, as required by” the Abortion Order.  
25 (the “CoC Abortion Condition”).

26  
27 <sup>4</sup> More recent grant agreements contain updated language that recites the Immigration Order. In these,  
28 the last part of this condition reads “. . . or abets *so-called* “sanctuary” policies that seek to shield illegal  
aliens from deportation.

1 362. These conditions are unconstitutional and unlawful for several reasons. As an initial  
 2 matter, neither the Homeless Assistance Act, the Appropriations Act, PRWORA, nor any legislation  
 3 authorizes HUD to attach these conditions to federal funds appropriated for CoC grants.

4 **d. HUD announces it will attach new, unlawful conditions to Office of**  
 5 **Community Planning and Development grants**

6 363. In or around June 2025, HUD’s CPD, which administers the CDBG, ESG, HOME, and  
 7 HOPWA programs, among others, issued guidance announcing that it will attach new conditions to  
 8 Fiscal Year 2025 agreements governing all CPD-administered grants.

9 364. In particular, on June 5, 2025, CPD General Deputy Assistant Secretary Claudette  
 10 Fernandez issued a letter to the executive directors of two organizations representing states and local  
 11 jurisdictions that administer CPD grant programs (the “Fernandez Letter”). The Fernandez Letter states  
 12 that CPD “[g]rantees are . . . encouraged to review the White House Executive Orders as they develop  
 13 their consolidated plan and annual action plans,” which are required under the CDBG, HOME, HOPWA,  
 14 and ESG programs. Letter from Claudette Fernandez, Acting Director, CPD General Deputy Assistant  
 15 Secretary, to Council of State Community Development Agencies and National Community  
 16 Development Association (June 5, 2025), [https://ncdaonline.org/wp-content/uploads/2025/06/6-5-2025-](https://ncdaonline.org/wp-content/uploads/2025/06/6-5-2025-HUD-Response-to-COSCDA-NCDA.pdf)  
 17 [HUD-Response-to-COSCDA-NCDA.pdf](https://ncdaonline.org/wp-content/uploads/2025/06/6-5-2025-HUD-Response-to-COSCDA-NCDA.pdf) (last visited December 17, 2025).

18 365. The Fernandez Letter goes on to state that “FY2025 grant agreement[s]” that are issued  
 19 after a recipient submits their consolidated and action plans will “emphasize conformity with applicable  
 20 Administration priorities and executive orders.” It clarifies that, “[u]nder the FY 2025 grant agreement,  
 21 conformity means” that the recipient will be required to abide by a list of specific conditions. These  
 22 include the following (collectively, the “CPD Grant Conditions”):

23 366. First, grant recipients will be required to agree to “not use grant funds to promote ‘gender  
 24 ideology,’ as defined in [the Gender Ideology Order]” (the “CPD Gender Ideology Condition”).

25 367. Second, each recipient must “certif[y] that it does not operate any programs that violate  
 26 any applicable Federal antidiscrimination laws, including Title VI of the Civil Rights Act of 1964.” Each  
 27 recipient must also “agree[] that its compliance in all respects with all applicable Federal anti-  
 28 discrimination laws is material to the U.S. Government’s payment decisions for purposes of [the FCA]”

1 (together, the “CPD Discrimination Condition”).

2 368. Third, grant recipients must agree that:

3 [i]f applicable, no state or unit of general local government that receives  
4 funding under this grant may use that funding in a manner that by design or  
5 effect facilitates the subsidization or promotion of illegal immigration or  
abets policies that seek to shield illegal aliens from deportation.

6 (the “CPD Enforcement Condition”).

7 369. Fourth, each recipient must agree to conditions purportedly related to PRWORA and other  
8 immigration eligibility and verification requirements, specifically:

9 The Grantee must administer its grant in accordance with all applicable  
10 immigration restrictions and requirements, including the eligibility and  
11 verification requirements that apply under title IV of the Personal  
12 Responsibility and Work Opportunity Reconciliation Act of 1996, as  
13 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.

14 . . . .

15 Unless excepted by PRWORA, the Grantee must use SAVE, or an  
16 equivalent verification system approved by the Federal government, to  
17 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.

18 (together, the “CPD Verification Condition”).

19 370. Fifth, “[u]nless excepted by PRWORA,” grant recipients “must use SAVE, or an  
20 equivalent verification system approved by the Federal government, to prevent any Federal public benefit  
21 from being provided to an ineligible alien who entered the United States illegally or is otherwise  
22 unlawfully present in the United States.”

23 371. Finally, grant recipients must agree that they will “not use any grant funds to fund or  
24 promote elective abortions, as required by [the Abortion Order]” (the “CPD Abortion Condition”).

25 372. In addition to imposing these conditions through grant agreements, HUD is threatening to  
26 disapprove consolidated plans—including plans that have already been submitted—unless jurisdictions  
27 resubmit revised plans that (1) include assurances that the jurisdictions will comply with the CPD Grant  
28 Conditions and (2) strip the plans of certain words that HUD claims, in and of themselves, violate the

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1 related EOs, such as “equity” and “environmental justice.” HUD is requiring these revisions and  
2 commitments with as little as 24 hours’ notice.

3 373. The CPD Grant Conditions are unlawful for the same reasons the other conditions are  
4 unlawful, as explained above. In particular, and as explained further below, the CPD Grant Conditions  
5 violate the Separation of Powers, the Spending Clause, the Fifth Amendment’s void-for-vagueness  
6 doctrine, and the APA.

7 **3. DOT and its Operating Administrations Attach New Conditions to DOT**  
8 **Grants**

9 374. Since Secretary Duffy’s confirmation, DOT and its operating administrations have  
10 implemented President Trump’s Executive Orders by attaching new and unlawful conditions  
11 (collectively, the “DOT Grant Conditions”) across the expansive portfolio of DOT grants established by  
12 Congress; demanding grant recipients’ agreement to those new conditions, sometimes on very short  
13 timelines; and issuing agency-wide letters and statements about how DOT will enforce those conditions.

14 375. The DOT’s broad conception of these new conditions is confirmed in a letter from DOT  
15 Secretary Sean Duffy to all recipients of DOT funding stating that “[w]hether or not described in neutral  
16 terms, any policy, program, or activity that is premised on a prohibited classification, including  
17 discriminatory policies or practices designed to achieve so-called [DEI] goals, presumptively violates  
18 Federal Law.” Letter from Sean Duffy, DOT Secretary, to All Recipients of DOT Funding (April 24,  
19 2025) (the “April Duffy Letter”), [https://www.transportation.gov/sites/dot.gov/files/2025-  
20 04/Follow%20the%20Law%20Letter%20to%20Applicants%204.24.25.pdf](https://www.transportation.gov/sites/dot.gov/files/2025-04/Follow%20the%20Law%20Letter%20to%20Applicants%204.24.25.pdf) (last visited December 17,  
21 2025).

22 376. The April Duffy Letter announced DOT’s “policy” of imposing immigration enforcement  
23 and anti-DEI conditions on all DOT-funded grants as a requirement of receiving funding, and makes  
24 clear that DOT interprets federal nondiscrimination law to presumptively prohibit “any policy, program,  
25 or activity that is premised on a prohibited classification, including discriminatory policies or practices  
26 designed to achieve so-called [DEI] goals.” It further asserts that recipients’ “legal obligations require  
27 cooperation generally with Federal authorities in the enforcement of Federal law, including cooperating  
28 with and not impeding U.S. Immigration and Customs Enforcement (ICE) and other Federal offices and

1 components of the Department of Homeland Security in the enforcement of Federal immigration law.”  
 2 The April Duffy Letter also threatens “vigorous[] enforcement,” ranging from comprehensive audits,  
 3 claw-back of grant funds, and termination of grant awards to enforcement actions and loss of any future  
 4 federal funding from DOT.

5 377. Pursuant to the new policy set forth in the April Duffy Letter, DOT and its operating  
 6 administrations have attached substantially similar conditions relating to discrimination, immigration  
 7 enforcement, and executive orders to all grant agreements.

8 **a. DOT and the FTA attach new, unlawful conditions to FTA Grants**

9 378. For instance, on March 26, 2025, the FTA issued an updated Master Agreement  
 10 applicable to all funding awards authorized under specified federal statutes, including the FTA grant  
 11 programs discussed above.

12 379. The March 26 Master Agreement imposed a new condition on all FTA grants  
 13 implementing President Trump’s directive, as set out in the DEI Order, to condition federal grant funds  
 14 on recipients’ agreement not to promote DEI and to concede this requirement is material for purposes of  
 15 the FCA (the “FTA Discrimination Condition”). While FTA grants have long required compliance with  
 16 nondiscrimination laws and have been subject to the FCA, the March 26 Master Agreement provided:

17 (1) Pursuant to section (3)(b)(iv)(A), Executive Order 14173, Ending  
 18 Illegal Discrimination and Restoring Merit-Based Opportunity, the  
 19 Recipient agrees that its compliance in all respects with all applicable  
 Federal antidiscrimination laws is material to the government’s payment  
 decisions for purposes of [the FCA].

20 (2) Pursuant to section (3)(b)(iv)(B), Executive Order 14173, Ending  
 21 Illegal Discrimination and Restoring Merit-Based Opportunity, by entering  
 22 into this Agreement, the Recipient certifies that it does not operate any  
 programs promoting diversity, equity, and inclusion (DEI) initiatives that  
 violate any applicable Federal anti-discrimination laws.

23 380. That the FTA plans to enforce these new conditions more broadly than current  
 24 nondiscrimination law is reinforced by the March 26 Master Agreement’s requirement that the recipient  
 25 “comply with other applicable federal nondiscrimination laws, regulations, and requirements, and follow  
 26 *federal guidance prohibiting discrimination.*”

27 381. The FTA Discrimination Condition is in apparent tension with other requirements in the  
 28 March 26 Master Agreement. For example, the March 26 Master Agreement requires compliance with

1 2 C.F.R. § 300.321, which states, “[w]hen possible, the recipient or subrecipient should ensure that small  
2 businesses, minority businesses, women’s business enterprises, veteran-owned businesses, and labor  
3 surplus area firms” are, *inter alia*, “included on solicitation lists” and “solicited” when “deemed eligible.”

4 382. The FTA Discrimination Condition is also in apparent tension with DOT’s own  
5 regulations. For example, 49 C.F.R. 21.5, which prohibits discrimination, states, “[w]here prior  
6 discriminatory practice or usage tends, on the grounds of race, color, or national origin to exclude  
7 individuals from participation in, to deny them the benefits of, or to subject them to discrimination under  
8 any program or activity ... the applicant or recipient must take affirmative action to remove or overcome  
9 the effects of the prior discriminatory practice or usage.” 49 C.F.R. 21.5(b)(7).

10 383. Further, the March 26 Master Agreement defined “Federal Requirement” to include “[a]n  
11 applicable federal law, regulation, or *executive order*” (the “FTA EO Condition”). The March 26 Master  
12 Agreement refers to President Trump’s DEI Order as an executive order “pursuant to” which the recipient  
13 must comply and certify, with no explanation of how the DEI Order relates to funding of mass transit.

14 384. The April Duffy Letter to all recipients of DOT grants (including the FTA grants) further  
15 addresses the broad scope of the Administration’s anti-DEI agenda and how it expands and conflicts with  
16 established interpretations of federal nondiscrimination law, taking the position that any policy, program,  
17 or activity “designed to achieve so-called [DEI] goals”—even if “described in neutral terms”—  
18 ”presumptively” violates federal nondiscrimination laws. The April Duffy Letter also threatens  
19 “vigorous[] enforcement,” ranging from comprehensive audits, claw-back of grant funds, and termination  
20 of grant awards to enforcement actions and loss of any future federal funding from DOT.

21 385. On April 25, 2025, the FTA issued another updated Master Agreement applicable to all  
22 funding awards authorized under specified federal statutes, including the FTA grant programs discussed  
23 above.

24 386. The April 25 Master Agreement (the “FTA Master Agreement”) contains the same FTA  
25 Discrimination Condition and the same FTA EO Condition set forth above. But the FTA Master  
26 Agreement contains an additional condition requiring recipients to cooperate with federal immigration  
27 enforcement efforts (the “FTA Enforcement Condition”).  
28

1 387. In particular, the FTA Enforcement Condition amends an existing provision addressing  
2 free speech and religious liberty as follows (new language emphasized):

3 The Recipient shall ensure that Federal funding is expended in full  
4 accordance with the U.S. Constitution, Federal Law, and statutory and  
5 public policy requirements: including, but not limited to, those protecting  
6 free speech, religious liberty, public welfare, the environment, and  
7 prohibiting discrimination; *and the 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.*

8 388. The April Duffy Letter to all recipients of DOT grants (including the FTA grants) states  
9 that “DOT expects its recipients to comply with Federal law enforcement directives and to cooperate  
10 with Federal officials in the enforcement of Federal immigration law” and that “[d]eclining to cooperate  
11 with the enforcement of Federal immigration law or otherwise taking action intended to shield illegal  
12 aliens from ICE detection contravenes Federal law and may give rise to civil and criminal liability.”

13 389. In May 2025, FTA retroactively applied the April 2025 FTA Master Agreement to grants  
14 that were executed pursuant to earlier versions of the agreement. By substituting those earlier  
15 agreements with the FTA Master Agreement, the FTA purported to unilaterally add new substantive  
16 conditions to previously awarded grants without notifying the grant recipients.

17 390. Neither the statutory provisions creating the FTA grants, the relevant appropriations acts,  
18 nor any other legislation authorizes the FTA to condition these funds on the recipient’s certification that  
19 it does not “promote DEI,” its admission that its compliance with this prohibition is material for purposes  
20 of the FCA, or its agreement to “cooperate” with federal immigration enforcement efforts. Federal grant  
21 recipients are required to comply with nondiscrimination and other applicable federal laws. But  
22 executive orders and letters from agency heads cannot change what these laws require under existing  
23 court decisions.

24 391. In sum and as further explained below, the FTA Discrimination Condition, the FTA EO  
25 Condition, and the FTA Enforcement Condition (collectively, the “FTA Grant Conditions”) violate the  
26 Separation of Powers, the Spending Clause, the Tenth Amendment’s anti- commandeering principle, the  
27 Fifth Amendment’s void-for-vagueness doctrine, and the APA.  
28

**b. DOT and the FHWA attach new, unlawful conditions to FHWA Grants**

392. On March 17, 2025, DOT issued revised General Terms and Conditions applicable to Fiscal Year 2024 SS4A grants (the “FY 2024 SS4A General Terms and Conditions”).

393. The FY 2024 SS4A General Terms and Conditions imposed a new condition on all Fiscal Year 2024 SS4A grants implementing President Trump’s directive, as set out in the DEI Order, to condition federal grant funds on recipients’ agreement not to promote DEI and to concede this requirement is material for purposes of the FCA (the “SS4A Discrimination Condition”). While SS4A grants have long required compliance with nondiscrimination laws and have been subject to the FCA, the FY 2024 SS4A General Terms and Conditions provided:

(b) Pursuant to 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 FCA].

(c) Pursuant to Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, by entering into this agreement, the Recipient certifies that it does not operate any programs promoting diversity, equity, and inclusion (DEI) initiatives that violate any applicable Federal anti-discrimination law.

394. The SS4A Discrimination Condition is in apparent tension with other requirements in the FY 2024 SS4A General Terms and Conditions. For example, the FY 2024 SS4A General Terms and Conditions require compliance with 2 C.F.R. § 300.321, which states, “[w]hen possible, the recipient or subrecipient should ensure that small businesses, minority businesses, women’s business enterprises, veteran-owned businesses, and labor surplus area firms” are, *inter alia*, “included on solicitation lists” and “solicited” when “deemed eligible.”

395. The SS4A Discrimination Condition is also in apparent tension with DOT’s own regulations. For example, 49 C.F.R. 21.5, which prohibits discrimination, states, “[w]here prior discriminatory practice or usage tends, on the grounds of race, color, or national origin to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity . . . the applicant or recipient must take affirmative action to remove or overcome

1 the effects of the prior discriminatory practice or usage.” 49 C.F.R. 21.5(b)(7).

2 396. The FY 2024 SS4A General Terms and Conditions contain an additional condition  
3 requiring recipients to cooperate with federal immigration enforcement efforts (the “SS4A Enforcement  
4 Condition”).

5 397. In particular, the SS4A Enforcement Condition amends a pre-existing provision  
6 addressing free speech and religious liberty as follows (new language emphasized):

7 The Recipient shall ensure that Federal funding is expended in full  
8 accordance with the United States Constitution, Federal law, and statutory  
9 and public policy requirements: including but not limited to, those  
10 protecting free speech, religious liberty, public welfare, the environment,  
11 and prohibiting discrimination; *and 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.*

12 398. Exhibit A to the FY 2024 SS4A General Terms and Conditions also requires the recipient  
13 to assure and certify that it will “comply with all applicable Federal laws, regulations, executive orders,  
14 policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal  
15 funds for this Project” (the “SS4A EO Condition”). While this requirement existed in a similar form in  
16 prior agreements, Exhibit A to the FY 2024 SS4A General Terms and Conditions lists President Trump’s  
17 DEI Order and Gender Ideology Order (among other recent Trump Administration executive orders), as  
18 well as two criminal immigration statutes (8 U.S.C. § 1324 and 8 U.S.C. § 1327) as “provisions”  
19 purportedly “applicable” to SS4A grant agreements, with no explanation of how those Orders or statutes  
20 relate to roadway grants or even apply to local governments.

21 399. Also on March 17, 2025, DOT issued revised General Terms and Conditions applicable to  
22 Fiscal Year 2023 SS4A grants and to Fiscal Year 2022 SS4A grants. Those revised General Terms and  
23 Conditions, and the revised Exhibit A to each, contain provisions identical to the SS4A Discrimination  
24 Condition, the SS4A Immigration Condition, and the SS4A EO Condition discussed above.

25 400. On April 22, 2025, the FHWA issued Competitive Grant Program General Terms and  
26 Conditions purportedly applicable to all FHWA competitive grants (the “2025 FHWA General Terms  
27 and Conditions”).

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1           401. The 2025 FHWA General Terms and Conditions imposed a new condition on all FHWA  
 2 competitive grants (including the BIP, Culvert AOP Program, and ATTAIN program discussed above)  
 3 implementing President Trump’s directive, as set out in the DEI Order and further explained in the April  
 4 Duffy letter, to condition federal grant funds on recipients’ agreement not to promote DEI and to concede  
 5 this requirement is material for purposes of the FCA (the “FHWA Discrimination Condition”). While  
 6 FHWA grants have long required compliance with nondiscrimination laws and have been subject to the  
 7 FCA, the 2025 FHWA General Terms and Conditions provide:

8                   (b) Pursuant to Section (3)(b)(iv)(A), Executive Order 14173, Ending  
 9 Illegal Discrimination and Restoring Merit-Based Opportunity, the  
 10 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 FCA].

11                   (c) Pursuant to Section (3)(b)(iv)(B), Executive Order 14173, Ending  
 12 Illegal Discrimination and Restoring Merit-Based Opportunity, by entering  
 13 into this agreement, the Recipient certifies that it does not operate any  
 programs promoting diversity, equity, and inclusion (DEI) initiatives that  
 violate any applicable Federal anti-discrimination laws.

14           402. The 2025 FHWA General Terms and Conditions contain an additional condition requiring  
 15 recipients to cooperate with federal immigration enforcement efforts (the “FHWA Enforcement  
 16 Condition”).

17           403. In particular, the FHWA Enforcement Condition incorporates immigration enforcement  
 18 into a provision addressing compliance with federal law and policy as follows (immigration enforcement  
 19 language emphasized):

20                   The Recipient shall ensure that Federal funding is expended in full  
 21 accordance with the United States Constitution, Federal law, and statutory  
 22 and public policy requirements: including but not limited to, those  
 23 protecting free speech, religious liberty, public welfare, the environment,  
 24 and prohibiting discrimination; *and the 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.*

25           404. The Exhibits to the 2025 FHWA General Terms and Conditions—dated April 30, 2025  
 26 and applicable to FHWA competitive grants—further require the recipient to assure and certify that it  
 27 will “comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and  
 28 requirements as they relate to the application, acceptance, and use of Federal funds for this Project” (the

1 “FHWA EO Condition”). The Exhibits list President Trump’s DEI Order and Gender Ideology Order  
 2 (among other recent Trump Administration executive orders), as well as two criminal immigration  
 3 statutes (8 U.S.C. § 1324 and 8 U.S.C. § 1327), as “provisions” purportedly “applicable” to FHWA  
 4 competitive grant agreements, with no explanation of how those Orders or statutes relate to highway  
 5 grants or even apply to local governments.

6 405. Additionally, the April Duffy Letter (described in paragraphs 85 and 86 above) was  
 7 directed to all recipients of DOT grants, including those receiving FHWA grants.

8 406. Neither the statutory provisions creating the FHWA grants, the relevant appropriations  
 9 acts, nor any other legislation authorizes the FHWA or DOT to condition these funds on the recipient’s  
 10 certification that it does not “promote DEI,” its admission that its compliance with this prohibition is  
 11 material for purposes of the FCA, or its agreement to “cooperate” with federal immigration enforcement  
 12 efforts. Federal grant recipients are required to comply with nondiscrimination and other applicable  
 13 federal laws. But executive orders and letters from agency heads cannot change what these laws require  
 14 under existing court decisions.

15 407. In sum and as further explained below, the SS4A Discrimination Condition, the SS4A  
 16 Enforcement Condition, the SS4A EO Condition, the FHWA Discrimination Condition, the FHWA  
 17 Enforcement Condition, and the FHWA EO Condition (collectively, the “FHWA Grant Conditions”)  
 18 violate the Separation of Powers, the Spending Clause, the Tenth Amendment’s anti-commandeering  
 19 principle, the Fifth Amendment’s void-for-vagueness doctrine, and the APA.

20 **c. DOT and the FAA attach new, unlawful conditions to FAA Grants**

21 408. Implementing the April Duffy Letter and the Trump Administration Executive Orders, on  
 22 April 25, 2025, the FAA issued a proposal labeled “Notice of modification of Airport Improvement  
 23 Program grant assurances; opportunity to comment,” providing notice and soliciting public comments on  
 24 modifications to the Grant Assurances (the “2025 FAA Grant Assurances”). In its notice, the FAA stated  
 25 that the 2025 FAA Grant Assurances would become effective immediately, notwithstanding the  
 26 opportunity to comment.

27 409. The 2025 FAA Grant Assurances require the sponsor to assure and certify that it will  
 28 “comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and

1 requirements as they relate to the application, acceptance, and use of Federal funds for this Grant.”  
 2 While this requirement existed in a similar form in prior versions of the Grant Assurances, the 2025 FAA  
 3 Grant Assurances list President Trump’s DEI Order and Gender Ideology Order (among other recent  
 4 Trump Administration executive orders), and incorporates all other executive orders, including the  
 5 Immigration Order, as “provisions” purportedly “applicable” to grant agreements, even though these  
 6 Orders on their face do not apply to non-federal entities and do not relate to funding of airport  
 7 development or infrastructure. Congress has not directed or authorized that the DEI Order, Gender  
 8 Ideology Order, or Immigration Order be imposed as Grant Assurances.

9 410. Implementing the April Duffy Letter and the Trump administration Executive Orders, on  
 10 May 6, 2025, FAA posted on its website a revised grant agreement template for 2025 for AIG grants with  
 11 added terms and conditions that did not appear in prior iterations of FAA grant agreements (the “FY  
 12 2025 FAA AIG Grant Template”). The FY 2025 FAA AIG Grant Template has not been circulated for  
 13 comment, as is statutorily required for changes to Grant Assurances.

14 411. The FY 2025 FAA AIG Grant Template imposes a new condition on all AIG grants that  
 15 implements President Trump’s directive, as set out in the DEI Order, to condition federal grant funds on  
 16 recipients’ agreement not to promote DEI and to concede that this requirement is material for purposes of  
 17 the FCA (the “FAA Discrimination Condition”). While FAA grants have long required compliance with  
 18 nondiscrimination laws and have been subject to the FCA, the FY 2025 FAA AIG Grant Template  
 19 provides:

20 Pursuant to Section (3)(b)(iv), Executive Order 14173, Ending Illegal  
 21 Discrimination and Restoring Merit-Based Opportunity, the sponsor:

22 a. Agrees that its compliance in all respects with all applicable Federal anti-  
 23 discrimination laws is material to the government’s payment decisions for  
 purposes of [the FCA]; and

24 b. certifies that it does not operate any programs promoting diversity,  
 25 equity, and inclusion (DEI) initiatives that violate any applicable Federal  
 anti-discrimination laws.

26 412. The FAA Discrimination Condition is in apparent tension with statutorily required Grant  
 27 Assurances imposed on sponsors with respect to FAA grant funds. For example, one of the statutorily  
 28 required Grant Assurances sponsors must make for airport development grants is that the airport sponsor

1 will take necessary action to ensure, to the maximum extent possible, that at least 10 percent of all  
2 businesses at the airport selling consumer products or providing consumer services to the public are small  
3 business concerns owned and controlled by “a socially and economically disadvantaged individual” or  
4 other small business concerns in historically underutilized business zones. 49 U.S.C. § 47107(e)(1).  
5 “Socially and economically disadvantaged individual” is defined to include “Black Americans, Hispanic  
6 Americans, Native Americans, Asian Pacific Americans, and other minorities,” as well as women.  
7 49 U.S.C. § 47113(a)(2); 15 U.S.C. § 637(d).

8 413. The FAA Discrimination Condition is also in apparent tension with DOT’s own  
9 regulations. For example, 49 C.F.R. 21.5, which prohibits discrimination, states, “[w]here prior  
10 discriminatory practice or usage tends, on the grounds of race, color, or national origin to exclude  
11 individuals from participation in, to deny them the benefits of, or to subject them to discrimination under  
12 any program or activity ... the applicant or recipient must take affirmative action to remove or overcome  
13 the effects of the prior discriminatory practice or usage.” 49 C.F.R. 21.5(b)(7). And the FAA  
14 Discrimination Condition is in tension with other provisions of the FY 2025 FAA AIG Grant Template.  
15 For example, the FY 2025 FAA AIG Grant Template states that the “sponsor’s [Disadvantaged Business  
16 Enterprise] and [Airport Concession Disadvantaged Business Enterprise] programs as required by  
17 49 C.F.R. Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement.”  
18 But 49 C.F.R. 23.25(e), for instance, requires the use of “race-conscious measures” in implementing the  
19 Airport Concession Disadvantaged Business Enterprise program when race-neutral measures, standing  
20 alone, are not projected to be sufficient to meet an overall goal, and sets forth examples of race-conscious  
21 measures airports can implement.

22 414. The FY 2025 FAA AIG Grant Template contains an additional condition requiring  
23 sponsors to cooperate with the enforcement of any federal law, including federal immigration  
24 enforcement efforts (the “FAA Enforcement Condition”).

25 415. In particular, the FAA Enforcement Condition incorporates immigration enforcement into  
26 a provision addressing free speech and religious liberty as follows (immigration enforcement language  
27 emphasized):  
28

The Sponsor shall ensure that Federal funding is expended in full accordance with the United States Constitution, Federal law, and statutory and public policy requirements: including but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination; *and the Sponsor 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 and the enforcement of Federal immigration law.*

416. The FY 2025 FAA AIG Grant Template further states with respect to immigration: “Title 8 - U.S.C., Chapter 12, Subchapter II - Immigration. The sponsor 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 FY 2025 FAA AIG Grant Template does not explain how those criminal immigration statutes relate to airport grants or even apply to local governments.

417. The FY 2025 FAA AIG Grant Template also requires the sponsor to assure and certify that it will “comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Grant” (the “FAA EO Condition”). While this requirement existed in a similar form in prior agreements, the FY 2025 FAA AIG Grant Template lists President Trump’s DEI Order and Gender Ideology Order (among other recent Trump Administration executive orders), and incorporates all other executive orders, including the Immigration Order, as “provisions” purportedly “applicable” to grant agreements, with no explanation of how those Orders relate to funding of airport development or infrastructure or apply to local governments.

418. The FY 2025 FAA AIG Grant Template also states that the “FAA may terminate this agreement and all of its obligations under this agreement” in certain circumstances, including if “FAA determines that termination of this agreement is in the public interest”; and further states that “[i]n terminating this agreement under this section, the FAA may elect to consider only the interests of the FAA” (the “FAA Termination Condition”). The FY 2025 FAA AIG Grant Template does not define “the public interest” or “the interests of the FAA” that would support a termination decision or expressly limit those interests to the funding of airport development or infrastructure.

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1 419. AIP and AIG grant agreements require sponsors to certify a number of sponsor assurances  
 2 (i.e., the Grant Assurances described above) that require sponsors to maintain and operate their facilities  
 3 safely, efficiently, and in accordance with specified conditions, including compliance with numerous  
 4 statutes, agency rules, and executive orders.

5 420. Additionally, The April Duffy Letter was directed to all recipients of DOT grants,  
 6 including those receiving FAA grants.

7 421. Neither the statutory provisions authorizing the FAA grants, the relevant appropriations  
 8 acts, nor any other legislation authorizes the FAA or DOT to condition the granting of these funds on the  
 9 recipient's certification that it does not "promote DEI," its admission that its compliance with this  
 10 prohibition is material for purposes of the FCA, or its agreement to "cooperate" with federal immigration  
 11 enforcement efforts. Federal grant recipients are required to comply with nondiscrimination and other  
 12 applicable federal laws. But executive orders and letters from agency heads cannot change what these  
 13 laws require under existing court decisions.

14 422. In sum and as further explained below, the FAA Discrimination Condition, the FAA  
 15 Enforcement Condition, the FAA EO Condition, the FAA Termination Condition (collectively, the "FAA  
 16 Grant Conditions"), including in the 2025 Grant Assurances, FAA AIG Grant Template, and any other  
 17 agreement, template, assurances, or other terms and conditions, violate the Separation of Powers, the  
 18 Spending Clause, the Tenth Amendment's anti-commandeering principle, and the Fifth Amendment's  
 19 void-for-vagueness doctrine.

20 **4. HHS and its Operating Divisions and Agencies Attach New Conditions to**  
 21 **HHS Grants**

22 423. HHS and its operating divisions and agencies have implemented President Trump's  
 23 Executive Orders by making changes to HHS policy and attaching new and unlawful conditions  
 24 (collectively, the "HHS Grant Conditions") across the expansive portfolio of HHS grants established by  
 25 Congress and demanding grant recipients' agreement to those new conditions.

26 424. For example, on April 16, 2025, HHS issued an updated HHS Grants Policy Statement  
 27 (2025 HHS GPS) applicable to discretionary grants that is "incorporated by reference in the official  
 28 Notice of Award (NoA) as a standard term and condition." It applies to "awards and award

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1 modifications that add funding made on or after April 16, 2025,” includes “supplements to award,  
2 competing and non-competing continuations,” and applies to “all HHS recipients and the requirements  
3 flow down to subrecipients.” The 2025 HHS GPS “is incorporated by reference as a standard term and  
4 condition of awards.” The 2025 HHS GPS states that it does not apply to nondiscretionary awards, but  
5 that “HHS agencies have the discretion to apply certain parts of the GPS to non-discretionary awards and  
6 other policies to” non-discretionary awards.<sup>5</sup>

7 425. The 2025 HHS GPS imposed a new condition on HHS grants implementing President  
8 Trump’s directive, as set out in the DEI Order, to condition federal grant funds on recipients’ agreement  
9 not to promote DEI and to concede this requirement is material for purposes of the FCA (the “HHS  
10 Discrimination Condition”). While HHS grants have long required compliance with nondiscrimination  
11 laws and have been subject to the FCA, the 2025 HHS GPS states that in addition to filing Form HHS  
12 690 (Assurance of Compliance with federal nondiscrimination laws, which was previously required  
13 under older versions of the GPS), “recipients must comply with all applicable Federal anti-discrimination  
14 laws material to the government’s payment decisions for purposes of 31 U.S.C. § 372(b)(4).” Further,  
15 the 2025 HHS GPS states that “By accepting the grant award, recipients are certifying that . . . [t]hey do  
16 not, and will not during the term of this financial assistance award, operate any programs that advance or  
17 promote DEI, DEIA, or discriminatory equity ideology in violation of Federal anti-discrimination laws . .  
18 . .” For this purpose, the following definitions apply:

- 19 (a) DEI means “diversity, equity, and inclusion.”
- 20 (b) DEIA means “diversity, equity, inclusion, and accessibility.”
- 21 (c) Discriminatory equity ideology has the meaning set forth in Section
- 22 2(b) of Executive Order 14190 of January 29, 2025.
- 23 . . . .
- 24 (e) Federal anti-discrimination laws means Federal civil rights law that
- 25 protect individual Americans from discrimination on the basis of race,
- 26 color, sex, religion, and national origin.

27  
28 <sup>5</sup> The 2025 HHS GPS does not apply to NIH grant awards.

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1 426. In July 2025, HHS released a revised 2025 GPS in which all mention of DEI was  
2 removed. Instead, the updated 2025 GPS simply stated, “By applying for or accepting federal funds . . .  
3 recipients certify compliance with all federal antidiscrimination laws and that complying with those laws  
4 is a material condition.” This revised version became effective as of July 24, 2025.

5 427. However, recently, HHS released an updated 2025 GPS, effective on October 1, 2025,  
6 doubling down on the imposition of new conditions. The 2025 GPS states that “[a]ll recipients subject to  
7 Title IX requirements must also adhere to the following term.” The terms referenced are as follows:

8 By accepting this award, including the obligation, expenditure, or  
drawdown of award funds, recipient certifies as follows:

- 9 • Recipient is compliant with Title IX of the Education Amendments  
10 of 1972, as amended, 20 U.S.C. §§ 1681 et seq., including  
11 requirements set forth in Presidential Executive Order 14168 titled  
12 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.
- 13 • The above requirements are conditions of payment that go the  
14 essence of the Agreement are therefore material terms of the  
Agreement.
- 15 • Payments under the Agreement are predicated on compliance with  
16 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.
- 17 • Recipient acknowledges that this certification reflects a change in  
18 the government’s position regarding the materiality of the foregoing  
requirements and therefore any prior payment of similar claims  
19 does not reflect the materiality of the foregoing requirements to this  
Agreement.
- 20 • Recipient acknowledges that a knowing false statement relating to  
21 Recipient’s compliance with the above requirements and/or  
eligibility for the Agreement may subject Recipient to liability  
22 under the False Claims Act, 31 U.S.C. § 3729, and/or criminal  
liability, including under 18 U.S.C. §§ 287 and 1001.

23 428. Furthermore, the newest 2025 GPS warns that Recipients who knowingly make false  
24 statements “relating to Recipient’s compliance with the above requirements and/or eligibility for the  
25 Agreement may subject Recipient to liability under the False Claims Act, 31 U.S.C. § 3729, and/or  
26 criminal liability, including under 18 U.S.C. §§ 287 and 1001.”

27 429. In addition to these agency-wide conditions, several HHS operating divisions and  
28 agencies have issued their own requirements. For example, CDC recently issued updated general terms

1 and conditions for both research and non-research awards. Those updated general terms and conditions  
2 incorporate the 2025 HHS GPS as applicable grants policy with which recipients must comply.

3 430. SAMHSA recently issued updated general terms and conditions for discretionary grants.  
4 Those updated general terms and conditions incorporate the 2025 HHS GPS as applicable grants policy  
5 with which recipients must comply. Moreover, in April 2025, SAMHSA updated its Notice of Funding  
6 Opportunity (NOFO) Application Guide to state that “[a]ll activities proposed in your application and  
7 budget narrative must be in alignment with the current Executive Orders” (the “SAMHSA EO  
8 Condition”) and that “[f]unds cannot be used to support or provide services, either directly or indirectly,  
9 to removable or illegal aliens” (the “SAMHSA Immigration Condition”).

10 431. On July 25, 2025, HRSA issued updated general terms and conditions applicable to “all  
11 active awards.” The revised HRSA terms and conditions incorporate the 2025 HHS GPS as applicable  
12 grants policy with which recipients must comply. They also contain the following provision (the “HRSA  
13 Gender Ideology Condition”):

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

- 17 • Recipient is compliant with Title IX of the Education Amendments  
18 of 1972, as amended, 20 U.S.C. §§ 1681 et seq., including the  
19 requirements set forth in Presidential Executive Order 14168 titled  
20 Defending Women From Gender Ideology Extremism and  
21 Restoring Biological Truth to the Federal Government, and Title VI  
22 of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq., and  
23 Recipient will remain compliant for the duration of the Agreement.
- 24 • The above requirements are conditions of payment that go the  
25 essence of the Agreement and are therefore material terms of the  
26 Agreement.
- 27 • Payments under the Agreement are predicated on compliance with  
28 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.

432. It is not clear if HRSA’s assertion that compliance with Title IX (or any other nondiscrimination law) purportedly now requires agreement to the Gender Ideology Order is shared by other HHS operating divisions and agencies, or is implicitly imported into other operating divisions and agencies’ conditions requiring compliance with nondiscrimination laws that do not expressly contain this added gloss.

433. Meanwhile, on May 6, 2025, HHS sent a “Dear Colleague” letter to medical schools receiving federal funds, providing “[HHS’s] current interpretation of federal law.” Regarding DEI, the letter stated “some American educational institutions . . . have adopted race-conscious policies under a broader umbrella of concepts known as ‘systemic and structural racism’ and ‘diversity, equity, and inclusion’ (DEI) to incorporate race-based criteria into training and discipline,” and “[a]dditionally, certain DEI programs may confer advantages or impose burdens based on generalizations associated with racial identity, rather than evaluating individuals on their own merits. Such programs can create a hostile environment, denying a student the ability to participate fully in school life because of the student’s race.” The letter also warned that institutions “found to be out of compliance with federal civil rights law may, consistent with applicable law, be subject to investigation and measures to secure compliance with may, if unsuccessful, affect continued eligibility for federal funding” and stated HHS would “prioritize investigations” of institutions that, among other things, require DEI or diversity statements in connection with hiring. Letter from Anthony F. Archeval, Acting Director, HHS Office for Civil Rights, to medical schools that receive federal financial assistance (May 6, 2025), <https://www.hhs.gov/sites/default/files/guidance-med-schools-dear-colleague-letter.pdf> (last visited December 17, 2025).

434. In a May 14, 2025 statement to the Senate Committee on Health, Education, Labor, and Pensions regarding President Trump’s FY 2026 budget, HHS Secretary Kennedy stated, among other things, that HHS is “committed to restoring a tradition of gold-standard, evidence based science—not one driven by politicized DEI, gender ideology, nor sexual identity.” Secretary Kennedy also stated that “NIH will no longer issue grants to promote radical gender ideology to the detriment of America’s youth, or fund dangerous gain-of-function research, though related research will continue consistent with

1 Administration policy and oversight. Our Administration is committed to eliminating radical gender  
 2 ideologies that poison the minds of Americans.” Statement by Robert F. Kennedy, Jr. on the President’s  
 3 Fiscal Year 2026 Budget before Committee on Health, Education, Labor, and Pensions (May 14, 2025),  
 4 [https://www.help.senate.gov/imo/media/doc/b1b74b8b-0612-8b5d-1904-a50babc1deea/HELP](https://www.help.senate.gov/imo/media/doc/b1b74b8b-0612-8b5d-1904-a50babc1deea/HELP%20Secretary%20Kennedy%20Testimony.pdf)  
 5 [%20Secretary%20Kennedy%20Testimony.pdf](https://www.help.senate.gov/imo/media/doc/b1b74b8b-0612-8b5d-1904-a50babc1deea/HELP%20Secretary%20Kennedy%20Testimony.pdf) (last visited December 17, 2025).

6 435. Neither the statutory provisions creating the HHS grants described in this Complaint, the  
 7 relevant appropriations acts, nor any other legislation authorizes HHS, itself or through its operating  
 8 divisions and agencies, to condition these funds on the recipient’s certification that it does not “promote”  
 9 DEI or gender ideology or its admission that its compliance with these prohibitions is material for  
 10 purposes of the FCA. Nor are Plaintiffs aware of any statute authorizing HHS, itself or through its  
 11 operating divisions and agencies, to impose such conditions on any other HHS grants that Plaintiffs have  
 12 previously received, currently receive, or are otherwise eligible to receive. Federal grant recipients must  
 13 comply with nondiscrimination and other federal laws. But executive orders and statements from agency  
 14 heads cannot change what these laws require under existing court decisions.

15 436. In sum and as further explained below, the HHS Grant Conditions violate the Separation  
 16 of Powers, the Spending Clause, the Tenth Amendment’s anti-commandeering principle, the Fifth  
 17 Amendment’s void-for-vagueness doctrine, and the APA.

## 18 **5. EPA Attaches New Conditions to EPA Grants**

19 437. EPA and its operating divisions and agencies have implemented President Trump’s  
 20 Executive Orders by attaching new and unlawful conditions (collectively, the “EPA Grant Conditions”)  
 21 across the expansive portfolio of EPA grants established by Congress and demanding grant recipients’  
 22 agreement to those new conditions.

23 438. For example, on April 3, 2025, EPA issued an updated General Terms and Conditions,  
 24 which included a new condition that states:

25 By accepting this EPA financial assistance agreement, (A) the recipient  
 26 agrees that its compliance in all respects with all applicable Federal anti-  
 27 discrimination laws is material to the government’s payment decisions for  
 28 purposes of [the Federal Claims Act]; and (B) the recipient certifies that it  
 does not operate any programs promoting Diversity, Equity and Inclusion  
 that violate any applicable Federal anti-discrimination laws.

1 U.S. Env'tl. Prot. Agency, EPA General Terms and Conditions effective October 1, 2024 or later,  
2 [https://www.epa.gov/system/files/documents/2024-10/fy\\_2025\\_epa\\_general\\_terms\\_and\\_conditions](https://www.epa.gov/system/files/documents/2024-10/fy_2025_epa_general_terms_and_conditions_effective_october_1_2024_or_later.pdf)  
3 [effective october 1 2024 or later.pdf](https://www.epa.gov/system/files/documents/2024-10/fy_2025_epa_general_terms_and_conditions_effective_october_1_2024_or_later.pdf) (last visited December 17, 2025).

4 439. The revised EPA General Terms and Conditions imposed this new condition on EPA  
5 grants implementing President Trump's directive, as set out in the DEI Order, to condition federal grant  
6 funds on recipients' agreement not to promote DEI and to concede this requirement is material for  
7 purposes of the FCA (the "EPA Discrimination Condition").

8 440. After the initial complaint in this litigation was filed, the EPA again updated its General  
9 Terms. Effective October 1, 2025, the second clause of the above-described term was changed to "By  
10 accepting this EPA financial assistance agreement...the recipient certifies that it does not operate any  
11 programs violating any applicable Federal antidiscrimination law or promoting any such violation." U.S.  
12 Env'tl. Prot. Agency, EPA General Terms and Conditions effective October 1, 2025 or later,  
13 [https://www.epa.gov/system/files/documents/2025-10/fy\\_2026\\_epa\\_general\\_terms\\_and\\_conditions](https://www.epa.gov/system/files/documents/2025-10/fy_2026_epa_general_terms_and_conditions_effective_october_1_2025_or_later.pdf)  
14 [effective october 1 2025 or later.pdf](https://www.epa.gov/system/files/documents/2025-10/fy_2026_epa_general_terms_and_conditions_effective_october_1_2025_or_later.pdf) (last visited January 14, 2026).

15 441. EPA's voluntary removal of explicit reference to DEI in the EPA General Terms and  
16 Conditions does not provide the relief and protection that the requested injunctive and declaratory relief  
17 would, and it does not moot Plaintiffs' claims. *See Friends of the Earth, Inc. v. Laidlaw Env't Servs.*  
18 *(TOC), Inc.*, 528 U.S. 167, 189–190 (2000); *Fed. Bureau of Investigation v. Fikre*, 601 U.S. 234, 241  
19 (2024). Significantly, President Trump has not repealed the DEI Order directing each federal agency  
20 head to include "in every contract or grant award" a term that the contractor or grant recipient "certify  
21 that it does not operate any programs promoting DEI" and the DOJ has not repealed its guidance  
22 regarding its overbroad interpretation of discrimination laws as they relate to DEI programs.

23 442. Furthermore, while EPA grants have long required compliance with nondiscrimination  
24 laws and have been subject to the FCA, executive orders and letters from agency heads cannot change  
25 what the laws require under existing court decisions. The EPA Discrimination Condition requiring  
26 recipients to certify that compliance "in all respects with all applicable Federal anti-discrimination laws"  
27 is always "material" for purposes of the FCA, is unauthorized by Congress and unconstitutionally vague.  
28 Furthermore, "materiality," under the FCA, "is a functional rather than formulistic, inquiry" that requires

1 courts to evaluate three factors, only one of which is whether the government’s payment was conditioned  
2 on compliance. *See United States ex rel. Bashir v. Boeing Co.*, 765 F. Supp. 3d 1111, 1128–29 (W.D.  
3 Wash. 2025). To determine materiality, a court also considered the government’s past enforcement of  
4 the requirement and the magnitude of the violation. *Id.* Accordingly, the EPA Discrimination Condition  
5 imposes an impermissibly vague legal standard that is broader than the statute allows.

6 443. In sum and as further explained below, the EPA Grant Conditions violate the Separation  
7 of Powers, the Spending Clause, the Tenth Amendment’s anti-commandeering principle, the Fifth  
8 Amendment’s void-for-vagueness doctrine, and the APA.

9 **6. The New Grant Conditions Implementing and Incorporating the Executive**  
10 **Orders Are Unlawful**

11 **a. Incorporation of the Executive Orders is Unlawful**

12 444. The conditions discussed above purport to incorporate executive orders as governing the  
13 use of federal funds. These orders in many ways purport to adopt new laws by presidential fiat, amend  
14 existing laws, and overturn court precedent interpreting laws. In so doing, the new grant conditions seek  
15 to usurp Congress’s prerogative to legislate and its power of the purse, as well as the judiciary’s power to  
16 say what the law means.

17 445. Furthermore, the executive orders are the President’s directives to federal agencies. These  
18 orders are unintelligible and vague as applied to grant recipients, and as implemented in the unlawful  
19 conditions at issue.

20 446. Without Congress passing his anti-DEI agenda, President Trump purports to have granted  
21 himself unchecked Article II powers to legislate by executive order and impose his decrees on state and  
22 local governments seeking grant funding.

23 **b. The Discrimination Condition is Unlawful**

24 447. While Plaintiffs have routinely certified compliance with federal nondiscrimination laws  
25 as a condition of federal funding in the past, the Trump Administration’s communications to federal  
26 grant recipients make clear that the agencies seek compliance with the Trump Administration’s novel,  
27 incorrect, and unsupported interpretation of federal nondiscrimination law as barring any and all DEI  
28 programs. The Trump Administration’s conception of an “illegal” DEI program is contrary to actual

1 nondiscrimination statutes and is inconsistent with what any court has endorsed when interpreting them.

2 448. For instance, a February 5, 2025 letter from Attorney General Pam Bondi to DOJ  
 3 employees states that DOJ’s Civil Rights Division will “penalize” and “eliminate” “illegal DEI and  
 4 DEIA” activities and asserts that such activities include any program that “divide[s] individuals based on  
 5 race or sex”—potentially reaching affinity groups or teaching about racial history. Letter from Pam  
 6 Bondi, Attorney General, to all DOJ Employees (Feb. 5, 2025), [https://www.justice.gov/ag/media/  
 7 1388501/dl?inline](https://www.justice.gov/ag/media/1388501/dl?inline) (last visited December 17, 2025).

8 449. A second letter from Attorney General Bondi to grant recipients, issued on July 29, 2025,  
 9 purports to clarify the application of federal antidiscrimination laws to DEI programs for entities  
 10 receiving federal funds. However, contrary to established legal precedent, the letter states that entities  
 11 that promote DEI training programs that include discussions of inherent bias, white privilege, or toxic  
 12 masculinity violate federal law. The letter instructs entities to “[m]onitor their parties that receive federal  
 13 funds to ensure ongoing compliance, including reviewing program materials.” Letter from Pam Bondi,  
 14 Attorney General, to all Federal Agencies (Jul. 29, 2025) <https://www.justice.gov/ag/media/1409486/dl>  
 15 (last visited December 17, 2025). If this requirement, to condition federal funding on the content of  
 16 program materials, were enforced, it would be a violation of the First Amendment. *See Rosenberger v.*  
 17 *Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 831 (1995).

18 450. Defendant Turner has stated that “HUD is carrying out Present Trump’s executive orders,  
 19 mission, and agenda,” by “[a]lign[ing] all programs, trainings, and *grant agreements* with the President’s  
 20 Executive Orders, removing diversity, equity, inclusion (DEI).” Press Release No. 25-059, *HUD*  
 21 *Delivers Mission-Minded Results in Trump Administration’s First 100 Days*, [https://www.hud.gov/news/  
 22 hud-no-25-059](https://www.hud.gov/news/hud-no-25-059) (emphasis added) (last visited December 17, 2025).

23 451. Neither the text of Title VI nor any other statute or other condition enacted by Congress  
 24 prohibits recipients of federal funding from considering issues of diversity, equity, or inclusion. The  
 25 Supreme Court has never interpreted Title VI to prohibit diversity, equity, and inclusion programs.  
 26 Indeed, existing case law rejects the Trump Administration’s expansive views on nondiscrimination law  
 27 with respect to DEI. The President has no authority to declare, let alone change, federal  
 28 nondiscrimination law by executive fiat. Yet, the DEI Order seeks to impose his views on DEI as if they

1 were the law by using federal grant conditions and the threat of FCA enforcement to direct and coerce  
 2 federal grant recipients into acquiescing in his Administration’s unorthodox legal interpretation of  
 3 nondiscrimination law.

4 452. Accepting these conditions would permit Defendants to threaten Plaintiffs with  
 5 burdensome and costly enforcement action, backed by the FCA’s steep penalties, if they refuse to align  
 6 their activities with President Trump’s political agenda. This threat is intensified by the grant conditions  
 7 that purport to have recipients concede the DEI certification’s “materiality”—an otherwise “demanding”  
 8 element of an FCA claim. Further, even short of bringing a suit, the FCA authorizes the Attorney  
 9 General to serve civil investigative demands on anyone reasonably believed to have information related  
 10 to a false claim—a power that could be abused to target grant recipients with DEI initiatives the Trump  
 11 Administration disapproves of. *See* 31 U.S.C. § 3733.

12 453. The FCA is intended to discourage and remedy fraud perpetrated against the United  
 13 States—not to serve as a tool for the Executive to impose unilateral changes to nondiscrimination law,  
 14 which is instead within the province of Congress in adopting the laws and the Judiciary in interpreting  
 15 them. Requiring recipients to certify that compliance “in all respects with all applicable Federal anti-  
 16 discrimination laws” is always “material” for purposes of FCA imposes an impermissibly vague standard  
 17 that is broader than the statute allows.

18 **c. The Immigration Enforcement Condition is Unlawful**

19 454. Congress has not delegated to Defendants the authority to condition grant funding on a  
 20 recipient’s agreement not to “promot[e] . . . illegal immigration” or “abet[] policies that seek to shield  
 21 illegal aliens from deportation.” It is also unclear what type of conduct this might encompass, leaving  
 22 federal grant recipients without fair notice of what activities would violate the prohibition and giving  
 23 federal agencies free rein to arbitrarily enforce it.

24 455. Indeed, on April 24, 2025, Judge William H. Orrick of the United States District Court for  
 25 the Northern District of California preliminarily enjoined the federal government from “directly or  
 26 indirectly taking any action to withhold, freeze, or condition federal funds from” sixteen cities and  
 27 counties on the basis of Section 2(a)(ii) of the Immigration Order, which directs that no “Federal  
 28 payments” be made to states and localities if the “effect,” even unintended, is to fund activities that the

Administration deems to “facilitate” illegal immigration or “abet so-called ‘sanctuary’ policies.” *City & Cnty. of San Francisco v. Trump*, 25-CV-01350- WHO, 2025 WL 1186310 (N.D. Cal. Apr. 24, 2025). The court ruled that the direction “to withhold, freeze, or condition federal funding apportioned to localities by Congress, violate[s] the Constitution’s separation of powers principles and the Spending Clause”; “violate[s] the Fifth Amendment to the extent [it is] unconstitutionally vague and violate[s] due process”; and “violate[s] the Tenth Amendment because [it] impose[s] [a] coercive condition intended to commandeer local officials into enforcing federal immigration practices and law.” *Id.* at \*2.

**d. The Verification Condition is Unlawful**

456. Further, PRWORA does not authorize the Verification Condition for at least two reasons. First, PRWORA explicitly does not require states to have an immigration status verification system until twenty-four months after the Attorney General promulgates certain final regulations. 8 U.S.C. § 1642(b). Those regulations must, among other things, establish procedures by which states and local governments may verify eligibility and procedures for applicants to prove citizenship “in a fair and nondiscriminatory manner.” *Id.* § 1642(b)(ii), (iii). The Attorney General has issued interim guidance and a proposed verification rule, but has not implemented a final rule. *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). This failure to promulgate a final regulation left in place DOJ’s Interim Guidance, which requires only the examination of identity and immigration documentation. 62 Fed. Reg. at 61348–49. Absent implementing regulations, Plaintiffs are not required to verify participants’ immigration status using SAVE or an equivalent verification system. *See* 42 U.S.C. § 1320b-7. Requiring recipients to do so exceeds the authority created in PRWORA.

457. Second, SAVE is a database operated by the U.S. Department of Homeland Security, acting through U.S. Citizenship and Immigration Services, that is sometimes used to assist federal immigration enforcement actions. The Verification Condition would require Plaintiffs to gain access to this system, train their own employees how to use the system, and require them to enter immigration information. Such an effort to commandeer local resources for matters related to federal immigration

1 enforcement is counter to federal law, as well as applicable local and state laws precluding local  
2 participation in federal immigration enforcement.

3 **e. The Gender Ideology Condition is Unlawful**

4 458. The Gender Ideology Condition improperly seeks to force federal grant recipients to no  
5 longer recognize transgender, gender diverse, and intersex people by restricting funding that promotes  
6 “gender ideology.” This violates HUD’s own regulations, which require that grant recipients and  
7 subrecipients ensure “[e]qual access to CPD programs, shelters, other buildings and facilities, benefits,  
8 services, and accommodations is provided to an individual in accordance with the individual’s gender  
9 identity, and in a manner that affords equal access to the individual’s family,” including facilities with  
10 “shared sleeping quarters or shared bathing facilities.” 24 C.F.R. § 5.106(b)–(c). HUD regulations also  
11 prohibit subjecting an individual “to intrusive questioning or asked to provide anatomical information or  
12 documentary, physical, or medical evidence of the individual’s gender identity.” *Id.* § 5.106(b)(3).

13 459. While Defendant Turner announced HUD will no longer enforce these regulations, the  
14 regulations remain in effect and applicable to the CPD programs.

15 460. The Gender Ideology Condition is also vague. The definition of “gender ideology” is not  
16 only demeaning, but also idiosyncratic and unscientific. Further, given the expansive meaning of  
17 “promote,” federal agencies have free rein to punish recipients who merely collect information on gender  
18 identity, which has long been authorized and encouraged by HUD in its binding regulations, as such  
19 information can be used to improve the quality and efficacy of homeless services.

20 461. The Trump Administration has already terminated federal funding as a result of agency  
21 action carrying out the Gender Ideology Order and related executive orders. For example, one of the  
22 largest free and reduced-cost healthcare providers in Los Angeles reported that the U.S. Centers for  
23 Disease Control and Prevention (CDC) terminated a \$1.6 million grant that would have supported the  
24 clinic’s transgender health and social health services program. The CDC ended the grant in order to  
25 comply with the Gender Ideology Order. *See* Kristen Hwang, LA clinics lose funding for transgender  
26 health care as Trump executive orders take hold, Cal Matters (Feb. 4, 2025), [https://calmatters.org/health/  
27 2025/02/trump-executive-order-transgender-health/](https://calmatters.org/health/2025/02/trump-executive-order-transgender-health/) (last visited December 17, 2025).

28 462. On February 28, 2025, Judge Lauren King of the United States District Court for the

1 Western District of Washington enjoined enforcement of the Gender Ideology Order in part (including  
 2 parts the Gender Ideology Condition it incorporates by references), holding that the plaintiffs had shown  
 3 a likelihood of success on their claims that the Order violates the Fifth Amendment’s guarantee of equal  
 4 protection and the separation of powers. *Washington v. Trump*, 768 F. Supp. 3d 1239, 1261-77 (W.D.  
 5 Wash. 2025).

6 463. Particularly relevant here, the Court ruled that the plaintiffs were likely to succeed in  
 7 showing that “[b]y attaching conditions to federal funding that were . . . unauthorized by Congress,”  
 8 subsections 3(e) and (g) of the Gender Ideology Order “usurp Congress’s spending, appropriation, and  
 9 legislative 11 powers.” *Id.* at \*1261. The Court explained that the Gender Ideology Order “reflects a  
 10 ‘bare desire to harm a politically unpopular group’” by “deny[ing] and denigrat[ing] the very existence of  
 11 transgender people.” *Id.* at 1277 (citation omitted).

12 **f. The Abortion Condition is Unlawful**

13 464. The Abortion Condition (including the Abortion Order incorporated by reference) does  
 14 not implement, but rather exceeds, the Hyde Amendment’s narrow prohibition on using federal funds to  
 15 pay for, or require others to perform or facilitate, abortions. While it purports to apply the Hyde  
 16 Amendment—a provision that has been enacted in successive appropriations acts that limits the use of  
 17 federal funds for abortions (subject to narrow exceptions)—in reality, it goes well beyond the Hyde  
 18 Amendment. The Hyde Amendment to the 2024 Appropriations Act specifically and narrowly prohibits  
 19 the use of appropriated funds to “require any person to perform, or facilitate in any way the performance  
 20 of, any abortion” or to “pay for an abortion, except where the life of the mother would be endangered if  
 21 the fetus were carried to term, or in the case of rape or incest.” Pub. L. 118-42, §§ 202, 203, 138 Stat. 25  
 22 (March 9, 2024). But the Hyde Amendment to the 2024 Appropriations Act does not require grant  
 23 recipients to refrain from “promot[ing] abortion”—a vague prohibition that is susceptible to arbitrary  
 24 enforcement. And in doing so, the Abortion Condition usurps Congress’s spending, appropriations, and  
 25 legislative power. In sum and as further explained below, Defendants’ imposition of the Abortion  
 26 Condition violates the Separation of Powers, the Spending Clause, the Fifth Amendment’s void- for-  
 27 vagueness doctrine, and the APA.

28 465. In sum and as further explained below, Defendant’s imposition of the EO Grant

1 Conditions violates the Separation of Powers, the Spending Clause, the Fifth Amendment’s void- for-  
 2 vagueness doctrine, and the APA.

3 **F. Multiple Courts Have Issued Injunctions Preventing the Imposition of the Unlawful**  
 4 **Grant Conditions**

5 466. Since President Trump issued the executive orders directing federal agencies to impose  
 6 new conditions on grant funding and terminate funding for noncompliance, numerous plaintiffs—  
 7 including states, cities, and nonprofit organizations—have filed lawsuits seeking to enjoin the  
 8 implementation of these directives. In response, courts across the country have granted preliminary  
 9 injunctions to halt enforcement of these unlawful conditions while litigation proceeds. *See e.g., Chicago*  
 10 *Women in Trades v. Trump*, No. 25 C 2005, 2025 WL 1114466 (N.D. Ill. Apr. 14, 2025); *City & Cnty. of*  
 11 *San Francisco v. Trump*, No. 25-CV-01350-WHO, 2025 WL 1186310 (N.D. Cal. Apr. 24, 2025),  
 12 opinion clarified, No. 25-CV-01350-WHO, 2025 WL 1358492 (N.D. Cal. May 9, 2025); *S. Educ. Found.*  
 13 *v. United States Dep’t of Educ.*, No. CV 25-1079 (PLF), 2025 WL 1453047 (D.D.C. May 21, 2025);  
 14 *Martin Luther King, Jr. Cnty. v. Turner*, No. 2:25-CV-814, 2025 WL 1582368 (W.D. Wash. June 3,  
 15 2025); *San Francisco A.I.D.S. Found. v. Trump*, No. 25-CV-01824-JST, 2025 WL 1621636 (N.D. Cal.  
 16 June 9, 2025).

17 467. On July 2, 2025, presumably in response to the numerous injunctions granted against  
 18 DOT and HUD, DOT Secretary Sean Duffy sent another letter to all recipients of DOT funding,  
 19 attempting to walk back his earlier statements in the April Duffy Letter (described in paragraphs 85 and  
 20 86 above). The July Duffy Letter states:

21 “I write to clarify that the Department will no longer enforce [Biden’s  
 22 executive policies], or any other requirements incorporated into its Federal  
 23 financial assistance agreements that are inconsistent with the policy  
 24 objectives of this Administration and current DOT leadership... This letter  
 does not impose new conditions or requirements, but instead serves merely  
 to provide notice that DOT will not enforce or require adherence to any of  
 the [Biden executive policies]”

25 Letter from Sean Duffy, DOT Secretary, to All Recipients of DOT Funding (July 2, 2025) (the “July  
 26 Duffy Letter”), <https://www.transportation.gov/sites/dot.gov/files/2025-07/SecDOT%20letter%20to%20recipients%20of%20FFA%2007022025.pdf> (last visited December 17, 2025).

28 468. The July Duffy Letter directly contradicts his earlier April Letter, the Executive Orders,

1 and the June 5th Letter from Claudette Fernandez. Furthermore, the July letter completely ignores the  
 2 provisions of Trump’s Executive Orders, which Defendants have implemented, that directs each federal  
 3 agency head to include “in every contract or grant award” a term that the contractor or grant recipient  
 4 “certify that it does not operate any programs promoting DEI,” and directs all agency heads to ensure  
 5 “that Federal payments to States and localities do not, by design or effect, facilitate the subsidization or  
 6 promotion of illegal immigration, or abet so-called ‘sanctuary’ policies that seek to shield illegal aliens  
 7 from deportation.”

8 469. The conditions placed on HUD and DOT funding require more than compliance with pre-  
 9 existing law. The DEI Order, the Immigration Order, and subsequent agency letters broadly reinterpret  
 10 the law to prohibit all DEI and require affirmative cooperation with federal immigration enforcement,  
 11 indicating these new conditions are not reflective of existing law and instead are intended to further the  
 12 Trump administration’s policy goals—not Congress’s.

13 470. Although the July Duffy Letter purports to “clarify” the Department’s position, it does not  
 14 retract or disavow the Administration’s prior threats to vigorously enforce its sweeping and unlawful  
 15 interpretation of federal law. Nowhere does the July Duffy Letter state that DOT will cease enforcing  
 16 this Administration’s novel, overbroad, and contradictory interpretation of federal law, nor does it  
 17 acknowledge the numerous official statements by federal officials warning that noncompliance with  
 18 these policies will result in the loss of funding.

19 **G. Plaintiffs, as Recipients of Pass-Through Grants, have a Reasonable Concern that**  
 20 **the Challenged Conditions Apply to them**

21 471. Local government entities that receive federal grant funds may receive the funds directly  
 22 from a federal agency (as a direct recipient) or indirectly from a pass-through entity (as a sub-recipient).  
 23 Where a pass-through entity (for example, a state) provides federal funds to a sub- recipient (for  
 24 example, a city or county within the state), the pass-through entity is responsible for ensuring the sub-  
 25 recipient complies with applicable federal requirements. *See* 2 C.F.R. §§ 200.332(b)(2) (pass-through  
 26 entity must provide to the sub-recipient information regarding “[a]ll requirements of the subaward,  
 27 including requirements imposed by Federal statutes, regulations, and the terms and conditions of the  
 28 Federal award”), 200.332(e) (pass-through entity must “[m]onitor the activities of a subrecipient as

1 necessary to ensure that the subrecipient complies with Federal statutes, regulations, and the terms and  
 2 conditions of the subaward”); 2 C.F.R. Part 2400 (incorporating 2 C.F.R. Part 200 requirements with  
 3 respect to federal awards made by HUD to non-federal entities); 2 C.F.R. Part 1201 (same for DOT).

4 472. Consistent with 2 CFR § 200.332, the grant agreements and terms and conditions at issue  
 5 in this case incorporate applicable federal requirements against any sub-recipients.

6 473. For example, the FY 2024 SS4A General Terms and Conditions require that the recipient  
 7 “monitor activities under this award, including activities under subawards and contracts, to ensure ... that  
 8 those activities comply with this agreement,” and state that “[i]f the Recipient makes a subaward under  
 9 this award, the Recipient shall monitor the activities of the subrecipient in compliance with 2 C.F.R.  
 10 200.332(e).” Exhibit A to the 2024 SS4A General Terms and Conditions—which incorporates the DEI  
 11 and Gender Ideology Orders and two criminal immigration statutes as “applicable provisions” as  
 12 discussed above—states that “[p]erformance under this agreement shall be governed by and in  
 13 compliance with the following requirements, as applicable, to the type of organization of the Recipient  
 14 and any applicable sub-recipients.” The 2025 FHWA General Terms and Conditions, the Exhibits  
 15 thereto, as well as the 2025 FAA Grant Assurances and FY 2025 FAA AIG Grant Template, contain  
 16 similar language.

17 474. The FTA Master Agreement requires that grant recipients take measures to assure that  
 18 “Third Party Participants” (defined to include sub-recipients) “comply with applicable federal laws,  
 19 regulations, and requirements, and follow applicable federal guidance, except as FTA determines  
 20 otherwise in writing.”

21 475. Plaintiffs receive federal grant funds via pass-through grants (i.e., as sub-recipients) and  
 22 has a reasonable concern, based on the April Duffy Letter, applicable regulations, and the grant  
 23 agreement language discussed above, that the challenged grant conditions apply to their use of the pass-  
 24 through funds.

25 **H. Plaintiffs face an Impossible Choice of Accepting Illegal Conditions, or Forgoing**  
 26 **Federal Grant Funding for Critical Programs and Services**

27 476. The grant conditions that Defendants seek to impose leave Plaintiffs with the Hobson’s  
 28 choice of accepting illegal conditions that are unauthorized by Congress, violate the Constitution, and

1 accompanied by poison pill provisions that increase the risk of FCA claims, or forgoing the grant  
 2 funds—funds paid (at least partly) through local federal taxes—that are essential for vital local services.  
 3 The uncertainty caused by these illegal conditions has impeded Plaintiffs’ ability to budget and plan for  
 4 services covered by the grants.

5 477. Defendants’ overbroad interpretation and enforcement of the EO Conditions is not  
 6 hypothetical. On or around August 18, 2025, the City of Fresno received an email from HUD notifying it  
 7 “that the Department is questioning the accuracy of the City of Fresno’s certification that the Community  
 8 Development Block Grant (CDBG) funds described in its Fiscal Year 2025 Consolidated Plan/Action  
 9 Plan (the Plan) will be administered in conformity with applicable laws, including Executive Orders.” In  
 10 the email, HUD explained that it had “identified language in Fresno’s 2025 Consolidated Plan/Action  
 11 Plan “that is not consistent with Executive Order 14148 Additional Rescissions of Harmful Executive  
 12 Orders and Actions, Executive Order 14151 Ending Radical and Wasteful Government DEI Programs  
 13 and Preferencing, Executive Order 14173 Ending Illegal Discrimination and Restoring Merit-Based  
 14 Opportunity, and Executive Order 14168 Defending Women From Gender Ideology Extremism and  
 15 Restoring Biological Truth to the Federal Government.” Specifically, HUD took issue with the  
 16 following statements from Fresno’s 2025 Consolidated Plan/Action Plan:

17 “The DRIVE Plan has goals to improve housing affordability and stability,  
 18 reduce **racial** and economic isolation and support **environmental justice**  
 and sustainability, most of which are addressed in the strategic plan.”

19 “Emergency shelter for **all genders and their dependent children** who  
 20 are fleeing domestic violence.” (emphasis added by HUD).

21 478. HUD stated that “[t]his language includes provisions that appear to be inconsistent with  
 22 the implementation of federal programs pursuant to the referenced executive orders, and directed Fresno  
 23 to “[r]emove or replace all ‘equity’ references throughout the document,” “[r]emove or replace all  
 24 “environmental justice” references throughout the document,” “[r]emoving all “transgender” references  
 25 throughout the document,” and provide assurances that “[t]he City of Fresno shall not use grant funds to  
 26 promote ‘gender ideology,’ as defined in Executive Order (E.O.) 14168, Defending Women from Gender  
 27 Ideology Extremism and Restoring Biological Truth to the Federal Government.”

28 479. HUD directed Fresno to take these actions no later than 12:00 pm EDT Thursday, **August**

1 **21, 2025**, and provided that “failure to address HUD’s concerns regarding the certification may result in  
2 HUD determining that the certification is inaccurate or unsatisfactory, which will result in disapproval of  
3 the Plan.”

4 480. Plaintiffs, the City of Redwood City, City of Saint Paul, and the County of Marin have  
5 received similar notices from HUD.

6 481. Additionally, Defendants’ unlawful conduct has already occurred, causing delay and  
7 uncertainty in Plaintiffs’ budgeting and long-term planning processes. Furthermore, the deadlines for  
8 Plaintiffs to submit assurances and agreements containing the unlawful conditions to Defendants are  
9 imminent.

10 482. For example, on or around August 14, 2025, the City of Fresno received an additional  
11 Grant Offer and Agreement letter from the FAA regarding an ATP grant. The Grant Offer included the  
12 2025 FAA Grant Assurances, which, as discussed above, incorporate the unlawful EO Conditions, as  
13 “provisions” purportedly “applicable” to grant agreements. The Grant Offer stated, “You may not make  
14 any modification to the text, terms or conditions of the grant offer,” and provided that the offer will  
15 expire and the FAA will not be obligated to pay any part of the costs of the designated ATP project  
16 unless the offer has been fully executed and finalized on or before **August 29, 2025**.

17 483. Additionally, Fresno has already spent \$13 million of FAA funding allocated for Fresno’s  
18 use on FAT’s terminal expansion project. Those funds are set to expire on **September 30, 2025**. If  
19 Fresno and the other FAA Plaintiffs do not submit for reimbursement by the end of September, which  
20 requires assuring compliance with the 2025 FAA Grant Assurances, they will lose out on millions of  
21 previously allocated federal funds.

22 484. Fresno was also recently awarded a Brownfields and Land Revitalization RFL grant of  
23 \$750,000 on August 5, 2025, with the mailing date of August 8, 2025. For an RFL grant, the recipient  
24 demonstrates its commitment to carry out the award by either drawing down funds within 21 days after  
25 the EPA award or amendment mailing date. Additionally, the City of Fresno has received notice from  
26 the EPA that it intends to award the City an additional grant that will also be subject to the unlawful EO  
27 Conditions.

28 485. Nor is the heightened FCA risk merely speculative. A May 19, 2025, letter from Deputy

1 Attorney General Todd Blanche to certain DOJ divisions and offices and all U.S. Attorneys states that  
 2 DOJ is setting up a “Civil Rights Fraud Initiative”—co-led by DOJ’s Civil Fraud Section and Civil  
 3 Rights Division—that will “utilize the [FCA] to investigate and, as appropriate, pursue claims against  
 4 any recipient of federal funds that knowingly violates civil rights laws.” The letter asserts the FCA “is  
 5 implicated whenever federal-funding recipients or contractors certify compliance with civil rights laws  
 6 while knowingly engaging in racist preferences, mandates, policies, programs, and activities, including  
 7 through diversity, equity, and inclusion (DEI) programs that assign benefits or burdens on race, ethnicity,  
 8 or national origin.” It further states that the Civil Fraud Section and Civil Rights Division will “engage  
 9 with the Criminal Division, as well as with other federal agencies that enforce civil rights requirements  
 10 for federal funding recipients” (including HUD) and “will also establish partnerships with state attorneys  
 11 general and local law enforcement to share information and coordinate enforcement actions.” Finally,  
 12 the letter states that DOJ “strongly encourages” private lawsuits under the FCA and “encourages anyone  
 13 with knowledge of discrimination by federal-funding recipients to report that information to the  
 14 appropriate federal authorities so that [DOJ] may consider the information and take any appropriate  
 15 action.” Letter from Todd Blanche, Deputy Attorney General, to DOJ Offices, 19 Divisions, and U.S.  
 16 Attorneys (May 19, 2025), <https://www.justice.gov/dag/media/1400826/dl?inline> (last visited December  
 17 17, 2025).

18 486. Withholding HUD grants from the HUD Plaintiffs could result in a loss of millions of  
 19 dollars in funding for housing and other services that Plaintiffs have adopted to meet the basic needs of  
 20 their residents. It would result in Plaintiffs being unable to serve their residents resulting in the loss of  
 21 access to housing, healthcare, counseling, and other assistance. This funding represents a significant  
 22 percentage of those Plaintiffs’ total budgets for housing and community support programs, including  
 23 community development and infrastructure improvements, affordable housing creation and rehabilitation,  
 24 and homelessness services such as outreach, shelter, prevention, and rapid re-housing. The loss of this  
 25 funding would have devastating effects on Plaintiffs and their residents.

26 487. Withholding DOT grants from Plaintiffs would result in the loss of hundreds of millions  
 27 of dollars in funding for critical services and projects for their residents.

28 488. Withholding FTA grants from the FTA Plaintiffs would result in the loss of funding for

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1 public transit services, including capital projects, maintenance, and improvements, which would cause  
2 long-lasting harm to Plaintiffs’ finances and lead to delays in or the elimination of critical transit projects.  
3 The loss of this funding, which represents a significant percentage of those Plaintiffs’ total budgets for  
4 public transit services, would threaten transit improvements and safety initiatives and have severe  
5 negative impacts on these services.

6 489. Withholding FHWA grants from the FHWA Plaintiffs would result in the loss of funding  
7 for street and roadway improvements, including enhancing pedestrian safety, reconfiguring major  
8 roadways to decrease crashes and improve transit, and building bike lanes, that will result in long-lasting  
9 harm to Plaintiffs’ finances, delays to or elimination of critical infrastructure and safety projects, and  
10 diversion of funds from other crucial local projects. The loss of this funding, which represents a  
11 significant percentage of those Plaintiffs total budgets for street and roadway projects, would threaten  
12 roadway improvement and safety initiatives and have severe negative impacts on these projects.

13 490. Withholding FAA grants from the FAA Plaintiffs would result in the loss of funding for  
14 ongoing and future airport projects—including development and improvement of runways, taxiways,  
15 terminals, and control tower as well as airport transit, safety, and sustainability projects—that will result  
16 in long-lasting harm to those Plaintiffs’ finances, delays to or elimination of critical airport infrastructure  
17 and safety projects, and diversion of funds from other crucial projects. The loss of this funding, which  
18 represents a significant percentage of those Plaintiffs’ total budgets for airport development and  
19 infrastructure projects, would threaten airport improvement and safety initiatives and have severe  
20 negative impacts on these critical projects.

21 491. Withholding HHS grants from the HHS Plaintiff would threaten or eliminate critical  
22 individual and public health services for millions of residents. Loss of funding could decimate public  
23 health budgets and cause residents, including those most vulnerable, to lose access to meals, medical  
24 care, housing, and lifesaving social safety net services. Loss of funding could also devastate local public  
25 health and child welfare agencies, which may be forced to conduct significant layoffs and operational  
26 reductions.

27 492. Withholding EPA grants from the EPA Plaintiffs would result in the loss of funding for  
28 environmental protection and infrastructure projects, including brownfields mitigation and sustainability

1 development, which would cause long-lasting harm to Plaintiffs’ finances and lead to delays in or  
 2 elimination of critical environmental and public health projects. The loss of this funding would have  
 3 severe negative impacts on public health and environmental safety.

4 493. The prospective loss of these federal funds would be so catastrophic to Plaintiffs’ finances  
 5 that the essential services it provides—including housing support, public transportation, street and  
 6 roadway safety improvements, and airport operations—would be effectively halted. Plaintiffs cannot  
 7 replace these funds with local revenue without drastically cutting other critical services or abandoning  
 8 their obligations to vulnerable populations. Yet agreeing to the vague, unauthorized, and contradictory  
 9 grant conditions—even if Plaintiffs were to make a good faith effort to revise their policies to comply—  
 10 would expose them to significant liability. Certifying compliance with these conditions carries an  
 11 intolerable risk of enforcement under the False Claims Act, and constitutional and statutory challenges  
 12 from stakeholders who could assert that Plaintiffs have adopted discriminatory or otherwise unlawful  
 13 policies in violation of their rights. Plaintiffs thus face an impossible dilemma: either accept legal  
 14 jeopardy by complying with the conditions, or forfeit funding that is essential to the health, safety, and  
 15 well-being of their residents.

16 **V. CAUSES OF ACTION**

17 **Count 1: Separation of Powers**  
 18 *(All Grant Conditions)*

19 494. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though  
 20 fully set forth herein.

21 495. The Constitution “exclusively grants the power of the purse to Congress, not the  
 22 President.” *City & Cnty. of S.F. v. Trump*, 897 F.3d 1225, 1231 (9th Cir. 2018). This power is  
 23 “directly linked to [Congress’s] power to legislate,” and “[t]here is no provision in the Constitution  
 24 that authorizes the President to enact, to amend, or to repeal statutes.” *Id.* (second alteration in  
 25 original) (quoting *Clinton v. City of New York*, 524 U.S. 417, 438 (1998)).

26 496. The Constitution vests Congress—not the Executive—with legislative powers, *see*  
 27 U.S. Const. art. 1, § 1, the spending power, *see* U.S. Const. art. 1, § 8, cl. 1, and the appropriations  
 28 power, *see* U.S. Const. art. 1, § 9, cl. 7. Absent an express delegation, only Congress is entitled to

1 attach conditions to federal funds.

2 497. “The Framers viewed the legislative power as a special threat to individual liberty, so  
3 they divided that power to ensure that ‘differences of opinion’ and the ‘jarrings of parties’ would  
4 ‘promote deliberation and circumspection’ and ‘check excesses in the majority.’” *Seila Law LLC v.*  
5 *Consumer Fin. Prot. Bureau*, 591 U.S. 197, 223 (2020) (quoting *The Federalist* No. 70, at 475 (A.  
6 Hamilton) and citing *id.*, No. 51, at 350).

7 498. “As Chief Justice Marshall put it, this means that ‘important subjects ... must be  
8 entirely regulated by the legislature itself,’ even if Congress may leave the Executive ‘to act under  
9 such general provisions to fill up the details.’” *West Virginia v. EPA*, 597 U.S. 697, 737 (2022)  
10 (Gorsuch, J., concurring) (quoting *Wayman v. Southard*, 10 Wheat. 1, 42–43, 6 L. Ed. 253 (1825)).

11 499. The separation of powers doctrine thus represents perhaps the central tenet of our  
12 Constitution. *See, e.g., Trump v. United States*, 603 U.S. 593, 637–38 (2024); *West Virginia v.*  
13 *EPA*, 597 U.S. at 723–24; *Seila Law LLC*, 591 U.S. at 227; *see also Clinton v. City of New York*,  
14 524 U.S. 417, 450 (1998) (“Liberty is always at stake when one or more of the branches seek to  
15 transgress the separation of powers” (Kennedy, J., concurring)). Consistent with these principles,  
16 the executive acts at the lowest ebb of his constitutional authority and power when he acts contrary  
17 to the express or implied will of Congress. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579,  
18 637 (1952) (Jackson, J., concurring).

19 500. Pursuant to the separation of powers doctrine, the Executive Branch may not “claim[]  
20 for itself Congress’s exclusive spending power, . . . [or] coopt Congress’s power to legislate.” *City*  
21 *& Cnty. of S.F.*, 897 F.3d at 1234. Indeed, the Impoundment Control Act of 1974 requires the  
22 President to notify and request authority from Congress to rescind or defer the expenditure of funds  
23 before acting to withhold or pause federal payments. 2 U.S.C. §§ 681 et seq. The President has not  
24 done so.

25 501. Congress has not conditioned the provision of Defendants’ grants on compliance with  
26 a prohibition on all forms of DEI, facilitating enforcement of federal immigration laws, verification  
27 of immigration status, or prohibiting the “promot[ion]” of “gender ideology” or “elective abortion.”  
28 Nor has Congress delegated to Defendants the authority to attach the EO Grant Conditions

1 unilaterally.

2 502. By imposing the EO Grant Conditions on grant recipients, Defendants are unilaterally  
3 attaching new conditions to federal funding without authorization from Congress.

4 503. Further, the “[t]he interpretation of the meaning of statutes, as applied to justiciable  
5 controversies,” is “exclusively a judicial function.” *Loper Bright Enterprises v. Raimondo*, 603  
6 U.S. 369, 411–13 (2024) (internal quotations omitted).

7 504. Here, Defendants seek to impose conditions that purport to require compliance with  
8 the law interpreted and envisioned by the Executive, contrary to Congress’s authority to legislate  
9 and the Judiciary’s interpretation of the law’s meaning.

10 505. For these reasons, Defendants’ conditioning of grants on compliance with the EO  
11 Grant Conditions violates the separation of powers doctrine.

12 **Count 2: Spending Clause**  
13 **(All Grant Conditions)**

14 506. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully  
15 set forth herein.

16 507. The Spending Clause of the U.S. Constitution provides that “Congress”—not the  
17 Executive—”shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts  
18 and provide for the common Defence and general Welfare of the United States ...” U.S. Const. art. I,  
19 § 8, cl. 1.

20 508. As described above, Defendants violate the separation of powers because the EO Grant  
21 Conditions are neither expressly nor impliedly authorized by Congress. For the same reasons,  
22 Defendants violate the Spending Clause.

23 509. The Spending Clause also requires States to have fair notice of conditions that apply to  
24 federal funds disbursed to them. *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17, 25 (1981).  
25 The grant conditions must be set forth “unambiguously.” *Arlington Cent. Sch. Dist. Bd. of Educ. v.*  
26 *Murphy*, 548 U.S. 291, 296 (2006).

27 510. Moreover, funding restrictions may only impose conditions that are reasonably related to  
28 the federal interest in the project and the project’s objectives. *S. Dakota v. Dole*, 483 U.S. 203, 207, 208

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1 (1987).

2 511. Finally, federal funds “may not be used to induce the States to engage in activities that  
3 would themselves be unconstitutional.” *Id.* at 210.

4 512. Even if Congress had delegated authority to the Executive and HUD, DOT, HHS, or EPA  
5 to condition grant funding on terms prohibiting all forms of DEI, facilitating enforcement of federal  
6 immigration laws, verification of immigration status, or prohibiting the “promot[ion]” of “gender  
7 ideology” or “elective abortion.”, the EO Grant Conditions would violate the Spending Clause by:

- 8 a. imposing conditions that are ambiguous, *see Pennhurst*, 451 U.S. at 17;
- 9 b. imposing conditions that are so severe as to be coercive;
- 10 c. imposing conditions that are not germane to the stated purpose of grant program funds,  
11 *see Dole*, 483 U.S. at 207 (“[C]onditions on federal grants might be illegitimate if they are  
12 unrelated ‘to the federal interest in particular national projects or programs.’”); and
- 13 d. with respect to the prohibition on promotion of “gender ideology,” imposing a condition  
14 that purports to require grant recipients to act unconstitutionally by discriminating on the  
15 basis of gender identity and sex, *see id.* at 210.

16 **Count 3: Tenth Amendment**  
17 **(All Grant Conditions)**

18 513. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully  
19 set forth herein.

20 514. The Tenth Amendment provides that “[t]he powers not delegated to the United States by  
21 the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the  
22 people.” U.S. Const. amend X.

23 515. Legislation that “coerces a State to adopt a federal regulatory system as its own” “runs  
24 contrary to our system of federalism.” *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 577–78  
25 (2012). States must have a “legitimate choice whether to accept the federal conditions in exchange for  
26 federal funds.” *Id.* at 578.

27 516. Even if Congress had delegated authority to the Executive or Defendants to condition  
28 grant funds on any policy that “promotes” the Administration’s conception of an “illegal” DEI program

1 or on participation in the Administration’s enforcement of federal immigration laws, the EO Grant  
2 Conditions would violate the Tenth Amendment by imposing conditions so severe as to coerce recipients  
3 of such funds to adopt the Administration’s reinterpretation of the law. *See id.* at 579 (Congress may not  
4 impose conditions so severe that they “cross[] the line distinguishing encouragement from coercion.”).

5 **Count 4: Fifth Amendment Due Process – Vagueness**  
6 *(All Grant Conditions)*

7 517. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully  
8 set forth herein.

9 518. Under the Due Process Clause of the Fifth Amendment, a governmental enactment, like  
10 an executive order, is unconstitutionally vague if it “fails to provide a person of ordinary intelligence fair  
11 notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory  
12 enforcement.” *United States v. Williams*, 553 U.S. 285, 304 (2008).

13 519. The EO Grant Conditions are unconstitutionally vague.

14 520. Initially, each of the EO Conditions is vague in purporting to incorporate all executive  
15 orders. Executive orders are the President’s directives to federal agencies and do not apply to federal  
16 grant recipients. The purported incorporation of all executive orders into the recipient or sponsor’s use of  
17 grant funds renders the other new grant conditions vague.

18 521. Each of the Discrimination Conditions fails to clearly define what conduct is prohibited  
19 and fails to specify clear standards for enforcement. This uncertainty is amplified by agency letters and  
20 statements, including the April Duffy Letter and Turner statements, that conflict with federal statutes and  
21 case law.

22 522. The HUD Enforcement Condition (which incorporates by reference the Immigration  
23 Order) fails to define the terms “facilitates,” “subsidization,” or “promotion” with respect to “illegal  
24 immigration,” leaving federal grant recipients without fair notice of what would violate the prohibition.

25 523. Similarly, each of the DOT Enforcement Conditions fails to define the terms “cooperate,”  
26 “cooperating,” “impeding,” and “enforcement” with respect to “Federal immigration law,” leaving  
27 federal grant recipients without fair notice of what would violate the prohibition.

28 524. Similarly, the FAA Termination Condition does not define “the public interest” or “the

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1 interests of the FAA” that would support a termination decision or expressly limit those interests to the  
2 funding of airport development or infrastructure, leaving federal grant recipients without fair notice of  
3 what would trigger termination of their grants.

4 525. The definition of “gender ideology” adopted in the Gender Ideology Condition is so vague  
5 as to require people of ordinary intelligence to guess as to what is prohibited. By the same token, the  
6 Gender Ideology Condition affords unfettered discretion to Defendants to determine, based on their  
7 subjective interpretation, whether a federal grant is used to “promote gender ideology.”

8 526. The meaning of the phrase “promote elective abortion” is also vague, leaving federal grant  
9 recipients without fair notice of what activities would violate the prohibition and affording Defendants  
10 unfettered discretion.

11 527. The vague terms and conditions described above are likely to chill individuals from  
12 engaging in First Amendment-protected speech on matters of public concern

13 528. Thus, the EO Grant Conditions are unconstitutionally vague in violation of the Fifth  
14 Amendment’s Due Process Clause.

15 **Count 5: Administrative Procedure Act, 5 U.S.C. § 706(2) –**

16 **Arbitrary and Capricious**  
17 *(All Grant Conditions)*

18 529. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully  
19 set forth herein.

20 530. Defendant HUD, HHS, EPA, and DOT, as well as the DOT operating administrations (the  
21 FTA, the FHWA, and the FAA), are all “agenc[ies]” as defined in the APA, 5 U.S.C. § 551(1).  
22 Additionally, the HUD Grant Agreements, the FTA Master Agreement, the FY 2024 SS4A General  
23 Terms and Conditions, the 2025 FHWA General Terms and Conditions, the 2025 FAA Grant  
24 Assurances, the FY 2025 FAA AIG Grant Template, HHS’s revised Grants Policy Statement, and the  
25 EPA’s updated General Terms and Conditions are all agency actions subject to review under the APA.

26 531. Final agency actions (1) “mark the ‘consummation’ of the agency’s decision making  
27 process” and (2) are ones “by which ‘rights or obligations have been determined,’ or from which ‘legal  
28 consequences will flow.’” *Bennett v. Spear*, 520 U.S. 154, 178 (1997).

1 532. The HUD Grant Agreements are final agency actions because they reflect final  
2 decisions—in accord with presidential directives—to require grant recipients to comply with various  
3 Trump Administration policy priorities as a condition to receiving federal HUD funds. *See State ex rel.*  
4 *Becerra v. Sessions*, 284 F. Supp. 3d 1015, 1031–32 (N.D. Cal. 2018) (holding that agency decision to  
5 impose new conditions on federal grants satisfies both tests for final agency action because it  
6 “articulate[s] that certain funds” will “require adherence to the” new conditions and “opens up the  
7 [recipient] to potential legal consequences,” including withholding of funds if the recipient declines to  
8 accept the conditions); *Planned Parenthood of N.Y.C., Inc. v. U.S. Dep’t of Health & Human Servs.*, 337  
9 F. Supp. 3d 308, 328–29 (S.D.N.Y. 2018) (same).

10 533. Similarly, the FTA Master Agreement, the FY 2024 SS4A General Terms and Conditions,  
11 the 2025 FHWA General Terms and Conditions, the 2025 FAA Grant Assurances, the FY 2025 FAA  
12 AIG Grant Template, HHS’s revised Grants Policy Statement, and the EPA’s updated General Terms and  
13 Conditions are final agency actions because they reflect final decisions—in accord with presidential  
14 directives—to require grant recipients to comply with various Administration policy priorities as a  
15 condition to receiving federal funds.

16 534. These actions determine rights and obligations and produce legal consequences because  
17 they exercise purported authority to create new conditions on already awarded funds that would obligate  
18 recipients to comply with the Executive’s policy priorities.

19 535. Under the APA, a “court shall . . . hold unlawful and set aside agency actions, findings,  
20 and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in  
21 accordance with law.” 5 U.S.C. § 706(2)(A).

22 536. “An agency action qualifies as ‘arbitrary’ or ‘capricious’ if it is not ‘reasonable and  
23 reasonably explained.’” *Ohio v. EPA*, 603 U.S. 279, 292 (2024) (quoting *FCC v. Prometheus Radio*  
24 *Project*, 592 U.S. 414, 423 (2021)). A court must therefore “ensure, among other things, that the agency  
25 has offered ‘a satisfactory explanation for its action[,] including a rational connection between the facts  
26 found and the choice made.’” *Id.* (quoting *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm*  
27 *Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983)). “[A]n agency cannot simply ignore ‘an important  
28 aspect of the problem’” addressed by its action. *Id.* at 293.

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1           537. HUD has provided no reasoned explanation for its decision to impose conditions related to  
2 prohibiting all forms of DEI, facilitating enforcement of federal immigration laws, verifying immigration  
3 status, and prohibiting the “promot[ion]” of “gender ideology” and “elective abortion” on HUD funds  
4 that have no connection to those issues.

5           538. HUD has provided no reasoned basis for withholding funds Congress appropriated for  
6 disbursement, except to the extent the HUD Grant Agreements make clear HUD is enacting the  
7 President’s policy desires, as expressed in Executive Orders 14168, 14173, 14182, and 14218, in place of  
8 Congress’s intent.

9           539. HUD also ignores essential aspects of the “problem” it purports to address via the CPD  
10 programs, including the Plaintiff’s reasonable and inevitable reliance on now at-risk funds, the  
11 expectation of reimbursement from already appropriated funds, and the potential impacts on low-income  
12 and homeless individuals and families who may be dissuaded from accepting services if they must verify  
13 their immigration status or are unable to use their identified gender in doing so.

14           540. Similarly, neither DOT nor its OAs have provided any reasoned basis for anti-DEI-related  
15 conditions to the FTA, FHWA, and FAA grants, seeking to impose the Administration’s view on all  
16 policies and programs, even when they are unrelated to programs receiving such grants. Moreover, DOT  
17 and its EOs failed to explain how Plaintiffs could simultaneously comply with each of the DOT  
18 Discrimination Conditions, while also complying with statutory, regulatory, and other requirements that  
19 are in apparent tension with those Conditions.

20           541. Nor has HHS provided a reasoned basis for imposing conditions related to “cooperation”  
21 with federal immigration enforcement on federal funds that have no connection to that issue.

22           542. Defendants have also ignored Plaintiffs’ reasonable reliance on awarded, but not yet  
23 obligated, funds and the expectation of reimbursement from already appropriated funds.

24           543. Plaintiffs therefore ask the Court to declare under 5 U.S.C. § 706 and 28 U.S.C. § 2201  
25 that Defendants imposing the EO Grant Conditions violates the APA because it is arbitrary and  
26 capricious; provide preliminary relief under 5 U.S.C. § 705; and preliminarily and permanently enjoin  
27 Defendants from imposing those Conditions without complying with the APA.  
28

**Count 6: Administrative Procedure Act, 5 U.S.C. § 706(2) –**

**Contrary to the Constitution**

*(All Grant Conditions)*

544. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

545. Under the APA, a “court shall ... hold unlawful and set aside agency actions, findings, and conclusions found to be ... contrary to constitutional right, power, privilege, or immunity.” 5 U.S.C. § 706(2)(B).

546. As described above, Defendants’ imposition of the EO Grant Conditions violates bedrock constitutional provisions and principles, including the separation of powers between the President and Congress, the Spending Clause, the Tenth Amendment, and the Fifth Amendment.

547. Plaintiffs therefore ask the Court to declare under 5 U.S.C. § 706 and 28 U.S.C. § 2201 that Defendants imposing the EO Grant Conditions violates the APA because it is contrary to constitutional rights, powers, privileges, or immunities; provide preliminary relief under 5 U.S.C. § 705; and preliminarily and permanently enjoin Defendants from imposing those Conditions without complying with the APA.

**Count 7: Administrative Procedure Act, 5 U.S.C. § 706(2) –**

**In Excess of Statutory Authority**

*(All Grant Conditions)*

548. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

549. Under the APA, a “court shall ... hold unlawful and set aside agency actions, findings, and conclusions found to be ... in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(C).

550. Defendants may exercise only authority granted to them by statute or the Constitution.

551. No law or provision of the Constitution authorizes Defendants to impose extra-statutory conditions not authorized by Congress on congressionally-appropriated funds.

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1 552. Neither the Housing and Community Development Act, the Cranston-Gonzalez National  
2 Affordable Housing Act, the Stewart B. McKinney Homeless Assistance Act, the AIDS Housing  
3 Opportunity Act nor any other legislation authorizes HUD to impose conditions on HUD grant funding  
4 related to prohibiting all forms of DEI, facilitating enforcement of federal immigration laws, verification  
5 of immigration status, or prohibiting the “promot[ion]” of “gender ideology” or “elective abortion.”.

6 553. Similarly, none of the statutes authorizing the HHS, EPA, FTA, FHWA, and FAA grants,  
7 nor the relevant appropriations acts, authorize Defendants to impose conditions on federal funding  
8 prohibiting all forms of DEI, facilitating enforcement of federal immigration laws, verification of  
9 immigration status, or prohibiting the “promot[ion]” of “gender ideology” or “elective abortion.”.

10 554. Indeed, by threatening to unilaterally withhold funds on the basis of unauthorized agency-  
11 imposed grant conditions, Defendants attempt to circumvent the process established in the Impoundment  
12 Control Act of 1974, which requires the President to notify and request authority from Congress to  
13 rescind or defer the expenditure of funds before acting to withhold or pause federal payments. 2 U.S.C.  
14 §§ 681 et seq.

15 555. Plaintiffs therefore ask the Court to declare under 5 U.S.C. § 706 and 28 U.S.C. § 2201  
16 that Defendants imposing the EO Grant Conditions violates the APA because it is in excess of  
17 Defendants’ statutory jurisdiction, authority, or limitations, or short of statutory right; provide  
18 preliminary relief under 5 U.S.C. § 705; and preliminarily and permanently enjoin Defendants from  
19 imposing those Conditions without complying with the APA.

20 **Count 8: Administrative Procedure Act, 5 U.S.C. § 706(2) –**

21 **Agency Action Contrary to Regulation**  
22 *(HUD Grant Conditions)*

23 556. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully  
24 set forth herein.

25 557. Under the APA, a “court shall . . . hold unlawful and set aside agency actions, findings,  
26 and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in  
27 accordance with law” or “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A).  
28

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1 558. The NOFOs under which Plaintiffs were awarded HUD funding for FY 2024 contain no  
2 terms or conditions related to prohibiting all forms of DEI, facilitating enforcement of federal  
3 immigration laws, verifying immigration status, or prohibiting the “promot[ion]” of “gender ideology” or  
4 “elective abortion.”

5 559. By imposing new terms and conditions on the HUD Grant Agreements not included in the  
6 NOFO or authorized elsewhere, HUD failed to comply with its own regulations governing the formation  
7 of CPD grant agreements and failed to observe the procedure required by law.

8 560. Plaintiffs therefore ask the Court to declare under 5 U.S.C. § 706 and 28 U.S.C. § 2201  
9 that imposing the HUD Grant Conditions violates the APA because it is contrary to HUD’s own  
10 regulations and thus not in accordance with law and without observance of procedure required by law;  
11 provide preliminary relief under 5 U.S.C. § 705; and preliminarily and permanently enjoin HUD from  
12 imposing the HUD Grant Conditions without complying with the APA.

13 **Count 9: Administrative Procedure Act, 5 U.S.C. § 706(2) –**

14 **Agency Action Without Procedure Required By Law**  
15 *(HUD, FTA, and FFA Grant Conditions)*

16 561. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully  
17 set forth herein.

18 562. Under the APA, a “court shall . . . hold unlawful and set aside agency actions, findings,  
19 and conclusions found to be . . . without observance of procedure required by law.” 5 U.S.C.  
20 § 706(2)(D).

21 563. An agency “must abide by its own regulations.” *Fort Stewart Schs. v. Fed. Labor Rels.*  
22 *Auth.*, 495 U.S. 641, 654 (1990).

23 564. HUD has adopted regulations requiring it to proceed by notice-and-comment rulemaking  
24 including for “matters that relate to . . . grants.” 24 C.F.R. § 10.1 (“It is the policy of the Department of  
25 Housing and Urban Development to provide for public participation in rulemaking with respect to all  
26 HUD programs and functions, including matters that relate to public property, loans, grants, benefits, or  
27 contracts . . . .”); 24 C.F.R. § 10.2 (definition of “rule”); 24 C.F.R. §§ 10.7–10.10 (notice-and-comment  
28 procedures); *Yesler Terrace Cmty. Council v. Cisneros*, 37 F.3d 442, 447, 448 (9th Cir. 1994).

1           565. The FTA is subject to statutory notice-and-comment requirements for certain statements  
 2 pertaining to grants issued under title 49, chapter 53 of the U.S. Code (including the FTA Grants).  
 3 Specifically, “[t]he Administrator of the [FTA] shall follow applicable rulemaking procedures under  
 4 section 553 of title 5 before the [FTA] issues a statement that imposes a binding obligation on recipients  
 5 of Federal assistance under this chapter.” 49 U.S.C. § 5334(k)(1). For this purpose, “binding obligation”  
 6 means “a substantive policy statement, rule, or guidance document issued by the [FTA] that grants rights,  
 7 imposes obligations, produces significant effects on private interests, or effects a significant change in  
 8 existing policy.” *Id.* § 5334(k)(2).

9           566. The FTA, and the FAA have also adopted regulations requiring those agencies to proceed  
 10 by notice-and-comment rulemaking when they promulgate substantive rules. *See* 49 C.F.R.  
 11 §§ 601.22(a), 601.24–601.28 (FTA); 14 C.F.R. Part 11 (FAA).

12           567. Through the HUD Grant Conditions, HUD has not just continued preexisting  
 13 requirements to comply with nondiscrimination laws and the other types of conditions approved by and  
 14 consistent with the relevant statutes and regulations, but also attached new conditions on HUD Grant  
 15 Agreements that require grant recipients to comply with various Administration directives as a condition  
 16 to receiving federal funds. These new conditions thus comprise a substantive rule, not an interpretive  
 17 rule or general statement of policy. *See, e.g., Yesler Terrace Cmty. Council*, 37 F.3d at 449 (“Substantive  
 18 rules ... create rights, impose obligations, or effect a change in existing law pursuant to authority  
 19 delegated by Congress.”); *Erringer v. Thompson*, 371 F.3d 625, 630 (9th Cir. 2004) (explaining that a  
 20 rule is substantive, i.e., “legislative,” *inter alia*, if there is no “adequate legislative basis for enforcement  
 21 action” without the rule, or if the rule “effectively amends a prior legislative rule”).

22           568. In imposing the HUD Grant Conditions, HUD failed to comply with the notice-and-  
 23 comment requirements set forth in its own regulations, and thus failed to observe the procedure required  
 24 by law.

25           569. Through the FTA and FAA Grant Conditions the FTA and the FAA have not just  
 26 continued preexisting requirements to comply with nondiscrimination laws and the other types of  
 27 conditions approved by and consistent with the relevant statutes and regulations, but attached new terms  
 28 and conditions to FTA and FAA Grants that require grant recipients to comply with various

1 Administration directives as a condition to receiving federal transit, and airport funds, which are  
2 substantive policy statements, rules, or guidance documents that impose obligations or effect significant  
3 changes in existing policy, not interpretive rules or general statements of policy.

4 570. In imposing the FTA Grant Conditions, the FTA failed to comply with the notice-and-  
5 comment requirements set forth in 49 U.S.C. § 5334(k)(1) and its own regulations, and thus failed to  
6 observe procedure required by law.

7 571. In imposing the FAA Grant Conditions, the FAA failed to comply with the notice-and-  
8 comment requirements set forth in its own regulations, and thus failed to observe procedure required by  
9 law.

10 572. Plaintiffs therefore ask the Court to declare under 5 U.S.C. § 706 and 28 U.S.C. § 2201  
11 that imposing the HUD Grant Conditions, the FTA Grant Conditions, and the FAA Grant Conditions  
12 violates the APA because it is without observance of procedure required by law; provide preliminary  
13 relief under 5 U.S.C. § 705; and preliminarily and permanently enjoin Defendants from imposing those  
14 Conditions without complying with the APA.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs request the following relief:

17 A. A declaration that the HUD Grant Conditions are unconstitutional, are not authorized by  
18 statute, violate the APA, and are otherwise unlawful;

19 B. A preliminary and permanent injunction enjoining HUD and its program offices from  
20 imposing or enforcing the HUD Grant Conditions or any materially similar terms or conditions to any  
21 HUD application or action plans submitted by, or HUD funds received by or awarded to Plaintiffs,  
22 directly or indirectly;

23 C. A declaration that the DOT Grant Conditions are unconstitutional, are not authorized by  
24 statute, violate the APA, and are otherwise unlawful;

25 D. A preliminary and permanent injunction enjoining DOT Defendants from imposing or  
26 enforcing the DOT Grant Conditions or any materially similar terms or conditions to any DOT funds  
27 received by or awarded to Plaintiffs, directly or indirectly;

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1 E. A declaration that the HHS Grant Conditions are unconstitutional, are not authorized by  
2 statute, violate the APA, and are otherwise unlawful;

3 F. A preliminary and permanent injunction enjoining HHS from imposing or enforcing the  
4 HHS Grant Conditions or any materially similar terms or conditions to any HHS funds received by or  
5 awarded to Plaintiffs, directly or indirectly;

6 G. A declaration that the EPA Grant Conditions are unconstitutional, are not authorized by  
7 statute, violate the APA, and are otherwise unlawful;

8 H. A preliminary and permanent injunction enjoining EPA from imposing or enforcing the  
9 EPA Grant Conditions or any materially similar terms or conditions to any EPA funds received by or  
10 awarded to Plaintiffs, directly or indirectly;

11 I. Award Plaintiffs their reasonable costs and attorneys' fees; and

12 J. Grant any other further relief that the Court deems fit and proper.

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Attorneys at Law

1 Dated: January 30, 2026

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2 By:           /s/ Jonathan V. Holtzman            
3 JONATHAN V. HOLTZMAN

4 Attorneys for Plaintiffs  
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11 Hillsboro; City of Mountain View; City of Salem;  
12 City of San Mateo; City of Santa Clara; City of  
13 Santa Cruz; City of Stockton; City of Sunnyvale;  
14 City of Vacaville; County of Los Angeles;  
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11 Dated: January 30, 2026

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22 Dated: January 30, 2026

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6 Dated: January 30, 2026

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11 Dated: January 30, 2026

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**ECF ATTESTATION**

I, JONATHAN V. HOLTZMAN, am the ECF user whose identification and password are being used to file this SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF. Pursuant to Civil Local Rule 5-1(i)(3), I hereby attest that the other above-named signatories concur in this filing.

Dated: January 30, 2026

RENNE PUBLIC LAW GROUP

By:           /s/ Jonathan V. Holtzman            
JONATHAN V. HOLTZMAN

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