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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COUNTY OF SANTA CLARA; CITY AND
COUNTY OF SAN FRANCISCO, *et al.*,

Plaintiffs,

vs.

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security, *et al.*,

Defendants.

Case No. 5:25-cv-08330-EJD

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY INJUNCTION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Hearing Date: November 20, 2025
Time: 9:00 a.m.
Before: Hon. Edward J. Davila
Place: U.S. District Court
San Jose Courthouse
280 South 1st Street
Courtroom 4—5th Floor
San Jose, CA 95113

Trial Date: None set

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on November 20, 2025 at 9:00 a.m., or as soon thereafter as may be heard¹ before the Honorable Edward Davila in Courtroom 4 of the United States District Court for the Northern District of California, 280 South 1st Street, San Jose, CA 95113, Plaintiffs² will and hereby do move the Court pursuant to Federal Rule of Civil Procedure 65 for a preliminary injunction against Defendants: Kristi Noem in her official capacity as Secretary of Homeland Security (Secretary); the United States Department of Homeland Security (DHS); David Richardson in his official capacity as the Senior Official Performing the Duties of the Administrator of FEMA; the Federal Emergency Management Agency (FEMA); and their officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with them (collectively, “Defendants”). Plaintiffs respectfully move the Court to enter a preliminary injunction before October 24, 2025, preventing Defendants from imposing, enforcing, or implementing unlawful and unauthorized grant conditions or any materially similar terms or conditions to any federal funds received or awarded to Plaintiffs, directly or indirectly.

This Motion presents the following issues to be decided: (1) whether Plaintiffs have shown a likelihood of success on the merits of their claims that Defendants’ imposition, enforcement, or

¹ Plaintiffs are moving to shorten time since relief is needed no later than October 24, 2025. Plaintiffs are also seeking to relate this case to *City & County of San Francisco v. Trump* (N.D. Cal., Case No. 3:25-cv-01350-WHO).

² Plaintiffs are the County of Santa Clara, City and County of San Francisco, City of Alameda, City of Bellingham, City of Berkeley, City of Culver City, City of Los Angeles, County of Los Angeles, Los Angeles County Consolidated Fire Protection District, Martin Luther King, Jr. County, County of Marin, City of Oakland, City of Palo Alto, City of Pasadena, City of Petaluma, Pierce County, City of Sacramento, City of San Diego, County of San Diego, City of San José, County of San Mateo, City of Santa Monica, City of Santa Rosa, Snohomish County, County of Sonoma, Sonoma County Community Development Commission, Sonoma County Water Agency (“Sonoma Water”), Sonoma Valley County Sanitation District (“SVCSD”), and the City of Tucson.

1 implementation of the grant conditions violate the Separation of Powers and spending power in the
 2 United States Constitution; (2) whether Plaintiffs have shown a likelihood of success on the merits of
 3 their claims that Defendants' imposition, enforcement, or implementation of the grant conditions
 4 violate the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)-(C); (3) whether Plaintiffs face a
 5 likelihood of irreparable harm in the absence of a preliminary injunction; and (4) whether the balance
 6 of equities and public interest favor preliminary injunctive relief.

7 Plaintiffs Motion is based on this Notice of Motion and Motion, the accompanying supporting
 8 Memorandum of Points and Authorities, the accompanying supporting declarations and exhibits
 9 thereto, the Request for Judicial Notice, as well as the papers, evidence, and records on file in this
 10 action, and any other written or oral evidence or argument as may be presented at or before the time
 11 this motion is heard by the Court.

12
 13 Dated: October 1, 2025

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[Additional signatories identified on signature page]

MEMORANDUM OF POINTS AND AUTHORITIES
INTRODUCTION

Plaintiffs move for a preliminary injunction preventing the Secretary of Homeland Security Kristi Noem (Secretary), U.S. Department of Homeland Security (DHS), David Richardson as the Senior Official Performing the Duties of the Administrator of FEMA, and the Federal Emergency Management Agency (FEMA) (collectively, “Defendants”) from imposing and enforcing unauthorized and unlawful conditions on Plaintiffs’ public safety, disaster preparedness, and emergency response management awards. Specifically, Defendants attempt to require grantees to comply with the Trump Administration’s ill-defined, unrestrained, and legally incorrect rewrite of federal anti-discrimination laws; prohibit grantees from undertaking any activities advancing or promoting diversity, equity, inclusion, and accessibility; and force compliance with roving executive orders—including those it might issue in the future. Defendants do so without statutory or constitutional authorization, in disregard of bedrock principles of separation of powers and the spending power, and in direct contravention of the requirements of the Administrative Procedure Act (APA). This disregard of the rule of law is an effort to further President Donald Trump’s political agenda at the expense of public safety and emergency management and preparedness intentionally redressed by Congress.

Plaintiffs are a compilation of local governments and local government agencies that serve communities characterized by unique topography, diverse demographics, and scores of distinct emergency management and preparedness needs. They also contain hubs for business and tourism, national and historical landmarks, and cutting-edge industries. The funding at issue includes grants that enhance public safety, disaster preparedness, and emergency response management throughout Plaintiffs’ streets, transit systems, and port systems, deter acts of terrorism threatening their communities and critical infrastructure, and promote the health and safety of the public and the first responders supporting them.

Defendants have forced Plaintiffs to make the Hobson’s choice between agreeing to abandon values, laws, and policies and commit to flagrantly unclear and unlawful conditions, or forgoing millions of dollars of funding earmarked for public safety, disaster preparedness, and emergency management at a time when Plaintiffs are already operating under severe financial strain. The risk to

Plaintiffs is not hypothetical—Plaintiffs must decide as early as **October 24, 2025** whether to agree to Defendants’ unlawful conditions or forfeit federal funding they would otherwise be able to accept without unlawful conditions. *See* Chi Decl. (Santa Monica) ¶ 19. Since Plaintiffs are likely to succeed on the merits of their claims and will be immediately and irreparably harmed if these unlawful conditions are allowed to stand, and since the balance of the equities weighs strongly in Plaintiffs’ favor, the Court should issue a preliminary injunction before **October 24** that bars Defendants from imposing and enforcing the unlawful grant conditions identified in this Motion.

BACKGROUND

I. Congressional Funding for Local Emergency Management and Preparedness.

For decades, Congress has appropriated billions of dollars to support state and local disaster preparedness and emergency response to prevent and mitigate the harms caused by unpredictable disasters, emergencies, and security threats. *See Illinois v. FEMA*, No. 25-206 WES, 2025 WL 2716277, at *1 (D.R.I. Sept. 24, 2025). “Over time, this support has been expanded through various statutes such as the Stafford Act, the USA PATRIOT Act, the Maritime Transportation and Security Act, and the Post-Katrina Emergency Management Reform Act, among others.” *Id.* To carry out these appropriations, Congress has authorized a large and varied portfolio of grant programs that it has directed Defendants to administer. These congressionally authorized programs vary in scope and purpose, including to respond to, prevent, and prepare for wildfires, floods, acts of terrorism, and more.³ Despite the nuance of each authorization, they are united by a common theme: to provide local governments with critical financial support to prepare for and respond to emergencies, threats, and

³ *See, e.g.*, 15 U.S.C. § 2229 (Assistance to Firefighters [AFG]); 15 U.S.C. § 2229a (Staffing for Adequate Fire and Emergency Response [SAFER]); 6 U.S.C. § 604 (Urban Area Security Initiative [UASI]); 6 U.S.C. § 605 (State Homeland Security Grant Program [SHSP]); 6 U.S.C. § 762 (Emergency Management Performance Grants [EMPG]); 6 U.S.C. § 1135 (Transit Security Grant Program [TSGP]); 42 U.S.C. § 5165f (National Urban Search and Rescue Response System [US&R]); 46 U.S.C. § 70107 (Port Security Grant Program [PSGP]); 42 U.S.C. § 5170c(a) (Hazard Mitigation Grant Program [HMGP]); 6 U.S.C. § 596b(a) (Securing the Cities [STC]).

1 similar safety needs.

2 Plaintiffs have consistently relied on these funds to protect and serve their communities
3 through a range of initiatives, ranging from increasing staffing of and programs for first responders,
4 securing equipment to promote health, safety, and security, developing and protecting critical
5 infrastructures, preparing for disasters like fires, floods, and earthquakes, updating technological
6 capabilities, and building robust regional partnerships. *E.g.*, Ott Decl. (Alameda) ¶ 11; Milstein Decl.
7 (Sacramento) ¶ 23; Spaulding Decl. (SVCSD) ¶ 6; Spaulding Decl. (Sonoma Water) ¶ 10; McCluskey
8 Decl. (King County) ¶ 13; Johnson Decl. (Oakland) ¶ 23; Jeakle Decl. (San Diego County) ¶ 34;
9 Bowman Decl. (SF) ¶¶ 4-7; Kim Decl. (SF) ¶¶ 4-10; Thomas Decl. (SF) ¶¶ 3-5; Wu Decl. (SF) ¶¶ 3-5;
10 Reed Decl. (Santa Clara) ¶¶ 30-33; Burrus Decl. (SF) ¶¶ 8-11. In exercising its legislative authority to
11 designate these programs and support local emergency management capabilities, Congress did not
12 provide Defendants unfettered authority to attach conditions to awards unrelated to the primary
13 purpose of the funding programs. Nor did Congress authorize Defendants to pick and choose funding
14 recipients based on the political agenda of the current Administration in office.

15 **II. Defendants Have Attached Unlawful Conditions on Plaintiffs' Awards.**

16 Each of the Plaintiffs has applied for or received, will imminently apply for, or anticipate
17 receiving, funding under one or more of the following DHS grant programs: Port Security Grant
18 Program (PSGP); Transit Security Grant Program (TSGP); Assistance to Firefighters (AFG); Staffing
19 for Adequate Fire and Emergency Response (SAFER); Homeland Security Grant Programs (HSGP);
20 Emergency Management Performance Grants Program (EMPG); Urban Search & Rescue (US&R);
21 Hazard Mitigation Grant Program (HMGP); and Securing the Cities (STC). In the final days of the
22 2025 federal fiscal year, Defendants began issuing awards for these grants and presenting Plaintiffs
23 with grant agreements incorporating terms from DHS's FY 2025 DHS Standard Terms and Conditions
24 Version 3 Dated April 18, 2025. (Request for Judicial Notice ["RJN"], Ex. 1 ("Standard DHS
25 Terms").) On their face, the Standard DHS Terms "apply to all new federal awards of federal financial
26 assistance (federal awards) for which the federal award date occurs in FY 2025 and flow down to
27 subrecipients unless a term or condition specifically indicates otherwise." Standard DHS Terms at p. 1.
28 And in practice, Defendants have incorporated many of these terms directly into Plaintiffs' grant

awards.⁴ These unprecedented new terms include conditions that are not authorized by the Constitution or any statute, and instead stem from President Trump’s executive orders directing agencies to require grant recipients to implement his political agenda as a prerequisite to receiving and maintaining funding. In short, this agenda includes redefining the meaning of federal anti-discrimination law inconsistently with *actual* federal anti-discrimination law, prohibiting whatever the Administration believes DEIA activities are, and demanding compliance with an unknown set of current and future executive orders, among other things.

Specifically, Plaintiffs’ awards contain two categories of unlawful conditions addressed in this Motion: (1) a Discrimination Condition and requirements implementing that condition; and (2) an Executive Order Condition requiring compliance with all executive orders related to grants.⁵ These

⁴ Defendants have incorporated the Standard DHS Terms by copying and pasting the terms into Plaintiffs’ awards as “Articles” in FEMA’s grant package. Exemplars of the final awards for each program are attached to the Declaration of David S. Louk (“Louk Decl.”) as Exhibits 2-9. For readability, Plaintiffs cite to the Standard DHS Terms rather than the specific award.

⁵ Plaintiffs’ complaint also sets forth Defendants’ unlawful attempt to force Plaintiffs to comply with civil immigration conditions contained in the Standard DHS Terms. (Compl. ¶¶ 169-170, 172, 183-190.) Plaintiffs are not moving at this time for relief from those conditions because they were already vacated as arbitrary and capricious in *Illinois v. FEMA*, No. 25-206 WES, 2025 WL 2716277 (D.R.I. Sept. 24, 2025). (*See, e.g.*, Louk Decl., Ex. 3 (SF PSGP Award 1), Article 60 (“Impact of State of Illinois v. FEMA Injunction”). In addition, as to some Plaintiffs in this case, a court has prohibited Defendants from applying the civil immigration conditions to DHS grants because doing so would violate the court’s injunction of executive orders that mandate the defunding of jurisdictions that limit cooperation with ICE. *City & County of San Francisco v. Trump*, No. 25-cv-01350-WHO, 2025 WL 1738675, at *1-3 (N.D. Cal. June 23, 2025). (*See, e.g.*, SF PSGP Award 1, Article 59 (“Impact of San Francisco v. Trump Preliminary Injunction”).) Despite these two court orders and Defendants’ sworn assertion to another court that the immigration conditions would not appear in many grants (*see* RJN, Ex. 2 (Richardson Decl.)), at least one of Plaintiffs’ awards to date include the civil immigration terms

conditions are referred to as the “Unlawful DHS Conditions.” Each is addressed in turn.

A. Discrimination Condition

Under the new DHS terms Plaintiffs must certify that “[t]hey do not, and will not . . . operate any programs that advance or promote DEI, DEIA, or discriminatory equity ideology in violation of Federal anti-discrimination laws,” and that “[t]hey do not engage in and will not . . . engage in, a discriminatory prohibited boycott.” Standard DHS Terms § C.XVII.2.a.i-ii. The Standard DHS Terms also broadly require recipients to comply with various specified civil rights laws.⁶ And DHS also broadly requires that “[r]ecipients must comply with all applicable Federal anti-discrimination laws material to the government’s payment decisions for purposes of 31 U.S.C. § 372(b)(4).” *Id.* § C.XVII.⁷

Though at least some of these conditions may seem to do nothing more than require compliance with federal law, they are in fact far more pernicious. Plaintiffs have regularly agreed to comply with federal antidiscrimination laws as a condition of federal funding in the past, but—as detailed in Section I.B.2.a, below—the federal government has now cast doubt on the well-established meaning of those provisions. President Trump, DHS, and other federal agencies have provided skewed

without any carveouts for the litigation identified. (*See* Louk Decl., Ex. 7 (Sacramento US&R Award).) Plaintiffs understand this was an oversight and reserve the right to move for immediate relief if Defendants intended more.

⁶ *See, e.g.*, Standard DHS Terms § C.III [Age Discrimination Act of 1975]; *Id.* § C.IV [Americans with Disabilities Act of 1990]; *Id.* § C.VII [Civil Rights Act of 1964]; *Id.* § C.VIII [Civil Rights Act of 1968]; *Id.* § C.XIV [Title IX]; *Id.* § C.XVI [Equal Treatment of Faith-Based Organizations]; *Id.* § C.XXIV [Civil Rights Act of 1964, Title VI]; *Id.* § C.XXXIII [Rehabilitation Act of 1973].

⁷ Another term requires recipients to certify that “[t]hey do not, and will not . . . operate any program that benefits illegal immigrants or incentivizes illegal immigration.” Standard DHS Terms § C.XVII.2.a.iii. This term was vacated in *Illinois* and is being excluded from Plaintiffs’ awards. (*See, e.g.*, SF PSGP Award 1, Article 60.) Accordingly, Plaintiffs do not move for relief on this provision at this time.

1 interpretations that purport to articulate what antidiscrimination law requires, but in fact assert an
 2 ideological agenda to prohibit policies or programs that promote inclusion for people of all races,
 3 ethnicities, national origins, sexes, gender identities, and sexual orientations, and also to prohibit any
 4 recognition whatsoever of the concept of gender identity. This agenda proceeds under the guise of, but
 5 is in fact in contradiction of, federal antidiscrimination law. The result is that, through the Standard
 6 DHS Terms, Plaintiffs reasonably fear that they must pledge to recognize the President's incorrect,
 7 incoherent, ambiguous, and legally unsupported distortion of federal anti-discrimination laws across
 8 all of their operations and risk civil and criminal penalties, or else forgo funding entirely. Collectively,
 9 these unprecedented conditions are referred to as the "Discrimination Condition."

10 *Grants Manual Implementation of the Discrimination Conditions*

11 In order to implement the Discrimination Condition's restrictions on DEIA, Defendants are also
 12 requiring recipients of certain awards to agree to comply with derivative conditions in FEMA's
 13 August 2025 Preparedness Grants Manual ("Grants Manual"). RJN, Ex. 3; Louk Decl., Ex. 1 (Notice
 14 to Recipients). According to the Grants Manual "[a]ll non-disaster grant program reimbursement
 15 requests must be reviewed and approved by FEMA prior to drawdowns." To the extent "funding is
 16 provided directly or indirectly to a subrecipient," the reimbursement request must indicate "[w]hether
 17 the subrecipient has *any* diversity, equity, and inclusion practices." Grants Manual, § 6.11.3 (emphasis
 18 added). Plaintiffs refer to this as the "DEI Disclosure Requirement."

19 **B. Executive Order Condition**

20 The Standard DHS Terms state "[r]ecipients must comply with the requirements of Presidential
 21 Executive Orders related to grants (also known as federal assistance and financial assistance), the full
 22 text of which are incorporated by reference." Standard DHS Terms § C.XXXI. Plaintiffs refer to this
 23 condition as the "EO Condition." Defendants have provided little detail on what "compliance" with
 24 the EO Condition would require. On its face, the provision is capable of any number of readings and is
 25 extraordinarily broad, especially given that the current Administration has issued over 200 executive
 26 orders to date in President Trump's second term alone. Moreover, executive orders do not by their
 27 terms apply to federal grant recipients. Despite the EO Condition's breadth and ambiguity, Defendants
 28 have adopted the EO Condition as a matter of policy and categorically imposed it on all of Plaintiffs'

grants. (*E.g.*, Louk Decl., Exs. 2-9 (Article 33 [“Presidential Executive Orders”].))

LEGAL STANDARD

A preliminary injunction is warranted where the moving party establishes (1) it is likely to succeed on the merits; (2) irreparable harm is likely in the absence of preliminary relief; (3) the balance of equities tips in the movant’s favor; and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under the Ninth Circuit’s “sliding scale approach,” a plaintiff may obtain an injunction if it shows “serious questions going to the merits and a hardship balance that tips sharply toward the plaintiff,” as long as it shows that “the other two elements of the *Winter* test are also met.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011) (cleaned up). All factors strongly favor Plaintiffs.

ARGUMENT

I. Plaintiffs Are Likely to Succeed on the Merits of Their Claims.

A. Plaintiffs Have Standing to Contest the Unlawful DHS Conditions.

Plaintiffs have standing to contest the Unlawful DHS Conditions because Plaintiffs are suffering injuries that are “concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013) (cleaned up). “A loss of funds promised under federal law satisfies Article III’s standing requirement.” *City & Cnty. of San Francisco v. Trump* (“*San Francisco*”), 897 F.3d 1225, 1235 (9th Cir. 2018) (cleaned up); *Arizona v. Yellen*, 34 F.4th 841, 852 (9th Cir. 2022). “An injunction enjoining Defendants from enforcing the [Unlawful DHS Conditions] would [also] redress Plaintiffs’ alleged injury of having to either modify their conduct or risk making a false certification.” *San Francisco A.I.D.S. Found. v. Trump*, No. 25-CV-01824-JST, 2025 WL 1621636, at *10 (N.D. Cal. June 9, 2025).

Here, Plaintiffs have been awarded millions in DHS funds, and anticipate receiving millions more in DHS funds via pass-through awards from their states based on long-standing practice, statutory entitlement, or predetermined allocations in notices of funding opportunities. Kim Decl. (SF) ¶¶ 7-16; Bowman Decl. (SF) ¶¶ 6-10; Louk Decl., Exs. 2-9. Because the Standard DHS Terms expressly specify that the Unlawful DHS Conditions will apply to direct recipients and subrecipients of awards, *see, e.g.*, RJN, Ex. 5 (HSGP NOFO) at p. 27-28; RJN, Ex. 6 (EMPG NOFO) at p. 21, there

1 is a significant, substantial, and imminent risk Plaintiffs will be forced to choose between the unlawful
 2 conditions and accepting funding. This imminent loss of funds through infringement of Plaintiffs’
 3 rights is traceable to the Unlawful DHS Conditions and redressable by an order restraining their
 4 enforcement. Thus, Plaintiffs plainly have standing.

5 **B. The Unlawful DHS Conditions Are Unconstitutional.**

6 **1. The Unlawful DHS Conditions Violate the Separation of Powers.**

7 Nothing in the Constitution or congressional authorizations bearing on the DHS programs at
 8 issue gives Defendants the power to impose conditions on Plaintiffs’ awards remotely approaching
 9 those at issue here. The absence of any constitutional or statutory authority to impose conditions on the
 10 grants is dispositive and highlights the problems with of the Unlawful DHS Conditions.

11 “Among Congress’s most important authorities is its control of the purse.” *Biden v. Nebraska*,
 12 600 U.S. 477, 505 (2023) (citing U. S. Const., art. I, §9, cl. 7). The Constitution “exclusively grants
 13 the power of the purse to Congress, not the President.” *San Francisco*, 897 F.3d at, 1231. Since
 14 Congress exclusively holds the power of the purse—and there is no inherent executive authority to
 15 place conditions on the receipt of federal funds—authority must be given to the executive by the
 16 legislature to impose conditions on the use funds. *See City of Los Angeles v. Barr*, 941 F.3d 931, 945
 17 (9th Cir. 2019) (agency grant conditions imposed without statutory authority were “ultra vires”); *City*
 18 *of Arlington v. FCC*, 569 U.S. 290, 297 (2013) (recognizing agencies are “charged with administering
 19 congressional statutes,” which means that “[b]oth their power to act and how they are to act is
 20 authoritatively prescribed by Congress”).

21 In establishing the grant programs at issue in this action and appropriating funds, Congress has
 22 not authorized Defendants to impose grant conditions even *remotely* similar to the Unlawful DHS
 23 Conditions, which effectively prohibit any activity that the Administration would consider to be
 24 “DEIA,” rewrite anti-discrimination law as it has long been understood, and force compliance with all
 25 executive orders. Moreover, the sprawling and hopelessly ambiguous Unlawful DHS Conditions are
 26 contrary to longstanding limits on the spending power in our constitutional structure.

27 **Infrastructure Security Grants:** Defendants administer several programs focused on
 28 transportation infrastructure designed to strengthen the nation’s critical infrastructure from potential

terrorist attacks, the Port Security Grant Program (PSGP) and Transit Security Grant Program (TSGP). Congress authorized PSGP funds for “port security services and to train public safety personnel[.]” 46 U.S.C. § 70107(a); RJN, Ex. 7 (PSGP NOFO) at p.23. In doing so, Congress identified eligible costs as well as application, reporting, and administrative requirements. 46 U.S.C. § 70107(b), (h), (i). Yet, nowhere did Congress include vague prohibitions on DEIA or require compliance with any and all executive orders.

TSGP authorization stems from 6 U.S.C. § 1135. *See* RJN, Ex. 8 (TSGP NOFO) at p. 17. Congress directed the Secretary to “establish a program for making grants to eligible public transportation agencies for security improvements” and enumerated permissible capital and operating uses. 6 U.S.C. §§ 1135(a)-(b). While the statute states that a grant “shall be subject” to “other terms and conditions as are determined *necessary* by the Secretary,” no plausible interpretation of this clause authorizes wide-ranging and ambiguous Unlawful DHS Conditions on policy issues completely unrelated to enumerated transportation security improvements. 6 U.S.C. § 1135(e) (emphasis added).

Indeed, courts must be skeptical of “agencies asserting highly consequential power beyond what Congress could reasonably be understood to have granted.” *W. Virginia v. EPA*, 597 U.S. 697, 724 (2022); *see also Martin Luther King, Jr. Cnty. v. Turner*, 785 F.3d 863, 866-67 (W.D. Wash. 2025) (“*King County*”) (holding “[s]ubstantive conditions implicating controversial policy matters that are unrelated to the authorizing statute, such as prohibitions on DEI initiatives . . . are simply not ‘of the same kind’ as conditions that require recipients to monitor and report the progress of their program”). A look at the statutory scheme demonstrates why. The Discrimination Condition’s prohibition on DEIA is in tension with Congress’s designation of transit security grant funds to support “security response training” for transit employees, specifically including training in procedures to support “individuals with disabilities and the elderly.” *See* 6 U.S.C. §§ 1135(b)(1)(L), (c)(5). Thus, no plausible reading of the statute “unambiguously” authorizes FEMA—an agency focused on emergency preparedness⁸—to impose conditions that carry out a contentious political

⁸ FEMA exists to “reduce the loss of life and property and protect the Nation from all hazards, including natural disasters, acts of terrorism, and other manmade disasters, by leading and supporting

agenda around race, gender, and accessibility unmoored from federal antidiscrimination law. *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006); *see also W. Virginia*, 597 U.S. at 721; *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 401 (2024).

Fire Related Grants: AFG authorization stems from 15 U.S.C § 2229. *See* RJN, Ex. 9 (AFG NOFO) at p. 6. SAFER is authorized by the same enactment but is codified in 15 U.S.C. § 2229a. *See* RJN, Ex. 10 (SAFER NOFO) at p. 15. Nothing in the statutes that create the AFG and SAFER programs could reasonably be construed to authorize the Unlawful DHS Conditions. With respect to AFG, Congress directed FEMA to “award grants on a competitive basis,” and expressly said that AFG grants must be “for the purpose of protecting the health and safety of the public and firefighting personnel . . . against fire, fire-related, and other hazards.” 15 U.S.C. § 2229(c)(1). In doing so, Congress identified approximately fourteen purposes that funding “shall” be used for, including funding emergency medical services and acquiring additional firefighting vehicles, equipment, and personal protective equipment. 15 U.S.C. § 2229(c)(3). In connection with SAFER, Congress required FEMA to issue competitive grants “for the purpose of increasing the number of firefighters to help communities meet industry minimum standards and attain 24-hour staffing to provide adequate protection from fire and fire-related hazards, and to fulfill traditional missions of fire departments that antedate the creation of [DHS].” 15 U.S.C. § 2229a(a)(1)(A).

Consistent with longstanding constitutional limits, no terms authorize the Unlawful DHS Conditions. And in fact, in plain contradiction of the President’s policy agenda to prohibit considerations relating to equity and access, fire prevention and control requirements authorize FEMA to “educate the public and overcome public indifference as to fire, fire prevention, and individual preparedness,” including through “programs to provide specialized information for those groups of individuals who are particularly vulnerable to fire hazards, such as the young and the elderly.” 15 U.S.C. § 2205. As to AFG, Congress contemplated that funds could be used to “provide specialized training . . . to recognize individuals who have mental illness and how to properly intervene with

the Nation in a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation.” 6 U.S.C. § 313(b)(1).

individuals with mental illness.” *Id.* § 2229(c)(3)(N). Neither of these Congressional preferences can be reconciled with the Unlawful DHS Conditions restricting inclusion and accessibility. Thus, “[n]ot only has the Administration claimed for itself Congress’s exclusive spending power, it has also attempted to coopt Congress’s power to legislate.” *San Francisco*, 897 F.3d at 1234.

Homeland Security Grants: Defendants administer numerous grant programs designed to prepare for and prevent terrorist attacks. For example, authorization for the Homeland Security Grant Program (HSGP), which includes the Urban Area Security Initiative (UASI) and State Homeland Security Grant Program (SHSP) amongst other programs, stems from 6 U.S.C. § 603 *et seq.* HSGP NOFO at p. 28. UASI and SHSP program funds are targeted at helping either high risk urban areas or local governments with “preventing, preparing for, protecting against, and responding to acts of terrorism.” 6 U.S.C. § 604(a); 6 U.S.C. § 605(a); *see also* 6 U.S.C. § 596b (STC). Consistent with the previous grants identified, nothing in the statutes authorized the Unlawful DHS Conditions.

Other Preparedness & Non-Disaster Grants: Congress permanently codified EMPG at 6 U.S.C. § 762. EMPG NOFO at p. 22. The authorization directs FEMA to make grants “for all hazards.” Congress further intended “to provide an orderly and continuing means of assistance . . . to State and local governments in carrying out their responsibilities to alleviate the suffering and damage[.]” 42 U.S.C. § 5121(b). US&R is authorized at 42 U.S.C § 5165f and provides funding under preparedness cooperative agreements for training and exercises, the acquisition and maintenance of equipment, and certain medical monitoring, amongst other things. 42 U.S.C § 5165f(I); RJN, Ex. 11 (US&R NOFO) at p. 11. HMGP awards are authorized to “substantially reduce the risk of, or increase resilience to, future damage, hardship, loss, or suffering in any area affected by a major disaster.” 42 U.S.C. § 5170c(a). Again, these statutes do not authorize the Unlawful DHS Conditions.

The foregoing makes plain that Defendants are conditioning Plaintiffs’ receipt of appropriated funds on compliance with the President’s political agenda, even though Congress has not authorized Defendants to leverage federal funding for that agenda, and even though the President lacks “his own constitutional powers” to add new conditions to federal funds. *San Francisco*, 897 F.3d at 1233-34 (cleaned up). Defendants’ actions therefore usurp Congress’s “power of the purse” and violate bedrock separation of powers principles. *Id.* at 1231. Faced with similar overreach by other executive agencies,

1 federal courts have not hesitated to enjoin similar grant conditions and overreach after finding that
 2 plaintiffs are likely to succeed on the merits of their challenges.⁹ The same reasoning applies here.

3 **2. The Unlawful DHS Conditions Violate Spending Power Constraints.**

4 Even if Congress authorized the imposition of the Unlawful DHS Conditions, the Conditions
 5 are still unlawful because they exceed constitutional limits on the spending power. Under the spending
 6 power, grant conditions generally must be (1) set forth unambiguously, (2) before a recipient enters
 7 into the grant agreement with the federal government, and (3) must be related to the subject matter of
 8 the grant program. *See S. Dakota v. Dole*, 483 U.S. 203, 207 (1987); *Pennhurst State Sch. & Hosp. v.*
 9 *Halderman*, 451 U.S. 1, 17 (1981). Defendants' new Unlawful DHS Conditions fail the first and third
 10 principles. The conditions are so vague, ambiguous, and open-ended that it is impossible for Plaintiffs
 11 to know the full range of activities the federal government might consider prohibited. Indeed, the
 12 conditions could not possibly have a nexus to the federal interest in preparing for and mitigating the
 13 effects of disaster, because in practice they *undermine* the purpose of the funds Congress appropriated
 14 here, which includes an intent to promote public safety and emergency management and preparedness.

15 **a. The Unlawful DHS Conditions Are Ambiguous.**

16 The Unlawful DHS Conditions fail the first requirement that grant conditions must be clear and
 17 unambiguous to pass constitutional muster under the spending power. "[I]f Congress intends to impose

18
 19 ⁹ *See, e.g., King Cnty.*, 785 F. Supp. 3d at 884-86; *King Cnty. v. Turner*, 2025 WL 2322763, at
 20 *11-15 (W.D. Wash. Aug. 12, 2025); *City & Cnty. of San Francisco v. Trump*, 779 F. Supp. 3d 1077
 21 (N.D. Cal. 2025), *opinion clarified*, 782 F. Supp. 3d 830 (N.D. Cal. 2025); *City & County of San*
 22 *Francisco v. Trump*, No. 25-cv-01350-WHO, 2025 WL 1738675, at *1-3 (N.D. Cal. June 23, 2025);
 23 *City of Fresno v. Turner*, No. 25-cv-07070-RS, 2025 WL 2721390, at *12 (N.D. Cal. Sept. 23, 2025);
 24 *San Francisco A.I.D.S. Found. v. Trump*, No. 25-CV-01824-JST, 2025 WL 1621636, at *27 (N.D.
 25 Cal. June 9, 2025); *City & Cnty. of San Francisco v. Sessions*, 372 F. Supp. 3d 928, 941-43- (N.D.
 26 Cal. 2019), *vacated on other grounds by City & Cnty. of San Francisco v. Garland*, 42 F.4th 1078 (9th
 27 Cir. 2022); *City & Cnty. of San Francisco v. Sessions*, 349 F. Supp. 3d 924, 944-48 (N.D. Cal. 2018),
 28 *vacated on other grounds by City & Cnty. of San Francisco v. Barr*, 965 F.3d 753 (9th Cir. 2020).

1 a condition on the grant of federal moneys, it must do so *unambiguously*[.]” *See Pennhurst*, 451 U.S.
 2 at 17 (1981) (emphasis added); *Arlington Cent.*, 548 U.S. at 296 (determining the ambiguity of
 3 conditions on federal grants requires evaluating “whether [a recipient] . . . would clearly
 4 understand . . . the obligations of the [conditions].”). The new conditions imposed on Plaintiffs’ grants
 5 are anything but clear.

6 As noted above, Plaintiffs have regularly agreed to comply with federal antidiscrimination laws
 7 as a condition of federal funding in the past, but the federal government has now called the meaning of
 8 those laws in question by purporting to interpret them far differently than previously understood by
 9 Congress, the executive, or the courts—leaving it unclear what is expected under the terms.

10 Immediately following his inauguration, President Trump began issuing a series of executive
 11 orders promoting his political agenda. For example, he issued orders directing all federal agencies to
 12 “assess grant conditions and grantee preferences and ensure grant funds do not promote gender
 13 ideology,” “terminate . . . ‘equity-related grants’”—without defining “equity-related” or even “equity,”
 14 and require grant recipients to certify that they do not operate any programs “promoting” DEIA “that
 15 violate any applicable Federal anti-discrimination laws” in all grant terms.¹⁰ Going further, President
 16 Trump recently ordered that discretionary grant awards must “demonstrably advance the President’s
 17 policy priorities” “and “shall not be used to fund, promote, encourage, subsidize, or facilitate” “racial
 18 preferences or other forms of racial discrimination by the grant recipient,” “denial by the grant
 19 recipient of the sex binary in humans or the notion that sex is a chosen or mutable characteristic,” or
 20 other “anti-American values.”¹¹

21
 22 ¹⁰ Executive Order No. 14168, *Defending Women From Gender Ideology Extremism And*
 23 *Restoring Biological Truth To The Federal Government*, 90 Fed. Reg. 8,615 (Jan. 20, 2025);
 24 Executive Order No. 14151, *Ending Radical and Wasteful Government DEI Programs and*
 25 *Preferencing*, 90 Fed. Reg. 8,339 (Jan. 20, 2025); Executive Order No. 14173, *Ending Illegal*
 26 *Discrimination and Restoring Merit-Based Opportunity*, 90 Fed. Reg. 8,633 (Jan. 21, 2025).

27 ¹¹ Executive Order No. 14332, *Improving Oversight of Federal Grantmaking*, 90 Fed. Reg.
 28 38929 (Aug. 7, 2025).

1 Doubling down on these executive orders, Attorney General Pam Bondi released a memo titled
 2 *Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination* on July 29, 2025.
 3 See RJN, Ex. 4 (“Discrimination Guidance Memo”). The Discrimination Guidance Memo purports to
 4 “clarif[y] the application of federal antidiscrimination laws to programs or initiatives that may involve
 5 discriminatory practices, including those labeled as Diversity, Equity, and Inclusion (‘DEI’)
 6 programs.” *Id.* at 1. Among other “clarifications,” Attorney General Bondi states that the use of
 7 “[f]acially neutral criteria (e.g., ‘cultural competence,’ ‘lived experience,’ geographic targeting) that
 8 function as proxies for protected characteristics violate federal law if designed or applied with the
 9 intention of advantaging or disadvantaging individuals based on protected characteristics.” *Id.* at 2.
 10 This “clarification,” however, is inconsistent with Supreme Court precedent that has “consistently
 11 declined to find constitutionally suspect” the adoption of race-neutral criteria—even where the
 12 decision-maker was “well aware” the race-neutral criteria “correlated with race.” *Coal. for TJ v.*
 13 *Fairfax Cnty. Sch. Bd.*, 68 F.4th 864, 885–86 (4th Cir. 2023) (cleaned up) (citing, inter alia, *Tex. Dep’t*
 14 *of Hous. & Cmty. Affs. v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 545 (2015)). Similarly, the
 15 Administration’s insistence on “the sex binary” and its refusal to recognize the reality of gender
 16 identity is out of step with governing law extending critical sex-based protection to trans people. See,
 17 e.g., *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 662, 670 (2020) (recognizing “Title VII
 18 prohibits all forms of discrimination because of sex, however they may manifest themselves or
 19 whatever other labels might attach to them”). Nevertheless, in early September—a few weeks before
 20 issuing new grant awards—FEMA sent copies of the Discrimination Guidance Memo to all grant
 21 recipients, with the admonition to “review and adhere to the Attorney General’s [guidance].” Louk
 22 Decl., Ex. 1 (FEMA Notice to Recipients).

23 Defendants’ new misinterpretation of federal law raises serious questions about what meaning
 24 and scope Defendants intend the Discrimination Condition to carry. And Plaintiffs reasonably fear
 25 significant consequences if they accept the award conditions subject to the Administration’s vague and
 26 unsupported distortion of federal anti-discrimination laws. The False Claims Act (FCA) imposes
 27 liability on “any person” who “knowingly presents, or causes to be presented, a false or fraudulent
 28 claim for payment or approval.” 31 U.S.C. § 3729(a)(1)(A). Each violation of the FCA is punishable

by mandatory treble damages plus civil penalties. 31 U.S.C. § 3729(a); 28 C.F.R. § 85.5(a). The Discrimination Condition expressly references the FCA and purports to achieve an end run around the federal government’s burden to prove that a representation is “material to the Government’s payment decisions” before these significant penalties will attach. Standard DHS Terms § C.XVII; *Universal Health Servs., Inc. v. United States ex rel. Escobar*, 579 U.S. 176, 192, 194 (2016). Moreover, the Department of Justice has formed a nationwide task force to target grantees that sign these certifications, has described potential liability under the FCA as a “weapon” it will deploy, and has “strongly encourag[ed]” private parties to bring civil suits against grant recipients. *See* RJN Ex. 12 (Civil Rights Fraud Initiative Memo), at pp. 1, 2.

The face of the certification requirement further underscores the ambiguity Plaintiffs have been dealt. Plaintiffs must certify that they “do not, and will not during the term of this financial assistance award, operate any programs that advance or promote DEI, DEIA, or discriminatory equity ideology in violation of Federal anti-discrimination laws.” Standard DHS Terms § C.XVII.2.a.1. Yet, Defendants now narrowly define “Federal anti-discrimination laws” to seemingly exclude non-citizens by indicating that these laws “protect individual *Americans* from discrimination”—even though civil rights laws facially protect individuals *and* classes of persons from discrimination based on national origin, in addition to protections based on race, sex, religion, and disability. Is the Administration now contending that federal anti-discrimination law only protects Americans and individuals?

Nor do the terms identify the list of activities “that advance or promote DEI, DEIA, or discriminatory equity ideology,” or even provide examples. Instead, the Standard DHS Terms vaguely define DEI to mean “diversity, equity, and inclusion” and DEIA to mean “diversity, equity, inclusion, and accessibility.” *Id.* § C.XVII.1.a-b. With respect to “discriminatory equity ideology,” the Standard DHS Terms incorporate Section 2(b) of Executive Order No. 14190, *Ending Radical Indoctrination in K-12 Schooling*, 90 Fed. Reg. 8,853 (Jan. 29, 2025), which states vaguely that it is “an ideology that treats individuals as members of preferred or disfavored groups, rather than as individuals, and minimizes agency, merit, and capability in favor of immoral generalizations[.]” Similarly, Plaintiffs must certify that they do not and will not “engage in[] a discriminatory prohibited boycott,” but DHS has provided no definition or meaning of that prohibition. Standard DHS Terms § C.XVII.2.a.ii.

1 What's more, the Discrimination Condition also leaves undefined the terms "operate," "program,"
 2 "advance," "engage," and "promote." Similarly, the DEI Disclosure Requirement has *no* definition for
 3 "diversity, equity, and inclusion practice" and does not seem limited to violations of federal anti-
 4 discrimination law, leaving Plaintiffs with basis to know what is prohibited. Grants Manual § 6.11.3.

5 These gaping holes in the terms Defendants construe as being material to their decisions to
 6 issue awards are inherently problematic for recipients. "DEI as a concept is broad: one can imagine a
 7 wide range of viewpoints on what the values of diversity, equity, and inclusion mean when describing
 8 a program or practice[.]" *Nat'l Educ. Ass'n v. United States Dep't of Educ.*, 779 F. Supp. 3d 149, 188
 9 (D.N.H. 2025); *San Francisco Unified Sch. Dist. v. AmeriCorps*, No. 25-CV-02425-EMC, 2025 WL
 10 1713360, at *18 (N.D. Cal. June 18, 2025) ("DEI" and "equity" based restrictions "are rife with
 11 vagueness and ambiguity, leaving grantees to speculate what is proscribed and what is permitted").
 12 Despite the layers of ambiguity, the Discrimination Condition does not even identify a single exemplar
 13 "program" or other activity "that advance[s] or promote[s] DEI, DEIA," "discriminatory equity
 14 ideology," or "discriminatory prohibited boycott" to provide fair notice of what conduct is unlawful.
 15 The Discrimination Condition does incorporate an executive order's definition of "discriminatory
 16 equity ideology." But that incorporation does nothing to resolve the ambiguity, since that executive
 17 order's definition is based on "immoral generalizations" within the executive order that are ambiguous
 18 and confer unconstrained enforcement discretion to the agencies. *AmeriCorps*, 2025 WL 1713360, at
 19 *18 (finding conditions ambiguous because incorporated provisions of executive orders were "highly
 20 ambiguous."). Ultimately, "[b]ecause the terms at issue are so broad and involve inherent value
 21 judgments, they leave regulated persons without proper notice of what conduct they must certify they
 22 are not engaging in, and they empower the government to enforce the [c]ertification [r]equirement
 23 arbitrarily." *Am. Fed'n of Tchrs. v. Dep't of Educ.*, SAG-25-628, 2025 WL 2374697, at *31 (D. Md.
 24 Aug. 14, 2025). This ambiguity is irreconcilable with the limits of the spending power.

25 The EO Condition is equally vague and ambiguous. Recipients cannot possibly ascertain what
 26 it means to comply with all executive orders "related to grants" that this Administration has issued *or*
 27 *might issue in the future*. Standard DHS Terms § C.XXXI. Indeed, it is unclear what it even means for
 28 an executive order to be "related to grants." The lack of legal foundation for this condition is

exacerbated by the fact that an “an executive order is not ‘law,’ within the meaning of the Constitution,” *California v. EPA*, 72 F.4th 308, 318 (D.C. Cir. 2023), and none of President Trump’s executive orders impose direct obligations on Plaintiffs as recipients of federal funds. As another court recently found, these executive order “conditions are impermissibly vague because they incorporate the equally vague language of the EOs themselves and because in some cases they do not specify *which* EOs are ‘applicable to grantees’ and in all cases they do not explain *how* the EOs are applicable to grantees.” *City of Fresno v. Turner*, No. 25-cv-07070-RS, 2025 WL 2469330, at *15-16 (N.D. Cal. Aug. 27, 2025). Underscoring the ambiguous nature of the EO Condition here, the Standard DHS Terms do enumerate *specific* executive orders in other parts that must be complied with, showing that Defendants do know how to provide more detail.¹² See Standard DHS Terms § C.XLI.

The EO Condition also is in tension with the spending power’s requirement that conditions must be unambiguous *before* a recipient enters into the grant agreement with the federal government. *Pennhurst*, 451 U.S. at 25 (spending power does not include the ability to impose “post acceptance or ‘retroactive’ conditions”). Defendants’ effort to bootstrap all executive orders in as a catch-all, regardless of whether they have been signed in the past, present, or future, does not comport with this limit on the spending power. Rather, the open-ended nature of this condition gives unbridled enforcement discretion to carry out President Trump’s political agenda when he wants it and how he wants it regardless of any constitutional limit.

Courts have repeatedly held that ambiguous conditions—including conditions materially similar to the Unlawful DHS Conditions—violate the spending power. *E.g.*, *Americorps*, 2025 WL 1713360, at *18-22; *City of Fresno*, 2025 WL 2469330, at *5; *see also Chicago Women in Trades v. Trump*, No. 25-cv-02005, 2025 WL 933871, at *8 (N.D. Ill. Mar. 27, 2025) (recognizing the meaning of DEI conditions “is left entirely to the imagination”). There is no reason to reach a different result

¹² The EO Condition is also problematic in that it is unclear whether it is intended to apply even to executive orders a court has enjoined. *See, e.g., City & Cnty. of San Francisco v. Trump*, 783 F. Supp. 3d 1148, 1203, 1204 (N.D. Cal. May 3, 2025); 782 F.3d 830, 836 (N.D. Cal. May 9, 2025); 2025 WL 2426858, at *2 (N.D. Cal. Aug. 22, 2025).

here and Plaintiffs are likely to succeed on the merits of their claim.

In addition, the Unlawful DHS Conditions violate the spending power's "independent constitutional bar" rule, *Dole*, 483 U.S. at 210, including by requiring Plaintiffs to violate separation of powers principles and the First Amendment rights of contractors and members of the public. *See* Compl. ¶¶ 216-234, 265, 270-71.

b. The Unlawful DHS Conditions Are Unrelated to the Purpose of the Grants.

Defendants' application of the Unlawful DHS Conditions to Plaintiffs' awards also violates the spending power's requirement that conditions imposed on federal grants must be "reasonably related to the purpose of the expenditure." *New York v. U.S.*, 505 U.S. 144, 172 (1992) (citation omitted); *Dole*, 483 U.S. at 207, 209 ("[C]onditions on federal grants" must be "reasonably calculated to address th[e] particular . . . purpose . . . for which the funds are expended."). This requirement is crucial: Without "some relationship" between spending conditions and "the purpose of the federal spending," "the spending power could render academic the Constitution's other grants and limits of federal authority." *New York*, 505 U.S. at 167. Defendants' conditions do precisely that, for there is no such relationship here. Nothing in the statutes authorizing any of Plaintiffs' DHS awards, or in the emergency management purposes for which Congress appropriated the funds, suggests any relationship between (a) the purpose of the federal spending at issue and (b) the Unlawful DHS Conditions' implementation of anything approaching President Trump's political ideology or the full sweep of executive orders has issued or might issue in the future.

If anything, the new conditions Defendants seek to impose on Plaintiffs' awards are antithetical to Congress's express purpose to guarantee public safety, community preparedness, and security of critical infrastructure. There is no question that Plaintiffs' funding requests qualified for funding: Otherwise, FEMA would not have issued awards and in some cases even predetermined targeted allocations for Plaintiffs in the first place. Rather than work in partnership with Plaintiffs to fulfill Congress's express intent to guarantee public safety and security for all community members, Defendants' unprecedented conditioning of funds now forces local governments to choose between resisting arbitrary, unlawful, and ideological mandates, and obtaining funding for the exact safety

measures Congress sought to incentivize in the first place to prevent harm. And as already noted, the conditions repeatedly contravene express requirements Congress imposed as part of its legislative prerogative contemplating consideration of equity and accessibility in carrying out programs. *Supra* I.A.B.1. Because of the unlawful strings attached to the federal funds for Plaintiffs’ qualifying projects, Defendants are leaving a patchwork of problems congressional leaders determined *needed* to be addressed. *E.g.*, Callagy Decl. (San Mateo County) ¶ 28; Johnson Decl. (Oakland) ¶ 40; Bowman Decl. (SF) ¶¶ 11-13; Thomas Decl. (SF) ¶¶ 6-9; Kim Decl. (SF) ¶¶ 16-17.) That is precisely why Defendants are not free to impose terms that are not “reasonably related to the purpose of the expenditure.” *New York*, 505 U.S. at 172. Plaintiffs are therefore likely to succeed on the merits.

C. The Unlawful DHS Conditions Violate the APA.

The APA requires courts to “hold unlawful and set aside agency action” that is “arbitrary” and “capricious,” “not in accordance with law,” “contrary to constitutional right,” “in excess of statutory jurisdiction,” or “without observance of procedure required by law.” 5 U.S.C. § 706(2). There are two sets of final agency actions at issue in this Motion: First, Defendants adopted the Unlawful DHS Conditions as a matter of policy, and thus categorically apply them to all grant programs. Second, Defendants attached the Unlawful DHS Conditions to each and every grant agreement through which Plaintiffs would receive federal funding, both directly and indirectly. Plaintiffs are likely to succeed on the merits of their claims that these agency actions violate the APA.

1. The Unlawful DHS Conditions Are Final Agency Action.

As a threshold issue, Defendants’ policy decision to adopt the Unlawful DHS Conditions and apply them categorically to grant recipients is a “final agency action” subject to review under the APA. The same is true for Defendants’ attachment of those conditions to Plaintiffs’ awards from DHS. *See* 5 U.S.C. § 704. Ultimately, “finality[] must be interpreted in a pragmatic and flexible manner.” *Oregon Nat. Desert Ass’n v. U.S. Forest Serv.*, 465 F.3d 977, 982 (9th Cir. 2006) (cleaned up). Defendants’ decisions to categorically apply the Discrimination and EO Conditions in the Standard DHS Terms to *all* awards marks “the ‘consummation’ of the agency’s decision-making process,” from which “legal consequences will flow,” and is therefore a final agency action reviewable under the APA. *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (citations omitted); *Illinois*, 2025 WL 2716277

at *8 (holding “the decision to attach the conditions can be final even if the final decision to award the funds and issue the NOFOs is still pending”). So too does the decision to apply the Unlawful DHS Conditions to individual grants. As courts have recognized, the decision to impose new conditions on federal grants is a final agency action because it “articulate[s] that certain funds” will “require adherence to the” new conditions and “opens up the [recipient] to potential legal consequences,” including withholding of funds if the recipient is unable to accept. *State ex rel. Becerra v. Sessions*, 284 F. Supp. 3d 1015, 1031–32 (N.D. Cal. 2018); *see also King Cnty.*, 785 F.3d at 873, n.18; *Rhode Island Coal. Against Domestic Violence v. Bondi*, No. CV 25-279 WES, 2025 WL 2271867, at *1 (D.R.I. Aug. 8, 2025)). Thus, there is no jurisdictional bar to reviewing Plaintiffs’ APA claims.¹³

2. The Unlawful DHS Conditions Exceed Defendants’ Statutory Authority and Are Contrary to the Constitution.

Defendants’ adoption, imposition, attachment, and enforcement of the Unlawful DHS Conditions are “not in accordance with law,” “contrary to constitutional right, power, privilege, or immunity,” and “in excess of statutory . . . authority” within the meaning of the APA for the reasons set forth above. 5 U.S.C. § 706(2)(A)-(C); *supra* Sections I.B.1-2. These conditions must therefore be held unlawful and vacated. *AmeriCorps*, 2025 WL 1713360, at *17 (finding plaintiffs likely to succeed on APA claim where “Congress expressly embedded [DEIA] principles throughout [] enabling statutes”); *City of Fresno*, 2025 WL 2721390, at *10, *12 (finding APA violation where DEI and immigration conditions were not authorized and “in some cases the statutes even contradict the conditions” and where conditions “violate Separation of Powers as in excess of statutory authority”).

3. The Unlawful DHS Conditions Are Arbitrary and Capricious.

Defendants’ adoption, imposition, and enforcement of the Unlawful DHS Conditions are also arbitrary and capricious because the conditions are not the result of “reasoned decisionmaking” and

¹³ The Tucker Act does not bar the claims since the challenge is to the “agencies’ *policies* and *guidance* to condition funding on the Grant Conditions on *statutory*, namely APA, and *constitutional* grounds, and they seek injunctive relief barring Defendants’ imposition of the conditions and setting aside related internal agency directives.” *City of Fresno*, 2025 WL 2721390, at *6.

are neither “reasonable” nor “reasonably explained.” *Michigan v. EPA*, 576 U.S. 743, 750 (2015); *Ohio v. EPA*, 603 U.S. 279, 292 (2024) (cleaned up). An agency must offer “a satisfactory explanation for its action” and can neither “rel[y] on factors which Congress has not intended it to consider” nor simply ignore “an important aspect of the problem[.]” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.* (“*State Farm*”), 463 U.S. 29, 43 (1983). While agencies are free to change their existing policies, they must “display awareness that” they are doing so, provide “good reasons for the new policy,” and demonstrate that they have taken account of “reliance interests” engendered by the prior policy. *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

Adoption, imposition, and enforcement of the Unlawful DHS Conditions bear all of the hallmarks of unreasoned decision-making. Generally, whether the agency “entirely failed to consider an important aspect of the problem” or “relied on factors which Congress has not intended it to consider,” *State Farm*, 463 U.S. at 43, “turns on what a relevant substantive statute makes important,” *Or. Nat. Res. Council v. Thomas*, 92 F.3d 792, 798 (9th Cir. 1996) (cleaned up). Agency action is thus arbitrary and capricious when the agency neither “look[s] to” nor “discuss[es]” statutory “requirements,” *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 682 (2020), or “relie[s] on factors which Congress has not intended it to consider.” *State Farm*, 463 U.S. at 43. Thus, an agency cannot impose grant conditions without ensuring that the relevant statutes support those conditions. *See New York v. Trump*, 769 F. Supp. 3d 119, 142 (D.R.I. 2025) (failing to consider whether action “fell within the bounds of their statutory authority” was arbitrary and capricious), *appeal docketed*, No. 25-1236 (1st Cir. Mar. 10, 2025); *Illinois*, 2025 WL 2716277 at *11-12 (holding Standard DHS Terms for immigration arbitrary and capricious).

Here, Defendants have adopted, and now seek to impose, the Unlawful DHS Conditions on grants without any authorization to do so on a grant-by-grant and statute-by-statute basis. Their imposition of a systematic prohibition on DEI also underscores that Defendants failed to consider the many statutory terms that actually *require* DHS to “ensure that the civil rights and civil liberties of persons are not diminished by efforts, activities, and programs aimed at securing the homeland,” 6 U.S.C. § 111(b)(1)(G), as well as certain statutory terms authorizing actions readily described as “DEI” or “DEIA.” *Supra* Section I.B.1. By instead basing funding decisions on compliance with the

1 President’s political agenda, DHS transparently “relied on factors which Congress has not intended it
2 to consider.” *State Farm*, 463 U.S. at 43; *City of Fresno*, 2025 WL 2721390, at *8 (actions furthering
3 presidential directive are not exempt from arbitrary-and-capricious review (collecting cases)).

4 Furthermore, in seeking to arbitrarily rewrite the law without authority, Defendants have failed
5 to observe procedures required by law. *See* 5 U.S.C. § 706(2)(D). Defendants are obligated to follow
6 the Office of Management and Budget Guidance in Title 2 of the Code of Federal Regulations, Part
7 200. 2 C.F.R. § 3002.10. As to “[s]pecific conditions,” “[f]ederal agencies are responsible for ensuring
8 that specific Federal award conditions . . . are consistent with the program design” and enumerate
9 specific conditions that may be included. 2 C.F.R. § 200.208(a). Regulations also require Defendants
10 to clarify “[t]he reason why the specific condition(s) is being imposed” “[p]rior to imposing specific
11 conditions.” 2 C.F.R. § 200.208(d)(2). But as Plaintiffs have shown, no reason has been provided that
12 the conditions comply with congressional programs.

13 In imposing the Unlawful DHS Conditions, Defendants have also failed to consider multiple
14 longstanding reliance interests. Before Defendants imposed the Unlawful DHS Conditions, “grant
15 recipients were not subject—at least as a matter of agency policy—to conditions prohibiting the
16 promotion of DEI, gender ideology,” and executive order compliance. *City of Fresno*, 2025 WL
17 2721390, at *8. As one district court recognized, “these references to federal law make clear that their
18 interpretation is undergoing significant change. Accordingly, the Grant Conditions reflect changes in
19 agency position which require not only an explanation of reasoning but also consideration of reliance
20 interests among other important factors.” *Id.* But nothing in the Standard DHS Terms or Defendants’
21 imposition of the Unlawful DHS Conditions shows any effort to consider reliance interests. “The
22 failure to even consider reasons to not impose the contested conditions highlights the arbitrariness of
23 the process.” *Illinois*, 2025 WL 2716277, at *12.

24 Furthermore, Defendants evidently failed to consider how the conditions jeopardize and
25 threaten local governments’ “capacity to protect public safety in the areas where federal and [local]
26 cooperation is most critical.” *Illinois*, 2025 WL 2716277, at *12. Rather than work in furtherance of
27 the public’s interests, the record shows Defendants sandbagged recipients with new unlawful terms
28 that risk a patchwork of security problems because recipients cannot legally accept them. Given the

1 apparent lack of reasoned decision making, Plaintiffs are likely to succeed on their claim that
 2 Defendants’ imposition of the Unlawful DHS Conditions is arbitrary and capricious.

3 **II. Plaintiffs Will Suffer Irreparable Harm in the Absence of Preliminary Relief.**

4 Based on deadlines imposed by Defendants, some Plaintiffs must decide as early as **October**
 5 **24** to either accept unlawful conditions or lose federal funding earmarked for vital public safety and
 6 security services. This is itself an irreparable harm, as a plaintiff may suffer constitutional injury from
 7 being forced into a “Hobson’s choice” between accepting unconstitutional conditions and losing out
 8 on federal funding Congress appropriated for them to use to protect their communities. *See, e.g.,*
 9 *Hecox v. Little*, 104 F.4th 1061, 1088 (9th Cir. 2024); *Hernandez v. Sessions*, 872 F.3d 976, 994–95
 10 (9th Cir. 2017); *Am. Trucking Ass’n, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1057–59 (9th Cir.
 11 2009). The loss of the funds would also result in immediate, irreparable, and reverberating harms—
 12 including by upending budgets, forcing the sacrifice of critical public safety upgrades intended to
 13 protect the community and first responders, and risking diminished community trust due to hampered
 14 community protection efforts. *E.g.,* Nutt Decl. (Santa Rosa) ¶ 13; McDonough Decl. (Tucson) ¶ 19;
 15 Shikada Decl. (Palo Alto) ¶ 15; Johnson Decl. (Oakland) ¶ 42; Bowman Decl. (SF) ¶ 13; Kim Decl.
 16 (SF) ¶¶ 16-17; Wu Decl. (SF) ¶¶ 6-11; Rubi Dec. (San Diego City) ¶¶ 13, 17-18.¹⁴

17 These real risks to Plaintiffs are not hypothetical problems; they are immediate obstacles
 18 exacerbated by the decisions of this Administration. Even a temporary interruption in funding disrupts
 19 procurement and management of programs that help prevent the loss of life and property during
 20 natural disasters and man-made threats. *E.g.,* Wallis Decl. (Sonoma County) ¶ 22. Loss of funds
 21

22 ¹⁴ *City & Cnty. of San Francisco*, 779 F. Supp. 3d at 1082 (finding “irreparable injury in the
 23 form of budgetary uncertainty, deprivation of constitutional rights, and undermining trust between the
 24 Cities and Counties and the communities they serve”); *see also Maryland v. King*, 567 U.S. 1301,
 25 1303 (2012) (Roberts, C.J., in chambers) (acknowledging irreparable harm exists to “enforcement and
 26 public safety interests”); *City of Los Angeles v. Sessions*, No. Cv-17-7215-R, 2018 WL 6071072, at *3
 27 (C.D. Cal. Sept. 13, 2018) (finding irreparable harm where city had to either “diminish[] community
 28 trust and undermine[] public safety” by implementing objectionable policies or forgoing funding).

would harm programs designed to protect Plaintiffs’ residents, including the most vulnerable among them, from worst-case scenarios like terrorist and cyber-attacks, fires, floods, and earthquakes. *E.g.*, Reed Decl. (Santa Clara) ¶¶ 14-15, 29-30; Whitman Decl. (Sonoma SCCDC) ¶ 9; Cochran Decl. (Petaluma) ¶¶ 7-10; Riordan Decl. (San Jose) ¶¶ 9-10; Thomas Decl. (SF) ¶ 8. The uncertainty that Defendants are creating undermines Plaintiffs’ ability to do long-term planning: without reliable and stable funding, they cannot responsibly commit to multi-year projects, leaving them ultimately less prepared to address both current and emerging threats. *E.g.*, Jeakle Decl. (San Diego County) ¶ 38. The threats to public safety and emergency management are particularly significant since Plaintiffs’ diverse, urban, and metropolitan areas include streets, railways, advanced telecommunications and power systems, and other critical infrastructure that will support large scale events vulnerable to public safety threats, including but not limited to the 2026 FIFA World Cup and 2026 Super Bowl LX, in addition to the hundreds of events that already occur annually. *E.g.*, Chavez Decl. (LA City) ¶¶ 3, 28; Riordan Decl. (San Jose) ¶ 9; Burrus Decl. (SF) ¶¶ 12-13; Reed Decl. (Santa Clara) ¶ 29.

Ultimately, these extensive harms not only “impact [Plaintiffs’] ability to carry on day-to-day operations and fulfill [their] legal obligations,” they could be permanent if Defendants “transfer, re-allocat[e], or re-obligat[e]” grants to other recipients. *Climate United Fund v. Citibank, N.A.*, 775 F. Supp. 3d 335, 349 (D.D.C. 2025); *see also Nat’l Ass’n of Diversity Officers in Higher Educ. v. Trump*, 767 F. Supp. 3d 243, 288 (D. Md. 2025) (loss of federal grants was irreparable harm where “monetary recovery” was “likely to be precluded” in “light of Defendants’ sovereign immunity”). An injunction must issue to safeguard Plaintiffs from irreparable harm.

III. The Balance of Hardships and Public Interest Strongly Favor Preliminary Relief.

The balance of the equities and the public interest favor an injunction. In a case against the federal government, these factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). And in a case involving an alleged constitutional violation, the two factors are satisfied by likely success on the merits of the underlying claim. *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014); *see also Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (finding that “it is always in the public interest to prevent the violation of a party’s constitutional rights”) (cleaned up). This approach is sensible, because there can be no harm to the Defendants from an injunction

1 prohibiting them from enforcing grant requirements that offend established constitutional principles.
 2 *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (defendants “cannot suffer harm from an
 3 injunction that merely ends an unlawful practice”).

4 The factual record also underscores the point. Whatever interest Defendants may have in
 5 imposing the grant conditions and enforcing them during the course of this litigation pales in
 6 comparison to Plaintiffs’ irreparable harm from the conditions. If Plaintiffs are forced to decline funds
 7 due to unlawful conditions, public safety initiatives will be hamstrung and essential services and
 8 employees may be cut. *E.g.*, Schmit Decl. (Snohomish County) ¶¶ 14-15; Buddenhagen Decl.
 9 (Berkeley) ¶¶ 17-18; Nachbar Decl. (Culver City) ¶ 7; Hawkesworth Decl. (Pasadena) ¶ 16; Hewett
 10 Decl. (Bellingham) ¶ 13; Bowman Decl. (SF) ¶¶ 11-13; Kim (SF) ¶ 17; Thomas Decl. (SF) ¶¶ 8-9;
 11 Heiser Decl. (San Diego City) ¶¶ 25-26; Reed Decl. (Santa Clara) ¶ 27. Plaintiffs may also never be
 12 able to recoup funds to which they were otherwise entitled. If Plaintiffs accept the terms, Defendants
 13 make no assurances that they will not weaponize FCA liability to carry out President Trump’s agenda,
 14 which continues to be reaffirmed in executive action. Recent court orders granting similar preliminary
 15 relief undercut any hardship argument that Defendants could proffer; if myriad executive agencies can
 16 comply with a preliminary injunction against the enforcement of unlawful conditions and related
 17 executive orders, then Defendants have no serious argument that they cannot comply with an
 18 injunction in this case. Issuing the funding Plaintiffs seek to protect in this case actually benefits
 19 Defendants by carrying out federal goals and interests relating to preparedness measures and the
 20 prevention of and response to crime and terrorism. *E.g.*, Chavez Decl. (LA City) ¶¶ 23, 26, 28;
 21 Bowman Decl. (SF) ¶ 13; Kim Decl. (SF) ¶¶ 8, 16-17; Thomas Decl. (SF) ¶ 8; Reed Decl. (Santa
 22 Clara) ¶ 21. Accordingly, the public interest and balance of equities unequivocally tilt in favor of
 23 providing Plaintiffs interim relief.

24 CONCLUSION

25 For the foregoing reasons, Plaintiffs request that this Court issue a preliminary injunction
 26 prohibiting Defendants from imposing or enforcing the Unlawful DHS Conditions on Plaintiffs,
 27 withholding funding on the basis of those unlawful conditions, or imposing any materially similar
 28 conditions on Plaintiffs.

1 Dated: October 1, 2025

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* Application forthcoming for admission *pro hac vice*

FILER'S ATTESTATION

I, David S. Louk, am the ECF user whose identification and password are being used to file this 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: October 1, 2025

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